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federal register

Thursday
May 2, 1985

Selected Subjects

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Presidential Documents

Title 3—

The President

Proclamation 5334 of April 30, 1985

Helsinki Human Rights Day, 1985

By the President of the United States of America

A Proclamation

May 7, 1985, marks the opening session in Ottawa of the Human Rights Experts Meeting of the Conference on Security and Cooperation in Europe. This meeting is mandated to deal with questions concerning the record of all 35 CSCE states in protecting human rights and fundamental freedoms, in all their aspects, as embodied in the Final Act. This is the first CSCE meeting that has ever been devoted exclusively to human rights issues. It visibly manifests the success of joint U.S.-West European efforts to utilize CSCE as a major forum for discussions on human rights.

The United States delegation will work tirelessly to achieve meaningful results at this assembly, which discusses an issue of great concern to this Nation.

Human rights and fundamental freedoms lie at the heart of the commitments made in the Helsinki Accords of 1975 and in the Madrid Concluding Document of 1983. These documents set forth a clear code of conduct, not only for relations among sovereign states, but also for relations between states and their citizens. They hold out a beacon of hope for those in the East who seek a freer, more just, and more secure life. We and the other Atlantic democracies will not waver in our efforts to see that these commitments are someday fully honored in all of Europe.

Let us as Americans look once again to our commitment to implement fully the human rights and humanitarian provisions of the Helsinki Accords, because these freedoms are fundamental to our way of life. Let us pledge ourselves once again to do everything in our power so that all men and women may enjoy them in peace. In doing so, we call on all 35 CSCE states to dedicate themselves to upholding these humane principles.

The Congress, by Senate Joint Resolution 15, has designated May 7, 1985, as "Helsinki Human Rights Day" and authorized and requested the President to issue a proclamation reasserting our commitment to the Helsinki Accords.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 7, 1985, as Helsinki Human Rights Day and call upon all Americans to observe this day with appropriate observances that reflect our continuing dedication to full implementation of the commitment to human rights and fundamental freedoms made in the Helsinki Accords.

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

Ronald Reagan

[FR Doc. 85-10854
Filed 4-30-85; 4:13 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12513 of May 1, 1985

Prohibiting Trade and Certain Other Transactions Involving Nicaragua

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), chapter 12 of Title 50 of the United States Code (50 U.S.C. 191 *et seq.*), and section 301 of Title 3 of the United States Code,

I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of Nicaragua constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

I hereby prohibit all imports into the United States of goods and services of Nicaraguan origin; all exports from the United States of goods to or destined for Nicaragua, except those destined for the organized democratic resistance, and transactions relating thereto.

I hereby prohibit Nicaraguan air carriers from engaging in air transportation to or from points in the United States, and transactions relating thereto.

In addition, I hereby prohibit vessels of Nicaraguan registry from entering into United States ports, and transactions relating thereto.

The Secretary of the Treasury is delegated and authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the purposes of this Order.

The prohibitions set forth in this Order shall be effective as of 12:01 a.m., Eastern Daylight Time, May 7, 1985, and shall be transmitted to the Congress and published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
May 1, 1985.

[FR Doc. 85-10878
Filed 5-1-85; 10:48 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Suspension of Certain Provisions for Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends a sentence in § 989.67(j) of the marketing order for raisins produced from grapes grown in California. That sentence deals with the pricing of reserve raisins offered to handlers for free use. Suspension of that sentence would apply only to 1984 crop reserve Zante Currants so that the value of handlers' 1983 crop free tonnage inventory of those raisins can be adjusted downward closer to current world price levels, thereby aiding in the marketing of those supplies. The proposal was recommended by the Raisin Administrative Committee, which works with USDA in administering that marketing order.

EFFECTIVE DATE: April 26, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447-5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will have an impact on a substantial number of small entities. The net proceeds to equity holders resulting from the sale of reserve Zante Currant raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions, but the impact is not expected to be significant. In the long-term, the benefits of becoming more competitive under current marketing conditions should outweigh any adverse short-term impact and result in benefits to both small and large entities. The domestic inventory adjustment to be accomplished through this action will permit an overall price reduction for Zante Currant raisins, enabling the industry to compete more effectively with lower-priced foreign-produced Zante Currants, and to more aggressively market raisins generally so as to maintain and expand existing domestic markets and develop new markets. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased marketing of raisins at reduced prices.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Raisin packers have been conducting their marketing operations since last October on the premise that the value of the 1983 crop Zante Currant raisins carried into the 1984 season would be averaged down to the 1984 negotiated free tonnage price, and no useful purpose would be served by delaying the effective date of this action.

This final rule would suspend for Zante Currant raisins, through July 31, 1985, the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). That sentence provides that: "However, such raisins shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs to the equity holders incurred by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: Provided, That where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee."

Notice of this action was published in the **Federal Register** on March 6, 1985 (50 FR 9037). Interested persons were invited to submit written comments by April 5, 1985. Three comments strongly in favor of the proposal were received.

On June 27, 1984, the Department issued a document suspending the penultimate sentence of § 989.67(j) through July 31, 1986, to help reduce the value of handlers' 1983 crop free tonnage inventory of all raisin varietal types having reserve pools to permit more aggressive marketing and product movement and to help the industry become price competitive with foreign-produced raisins. That suspension was published in the **Federal Register** on June 29, 1984 (49 FR 26708).

Subsequent to that action, a group of raisin producers filed suit in the Federal district court for the Eastern District of California (Raisin Producers for Fair Marketing, et al. vs John R. Block, et al.), to enjoin the implementation of that suspension and necessary price adjustments. On July 31, 1984, Judge Price denied the request for injunctive relief insofar as it applied to 1983 crop reserve raisins but issued an order enjoining the suspension for the 1984 and subsequent crop year reserves until the Secretary has complied with the applicable provisions of the Agricultural Marketing Agreement Act of 1937, the Administrative Procedure Act, the Regulatory Flexibility Act, or until further order of the district court. The

decision of the court prevented the industry from making price adjustments in the value of 1983 crop Zante Currant free tonnage inventory because no reserve was established for that varietal type during the 1983 crop year and because the suspension of the penultimate sentence of § 989.67(j) was blocked with respect to 1984 and later crop year reserves.

A reserve is in effect for 1984 crop Zante Currant raisins and is available to offset the price of a portion of the higher valued 1983 crop inventory carried into the 1984 season (held in inventory on July 31, 1984) by the California raisin industry. That inventory totalling 2,551 natural condition tons was valued (producers' price) at $1,150 per ton while the 1984 producer price for the free tonnage portion of the 1984 crop is just over half that amount at $625 per ton. The plan would allow the Committee to sell to handlers one ton of 1984 crop reserve Zante Currant raisins at $100 per ton for each ton of 1983 crop Zante Currant raisins, valued at $1,150, effectively revaluing those raisins at $625, and making them competitive with free tonnage from the 1984 crop.

Deliveries of Zante Currant raisins to date this season are in excess of 2,900 tons. The carryin from the 1983 crop coupled with the 1984 production represent more than a two-year supply of Zante Currant raisins. Free tonnage shipments last year of Zante Currant raisins totalled about 2,262 packed tons and the most recent three-year average shipments was 2,311 tons.

In the absence of this action, open price contracting between producers and packers on 1984 crop Zante Currant deliveries was a possibility because of the excess supplies and the inflated value of the 1983 crop inventory. After the Committee's recommendation, packers did not use open price contracting but agreed instead in negotiations with the Raisin Bargaining Association to the aforementioned $625 per ton price, and have been conducting their marketing operations on the premise that the value of the 1983 crop Zante Currant raisins carried into the 1984 season would be averaged down to the 1984 negotiated free tonnage price.

In recommending this action, the Committee recognized that producers would be selling reserve Zante Currant raisins at a price well below production costs. However, the devaluation of the inventory would bring the prices of Zante Currant raisins in line with current marketing conditions and parallel the price adjustments already made on other California raisins using 1983 crop reserves.

One commenter recommended the establishment of a 1985 crop Zante Currant reserve pool because there are only 524 tons of 1984 crop reserve pool Zante Currant raisins available to devalue the 2,551 tons of 1983 crop Zante Currant raisins carried into the 1984–85 season. The commenter indicated that this is a must, otherwise packers will sustain great financial losses. The Department cannot implement this recommendation, because it is not possible to foresee the 1985 crop and marketing conditions for Zante Currant raisins at this time and whether there will be a reserve for Zante Currants in 1985.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by RAC, the comments, and other information, it is determined that (1) there has been a change of economic or marketing conditions so as to warrant sale of Zante Currant reserve raisins to handlers to provide them with raisins to sell as free tonnage, pursuant to § 989.67(j), and (2) under the conditions presently existing in the raisin industry, the penultimate sentence in § 989.67(j) does not now tend to effectuate the declared policy of the act and is hereby suspended with regard to Zante Currant raisins pursuant to § 989.91(b). However, such suspension shall continue only through July 31, 1985, at which time it shall terminate and the suspended sentence will become operative again beginning August 1, 1985.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

PART 989—[AMENDED]

The authority citation for Part 989 continues to read as follow:

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

§ 989.67 [Amended]

Therefore, the penultimate sentence in § 989.67(j) is hereby suspended for Zante Currant raisins through July 31, 1985.

Dated: April 26, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 85–10639 Filed 5–1–85; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 85–018]

Swine Health Protection Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes Louisiana from the list of States that have primary enforcement responsibility under the Swine Health Protection Act (the Act). This action is taken pursuant to a request from Louisiana. The intended effect of this action is to help ensure that certain requirements for the feeding of garbage to swine under the Act are enforced in Louisiana and thereby help prevent the dissemination of certain swine diseases.

This document also removes Arkansas from the list of States that do not have primary enforcement responsibility under the Act, but, under cooperative agreements with APHIS, issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. Arkansas no longer issues such licenses. With this change APHIS is now the entity that issues licenses for facilities eligible to be licensed in Arkansas. Therefore, the removal of Arkansas from the list of such States is necessary to inform interested persons that Arkansas no longer issues such licenses.

DATES: Effective date is May 2, 1985. Written comments must be received on or before July 1, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Firday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John L. Williams, Special Diseases Staff, VS, APHIS, USDA, Room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8487.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection Provisions" regulations (contained in 9 CFR Part 166 and referred to below as the Federal regulations) were established pursuant to the Swine Health Protection Act (set forth in 7

U.S.C. 3801 *et seq.* and referred to below as the Act). These authorities contain provisions regulating the treatment of garbage to be fed to swine and the feeding thereof in order to prevent the introduction into and dissemination in the United States of certain diseases of swine. The Act, except for authority for certain emergency actions, provides that the provisions of the Act and Federal regulations are to be enforced only in States that do not have primary enforcement responsibility under the Act.

Louisiana

The Act provides that a State shall have the primary enforcement responsibility for violations of laws and regulations relating to the treatment of garbage to be fed to swine and the feeding thereof during any period for which the Secretary of Agriculture determines that (1) such State has adopted adequate laws and regulations regulating the treatment of garbage to be fed to swine and the feeding thereof which meet the minimum standards of the Act and the regulations promulgated thereunder, (2) such State has adopted and is implementing effective enforcement procedures, and (3) such State keeps records and makes reports as the Secretary may require.

Prior to the effective date of this document, Louisiana was listed in § 166.14(c) of the regulations as a State having primary enforcement responsibility under the Act. Pursuant to a request from Louisiana and pursuant to the requirements of section 10(a) of the Act, this document removes Louisiana from the list of States that have primary enforcement responsibility under the Act. Therefore, the provisions of the Act and the Federal regulations are now being enforced in Louisiana.

Also, it should be noted that the feeding of garbage to swine is prohibited by the laws of Louisiana. Therefore, in accordance with section 13 of the Act and § 166.2(c) of the Federal regulations, Federal licenses will not be issued for the feeding of garbage to swine in Louisiana.

Arkansas

Pursuant to authority in the Act, APHIS enters into cooperative agreements with some States that do not have primary enforcement responsibility under the Act to allow such States to issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. Prior to the effective date of this document, Arkansas was included in the list of States in § 166.14(d) which issue such licenses under cooperative agreements with APHIS, but do not have primary enforcement responsibility under the Act. Arkansas no longer issues such licenses. Therefore, this document removes Arkansas from the list of States that issue such licenses under cooperative agreements with APHIS but do not have primary enforcement responsibility under the Act. With this change APHIS is the entity that issues such licenses for facilities eligible to be licensed in Arkansas.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not 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.

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

The amendments made by this document will not cause significant changes in requirements for affected persons.

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

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to help ensure that certain requirements for the feeding of garbage to swine under the Act are enforced in Louisiana and thereby help prevent the dissemination of certain swine diseases, and to inform interested persons that Arkansas no longer issues licenses to persons desiring to operate a treatment facility for garage that is to be treated and fed to swine.

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

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-Mouth disease, Hog cholera, Hogs, Garbage, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR Part 166 is amended as follows:

1. The authority for 9 CFR Part 166 is revised to read:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (c) and (d) of § 166.14 are revised to read as follows:

§ 166.14 State status.

* * * * *

(c) The following States have primary enforcement responsibilities under the Act: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

(d) The following States issue licenses under cooperative agreements with the Animal and Plant Health Inspection Service, USDA, but do not have primary enforcement responsibility under the Act: Alaska, Minnesota, Washington, and Puerto Rico.

* * * * *

Done at Washington, D.C., this 26th day of April 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-10638 Filed 5-1-85; 8:45 am]

BILLING CODE 3410-34-M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1503

Official Seal

AGENCY: African Development Foundation.

ACTION: Final rule.

SUMMARY: The African Development Foundation proposes to adopt an official seal. The African Development Foundation Act states that the Foundation may adopt a seal which shall be judicially noticed. The purpose of this rule is to adopt such a seal.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, (202) 634–9853.

List of Subjects in 22 CFR Part 1503

Seals and insignia.

Accordingly, Part 1503 is added to 22 CFR Chapter XV to read as follows:

PART 1503—OFFICIAL SEAL

Sec.

Authority: Pub. L. 95–533, 94 Stat. 3131 (22 U.S.C. 290h 4(2)(3)).

§ 1503.1 Authority.

Pursuant to section 506(a)(3) of Pub. L. 96–533, the African Development Foundation official seal and design thereof, which accompanies and is made part of this document, is hereby adopted, approved, and judicially noticed.

§ 1503.2 Description.

The official seal of the African Development Foundation is described as follows:

(a) Forming an outer circle is a ring of type in dark blue capital letters spelling the words "AFRICAN DEVELOPMENT FOUNDATION—UNITED STATES OF AMERICA;"

(b) Within that circle is an inner circle with the stylized letters ADF in dark blue superimposed on a light grey background.

(c) The official seal of the African Development Foundation when reproduced in black and white and when embossed, is as it appears below.

§ 1503.3 **Custody and authorization to affix.**

(a) The seal is the official emblem of the African Development Foundation and its use is therefore permitted only as provided in this part.

(b) The seal shall be kept in the custody of the General Counsel, or any other person he authorizes, and should be affixed by him, the Chairman of the Board of Directors, or the President of the African Development Foundation to authenticate records of the Foundation and for other official purposes. The General Counsel may redelegate and authorize redelegation of this authority.

(c) The President of the African Development Foundation shall designate and prescribe by internal written delegation and policies the use of the seal for other publication and display purposes and those Foundation officials authorized to affix the seal for these purposes.

(d) Use by any person or organization outside of the Foundation may be made only with the Foundation's prior written approval. Such request must be made in writing to the General Counsel.

Dated: April 25, 1985.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 85-10699 Filed 5-1-85; 8:45 am]

BILLING CODE 6117-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 85-029]

Authority Citation, Update

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revises the authority citation for Parts 110 and 165 of Title 33, Code of Federal Regulations (CFR) to conform to recently adopted **Federal Register** standards. Due to later codification, reorganization or revision, the statutes which authorize the regulations in these parts are not readily located by reference to the United States Code sections currently cited. This rule amends the authority citations to provide a direct reference to the section(s) of the current United States Code where the statutes are set out. In addition, the authority citations provide reference to regulations delegating Secretarial authority to the Commandant and further delegations to Commanders of Coast Guard Districts and Captains of the Port (COTPs).

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: LT Dave Shippert, Office of Chief Counsel, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and it is being made effective in less than 30 days. This rule merely updates the authority citations for 33 CFR Parts 110 and 165 to reflect the current location of statutory authority within the United States Code and to reference the relevant delegations of authority. Therefore, notice and comment are unnecessary in accord with 5 U.S.C. 553(b)(B). This rule will benefit the public by providing more direct references to statutory authority as found in the United States Code. Therefore, the Coast Guard has determined that good cause exists to make this rule effective in less than 30 days after publication in the **Federal Register** in accord with 5 U.S.C. 553(d)(3).

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. This rule merely updates the citation to statutory and regulatory authority for regulations within 33 CFR Part 110 and 165 to facilitate public review.

List of Subjects in 33 CFR Parts 110 and 165

Anchorage grounds, harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

In consideration of the foregoing, the Coast Guard is amending Parts 110 and 165 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

(1) The authority citation for Part 110 is revised to read as set forth below and the authority citations following the sections in Part 110 are removed.

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

PART 165—[AMENDED]

(2) The authority citation for Part 165 is revised to read as set forth below and the authority citations following the sections in Part 165 are removed.

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

Dated: April 25, 1985.

R. L. Brown,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 85-10675 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 85-030]

Authority Citation, Update

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: This rule revises the authority citation for Part 117 of Title 33, Code of Federal Regulations (CFR) to conform to recently adopted **Federal Register** standards. This rule amends the authority citation to provide a direct reference to the section(s) of the current United States Code where the statutes are set out. In addition, the authority citation provides reference to regulations delegating secretarial authority to the Commandant and further delegations to Commanders of Coast Guard Districts.

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Lt Dave Shippert, Office of Chief Counsel, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Telephone (202) 426-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and it is being made effective in less than 30 days. This rule merely updates the authority citation for 33 CFR Part 117 to reflect the current location of statutory authority within the United States Code and to reference the relevant delegations of authority. Therefore, notice and comment are unnecessary in accord with 5 U.S.C. 553(b)(B). This rule will benefit the public by providing a more direct reference to statutory authority as found in the United States Code. Therefore, the Coast Guard has determined that good cause exists to make this rule effective in less than 30 days after publication in the **Federal Register** in accord with 5 U.S.C. 553(d)(3).

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and

non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. This rule merely updates the citation to statutory and regulatory authority for regulations within 33 CFR Part 117 to facilitate public review.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

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

The authority citation for Part 117 is revised to read as set forth below.

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

Dated: April 24, 1985.

H.H. Kothe,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 85–10676 Filed 5–1–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 181 and 183

[CGD 83–012]

Certification, Safe Loading and Flotation Standards; Correction and Clarification

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction and clarification.

SUMMARY: The purpose of this document is to clarify the final rule on miscellaneous amendments to the certification, safe loading and flotation standards that appeared on page 39327 in the **Federal Register** of Friday, October 5, 1984 [49 FR 39327]. Since the effective date of the final rule, the Coast Guard has received questions regarding interpretation of §§ 183.39 and 183.41 of the Safe Loading Standard. This document corrects these sections to clarify the Coast Guard's intent and eliminate possible confusion.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/44), (CGD 83–012), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs (G–BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202) 426–1065, between 8 am and 4 pm Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: As originally written, sections 183.39 and 183.41 prescribed the method for determining the maximum persons capacity of inboard, inboard/outdrive and outboard powered boats subject to the Safe Loading Standard. The maximum persons capacity could not exceed the lesser value obtained by performing two different tests.

Amendments were proposed to §§ 183.39(a)(2) and 183.41(a)(2) that would remove the applicability of one of the tests, the dry stability test, to inboard, inboard-outdrive and outboard boats with a maximum persons capacity 550 pounds or more. The words, "the lesser of", were deleted because they were thought to be surplus. No comments were received on the proposal and the final rule was published.

Questions brought to the attention of the Coast Guard since the effective date of the final rule, indicate that the present wording appears to allow manufacturers of boats rating a maximum persons capacity of less than 550 pounds to calculate the maximum persons capacity by either one of the two test methods. The Coast Guard wants to make it clear that this was not the intention. The maximum persons capacity for these boats still must not exceed the lesser value obtained after performing both tests. Therefore, this document does not change the intent of the final rule.

The following corrections are made in FR Doc. 84–26365 appearing on page 39328 in the issue of October 5, 1984:

§ 183.39 [Corrected]

1. On page 39328, in the first column, in the seventh line, after the word, "exceed" and before the colon, by adding the words, "the lesser of".

§ 183.41 [Corrected]

2. On page 39328, in the second column, in the third line, after the word, "exceed" and before the colon, by adding the words, "the lesser of".

(46 U.S.C. 4302; 49 CFR 1.46(n)(1))

Dated: April 29, 1985.

A.D. Breed,

Commodore, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumers Affairs.

[FR Doc. 85–10683 Filed 5–1–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A–2–FRL–2829–1]

Standards of Performance for New Stationary Sources Delegation of Authority to the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegations of authority.

SUMMARY: This notice announces the delegation of authority by the Environmental Protection Agency to the Commonwealth of Puerto Rico to implement and enforce additional source categories of the Standards of Performance for New Stationary Sources (NSPS). This delegation was requested by the Puerto Rico Environmental Quality Board (EQB).

NSPS are air pollution control requirements set under the Clean Air Act. NSPS are applicable to certain categories of new air pollution sources.

EFFECTIVE DATE: This action was effective March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Francis W. Giaccone, Chief, Air Compliance Branch Air and Waste Management Division, Region II Office, 26 Federal Plaza, New York, New York 10278 (212) 264–9627.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Clean Air Act directs the Administrator of the Environmental Protection Agency (EPA) to delegate EPA's authority to implement and enforce Standards of Performance for New Stationary Sources (NSPS) to any state which has submitted adequate procedures. Nevertheless, the Administrator still retains concurrent authority to enforce the standards following delegation of authority to a state.

On February 20, 1985 EPA offered to the EQB delegation of four applicable NSPS categories and revisions and amendments to existing NSPS and NESHAPS promulgated between July 1, 1984 and December 31, 1984, in accordance with with the EPA/EQB delegation agreement date July 20, 1983. EQB accepted delegation of these additional NSPS and revisions and amendments to existing NSPS and NESHAPS in a letter dated March 7, 1985 from the Chairman of the EQB to the Regional Administrator, Region II. The following provides a complete listing of NSPS delegated to the EQB.

The new categories being delegated by today's action are identified with an asterisk (*). All revisions and amendments to the existing NSPS and NESHAPS from January 1, 1984 to June 30, 1984 are included here by reference.

NSPS Delegation

D Fossil-Fuel Fired Steam Generators for Which Construction commenced After August 17, 1971 (Steam Generators and Lignite Fired Steam Generators)
Da Electric Utility Steam Generating Units for Which Construction Commerced After September 18, 1978
E Incinerators
F Portland Cement Plants
G Nitric Acid Plants
H Sulfuric Acid Plants
I Asphalt Concrete Plants
J Petroleum Refineries—(Process Gas Combustion, Catalytic Regenerators)
J Petroleum Refineries:(Sulfur Recovery)
K Storage Vessels for Petroleum Liquids Constructed After June 11, 1973 prior to May 19, 1978.
Ka Storage Vessels for Petroleum Liquids Constructed After May 18, 1978
L Secondary Lead Smelters
M Secondary Brass and Bronze Ingot Production Plants
N Iron and Steel Plants
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction Plants
T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants
W Phosphate Fertilizer Industry: Triple Superphosphate Plants
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Steel Plants: Electric Arc Furnaces Constructed after 10/21/74 and prior to 8/17/83
*AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after 8/17/83
BB Kraft Pulp Mills
CC Glass Manufacturing Plants
DD Grain Elevators
EE Surface Coating of Metal Furniture
GG Stationary Gas Turbines
HH Lime Plants
LL Metallic Mineral Processing
QQ Graphic Art Industry Publication Rotogravure Printing
RR Pressure Sensitive Tape and Label Surface Coating Operations
* SS Industrial Surface Coating: Large Appliances
* TT Metal Coil Surface Coating
UU Asphalt Processing and Asphalt Roofing Manufacture
VV Equipment Leaks of Volatile Organic Compounds in Synthetic Organic Chemical Manufacturing Industry
WW Beverage Can Surface Coating Industry
XX Bulk Gasoline Terminals
FFF Flexible Vinyl and Urethane Coating and Printing
GGG Equipment Leaks of VOC in Petroleum Refineries
HHH Synthetic Fiber Production Facilities
* JJJ Standards of Performance for Petroleum Dry Cleaners

EPA's Findings

EPA's determination of approvability of delegations is based on the Agency's review of the Puerto Rico Public Policy Environmental Act, Law No. 9 of 1970, 12 L.P.R.A. Sec. 1121, et seq. and on the Puerto Rico Regulation for the Control of Atmospheric Pollution. Based on that review, EPA determined that such delegation is appropriate and so notified the Chairman of the EQB, in a letter dated July 20, 1983. This letter identified the conditions under which delegation would be approved. EQB subsequently accepted delegation of the additional categories in a letter dated March 7, 1985. Copies of all correspondence and EPA's delegation letter are available for public inspection in the Office of the Air Compliance Branch at the Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Consequences of EPA's Action

Effective March 11, 1985, all correspondence, reports and notifications required by the delegated NSPS should be submitted to the Offices of the Puerto Rico Environmental Quality Board located at P.O. Box 11488, Santurce, Puerto Rico, 00910, Attention: Air Quality Area Director.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12991.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. Section 7411).

Dated: April 17, 1985.

Christopher Dagget,

Regional Administrator.

[FR Doc. 85-10611 Filed 5-1-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, 76, and 78

[MM Docket 84-1296 FCC 85-179]

Implementation of the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order proposes changes in the Commission's rules and regulations. This action is necessitated by the passage of the Cable Communications Policy Act of 1984 which sets a national cable communications policy. This action is intended to revise our rules and regulations to conform with the Cable Communications Policy Act of 4984.

EFFECTIVE DATE: April 28, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 63

Communications common carriers.

47 CFR Part 76

Cable television.

47 CFR Part 78

Cable television.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 1, 63, and 76 of the Commission's Rules to implement the provisions of the Cable Communications Policy Act of 1984, MM Docket No. 84-1296; FCC 85-179.

Adopted: April 11, 1985.
Released: April 19, 1985.

By the Commission: Commissioner Rivera not participating.

Introduction

1. By this action, the Commission amends its rules to implement certain provisions of the Cable Communications Policy Act of 1984. This action

establishes rules and regulations for cable systems in the areas of ownership, channel usage, franchise requirements and pole attachments. In addition, it establishes regulations and guidelines governing the regulation of basic cable service rates by franchising authorities.

Background

2. On October 30, 1984, the Cable Communications Policy Act of 1984 (Cable Act) was signed into law.[1] This legislation amends the Communications Act of 1934, as amended, by adding a new Title VI, entitled "Cable Communications."[2] The intent of the Cable Act is to establish a national policy that encourages the growth and development of cable television services and assures that cable systems are responsive to the needs and interests of the local communities they serve.[3]

3. On December 4, 1984, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*) in the above-captioned proceeding.[4] In this *Notice*, the Commission proposed to amend its rules to implement certain provisions of the Cable Act.[5] In particular, the *Notice* proposed, *inter alia:* (1) Definitions for the terms cable operator, cable service, and cable system; (2) procedures whereby an aggrieved party may petition the Commission for a ruling or file a complaint concerning commercial channel access; (3) rule changes regarding common carrier ownership of cable systems in their rural service areas; (4) criteria for determining whether a cable system is subject to effective competition; (5) standards for regulation of basic cable service rates by a franchising authority in those instances where a cable system is not subject to effective competition; and (6) modification of our rules concerning state regulation of pole attachments to reflect new language contained in the Cable Act.

4. One hundred and forty (140) parties filed comments and sixty-three (63) parties filed replies in response to the *Notice*. A list of all parties is contained in Appendix A. The Commission was required by the Cable Act to complete this rule making within 180 days of enactment.

Discussion

Section 602—Definitions

5. Section 602 of the Cable Act defines a number of fundamental terms. In the *Notice*, we proposed to amend our rules to adopt the definitions of cable operator, cable service, and cable system contained in the Cable Act. In proposing these changes, we noted that there are differences between the new definitions and the definitions presently in our rules and that these differences may affect the manner in which we currently regulate certain segments of the cable industry. Comments were sought on the proposed definitions of these terms. Each of these terms is discussed below.

6. *Cable Operator.* The term "cable operator" is defined in paragraph (4) of section 602 of the Cable Act as follows:

> * * * any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

The term "affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.[6] A "significant interest" for the purposes of this definition means a cognizable interest as provided in the Commission's rules for attributing interests in broadcast, cable television and newspaper properties.[7]

7. Several parties submitted comments on the proposed cable operator definition. Comments filed by the law firm of Hogan & Hartson on behalf of various cable operators and state cable associations (Hogan & Hartson) state that the proposed definition, if read broadly, could include not only the local entity providing cable service to the community but also entities associated with the cable entity. This could include companies with management contracts to run the cable system, even if those companies have no ownership interests, and any person with a "cognizable interest" in the cable system, even if those persons do not participate in the management of the system. Hogan & Hartson suggests that the Commission "should clarify the definition by limiting it to a single cable operator per cable system." Tele-Communications, Inc. (TCI) believes that the Commission should clarify the use of the term "affiliate" to indicate that it is not being used in its common communications sense but rather is used to describe a purely legal relationship. In this regard, TCI believes that the Commission's present rules are more reflective of congressional intent.

8. The New York Telephone Company and the New England Telephone and Telegraph Company (NYNEX), while supporting the Commission's proposal, believes that more specificity is needed. NYNEX is concerned that the definition may give rise to uncertainty concerning the ability of the telephone companies to construct, sell or lease a cable system. NYNEX requests that the definition be amended to specify that "controls or is responsible for" pertains to provision of cable services, not facilities. Similar views are expressed by Pacific Bell and Nevada Bell (Pacific) in its comments and by the Ameritech Operating Companies (Ameritech) in its reply comments. Both Pacific and Ameritech propose that language be added to the proposed definition to affect this change.[8] BellSouth Corporation (BellSouth), on behalf of its operating telephone companies, supports the Commission's proposed adoption of the language contained in section 602(4) of the Cable Act. Similarly, Southwestern Bell Telephone Company (Southwestern Bell) supports the definition but suggests the Commission add language to clarify the meaning of "significant interest." The Communications Workers of America (CWA), in its comments, suggests that the definition be amended to include either "cable television system operator or cable operator" to ensure consistency with the statute.

9. After review of the comments and replies, we believe that our original proposal is generally appropriate. However, in order to ensure completeness and consistency with the statute, we will also amend our rules to include definitions of the terms: affiliate; persons; and significant interest. With regard to limiting the definition to

[1] Cable Communications Policy Act of 1984, Pub. L. 98-549, section 1 *et seq.*, 98 Stat. 2779 (1984).

[2] The Cable Act also amends certain other provisions of the Communications Act of 1934, as amended. For example, the Cable Act also amends section 224(c) of the Communications Act of 1934, as amended, by adding a new paragraph (c)(3).

[3] *See* House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Cong., 2nd Sess. (1984) (hereinafter House Report).

[4] *See Notice of Proposed Rule Making* in MM Docket No. 84-1296, 49 FR 48765 (1984).

[5] The Commission also recently initiated a separate rule making proceeding regarding the equal employment opportunity provisions of the Cable Act. *See Notice of Proposed Rule Making*, MM Docket No. 85-61, FCC 85-102, adopted March 1, 1985.

[6] *See* Section 602(1) of the Cable Act.

[7] *See* 47 CFR 73.3555, 73.3615 and 76.501. *See also* House Report at 41.

[8] Pacific proposes that the definition be amended to state that it "does not include a person or group of persons who provides cable distribution facilities for channel service to cable systems." Ameritech proposes the adoption of the language suggested by Pacific or the following language:

This definition shall not include a person or groups of persons who lease or manage local distribution systems for the delivery of cable services by third parties.

include only a single cable operator per cable system, we feel that the definition of a cable operator is intentionally broad and that a cable system may have more than one operator. According to the definition, any person who "provides cable service" and "owns a significant interest" in a cable system either directly or through a subsidiary or affiliated company would be a cable operator. In addition, anyone who controls or is responsible for the "management and operation" of a cable system would also come under the definition of a cable operator and may also be subject to sanctions for violations of the provisions of the Cable Act.[9] On the other hand, mere ownership of facilities used by a cable system would not be sufficient to qualify an entity as a cable operator. Accordingly, telephone companies that merely construct or lease cable system facilities are not cable operators under the Cable Act.

10. *Cable Service.* Section 602(5) of the Cable Act defines the term "cable service" as follows:

(A) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

The Commission's rules do not contain a definition of cable service or the terms "video programming" or "other programming service" which are included in this definition.[10] In the *Notice*, we proposed to include only the definition of the term cable service in our rules.

11. Most parties commenting on this matter favor the addition of the definition of cable service to the Commission's rules.[11] Several parties, however, comment that the proposed definition of cable service is incomplete and potentially confusing without also defining the terms "video programming" and "other program services" contained in the Cable Act. A number of parties suggest that the definition of cable service is meant to delineate the boundary between such services and services for which common carrier regulation could potentially be imposed.[12] In this regard, Southwestern Bell suggests a more precise definition of cable service in order to differentiate more clearly between cable services and telephone common carrier services. Several telephone interests, such as BellSouth and GTE, believe that our rules should state that the provision of non-video programming by a telephone company is a permissible activity under the Cable Act.

12. DOJ requests that the Commission clarify the definition of the term video programming contained in the Cable Act. DOJ recommends that the Commission indicate that programming "comparable" to that provided by a television broadcast station includes satellite-delivered, advertiser-supported programming networks such as ESPN, commercial-free TV programming such as HBO, and pay-per-view services which are not generally provided by broadcast television stations.

13. The National Cable Television Association, Inc. and the Community Antenna Television Association (NCTA/CATA), on the other hand, suggest that the Commission need not define the term cable service in the rules, because the term does not generally appear elsewhere in the Commission's rules and inclusion of the term is inappropriate given the unresolved preemption issues related to two-way services provided by cable systems. NCTA/CATA maintains that such inclusion might suggest that the Commission had decided that any services "other than those meeting the Cable Act's defintition of 'cable service' could be regulated as common carrier services * * *." In its reply comments, NCTA/CATA states that the term cable service is intended to distinguish between those services "that cannot, by statute, be regulated on a common carrier basis from whose regulatory status is yet to be determined by the Commission." Inclusion of the definition, it states, could be viewed as resolving the issue of preemption of state regulation of two-way services provided by cable systems.

14. We stated in the *Notice* that the legislative history indicated that the intent of Congress in defining cable service is to mark the boundary between the cable services that the legislation specifically exempts from common carrier regulation under section 621(c) of the Cable Act and all other non-cable communications services which cable systems could provide. We proposed to resolve only those issues raised in the Cable Act and, therefore, not to address the issue of the regulatory treatment of non-cable communications services offered over cable systems.[13] Consistent with our proposal, therefore, we will avoid ruling at this time on the manner of regulatory treatment of non-cable services. We emphasize that our adoption of the term "cable service" in our rules in no way represents any decision as to the regulatory treatment of non-cable services.

15. We believe that inclusion of the term "cable service" in our rules is necessary and consistent with the intent of Congress. The term is used extensively not only throughout the Cable Act but also in the rules we are adopting today. We believe that adoption of the term precisely as stated in the Cable Act is a necessary part of our implementation process. We believe that the legislative history and intent provides sufficient guidance regarding the definition of cable service. Such service includes programming services that make non-video information generally available to all subscribers and do not include subscriber-specific information. Cable services include, for example, pay-per-view video programming, teletext, one-way transmission of computer software, and

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[9] However, we will generally proceed against the franchisee who is a matter of record with us.

[10] The terms "video programming" and "other programming service" are defined in sections 602(11) and 602(16), respectively, of the Cable Act as follows:

The term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station;

The term "other programming service" means information that a cable operator makes available to all subscribers generally.

[11] These parties include Ameritech, Anchorage Telephone Utility, BellSouth, CWA, the City of New York (NYC), the Department of Justice (DOJ), GTE Services Corp. (GTE), the National Telecommunications and Information Administration (NTIA), NYNEX, Pacific, Southwestern Bell and the Connecticut Department of Public Utility Control (Connecticut PUC).

[12] For example, Anchorage Telephone Utility states in its reply comments that Congress included the definition of cable service "to differentiate between cable services exempted from common carrier regulation and all other non-cable communications services which can be provided over a cable system. Anchorage also states that Congress intended that cable operators should not be allowed to function as telecommunications common carriers. Similarly, Southwestern Bell proposes that the Commission adopt sections 3(b) and 621(d)(2) of the Cable Act concerning jurisdiction of the FCC and the states with respect to cable service to ensure clear delineation between the regulatory treatment of cable operators offering cable services and those offering common carrier services.

[13] This issue is currently under consideration before the Commission in Cox Cable Communications, Inc. (CCB-DFD-83-1), which concerns preemption of state regulation of Cox's institutional cable service in Omaha, Nebraska. The House Report states that the Committee "does not intend to resolve or even address the issue of the state or Federal treatment of non-cable communications services offered over cable systems . . . ." *See* House Report at 60. It also states that nothing in the Cable Act "shall be construed to affect existing regulatory authority with respect to non-cable communications services provided over a cable system." *See* House Report at 41.

on-line airline guides or catalog services that do not allow direct customer purchases. Two-way services that allow subscribers to manipulate or otherwise electronically process information or data would not be classified as cable services.[14] Examples of such non-cable services include at-home shopping and banking services, data processing, video conferencing, and all voice communications.[15]

16. We are also amending our rules at this time to include definitions of the terms "video programming" and "other programming service" as they are stated in the Cable Act. These terms are contained within the definition of the term "cable service," and we believe that their incorporation in the rules will reduce potential confusion which may arise from their absence. Further, with respect to the definition of video programming, we conclude that this definition is sufficiently expansive to include such video programming as that provided by ESPN, HBO, and other satellite-delivered cable network programming.

17. *Cable System.* The *Notice* also solicited comment on the definition of the term "cable system" contained in the Cable Act. The Cable Act defines a cable system as:

> * * * A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community * * *.[16]

Furthermore, the definition of cable system in the Cable Act specifically excludes *inter alia:* (1) Facilities that only retransmit the signals of television broadcast stations; and (2) facilities that serve only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facilities use public rights-of-way.

18. In the *Notice*, the Commission recognized several differences between this definition and the existing definition of a cable system in the Commission's rules. For example, the Commission's rules define a cable system as a facility that distributes the signals of broadcast stations.[17] The Cable Act redefines a cable system as a facility that provides video programming and it specifically excludes facilities that only retransmit broadcast signals.[18] In this regard, we requested comment on whether or not to include satellite-received "superstations" within the meaning of television broadcast signals; our initial position was that such facilities not be included within the meaning of television broadcast signals for this purpose.

19. A second difference is that cable systems with fewer than 50 subscribers are presently exempted from our rules. Under the Cable Act, such systems are no longer exempted. A third difference is that the Cable Act includes facilities, such as satellite master antenna television (SMATV) systems, that serve subscribers in one or more multiple unit dwellings under common ownership, control or management, if such facilities use public rights-of-way. The Commission's rules exclude all facilities that serve multiple unit dwellings under common ownership, control or management.

20. In proposing to adopt the definition of a cable system contained in the Cable Act, we noted that a number of regulatory concerns remain for facilities which previously qualified as cable systems but would no longer come under the definition and sought comment on what, if any, other rules should be applied to such facilities. We indicated that existing federal preemption policies such as those relating to franchise fee limits, technical standards, mandatory signal carriage, sports blackout, and network nonduplication rules would no longer be applicable to these systems. In addition, such facilities would no longer be eligible to be licensees in the Cable Television Relay Service (CARS). We raised the question of whether existing licensees should be "grandfathered" or whether the CARS eligibility rules should be amended.

21. In general, most commenters support adoption of the proposed definition of a cable system contained in the Cable Act. Some concern, however, was raised by a number of broadcast interests and others about the impact the Cable Act definition of a cable system may have on the Commission's signal carriage rules.[19] For example, the National Broadcasting Company, Inc. (NBC) and the Corporation for Public Broadcasting (CPB) argue that the definition of a cable system should not exempt cable facilities that retransmit exclusively broadcast signals. CPB indicates that at a minimum if the Commission adopts the Cable Act definition it must amend its signal carriage rules to include facilities that retransmit exclusively broadcast signals. Similarly, the Association of Independent Television Stations, Inc. (INTV), in its reply comments, states that the Commission should retain its current definition of a cable system at least for the purposes of its "must-carry" rules. Other parties, such as NCTA/CATA, also indicate that the Commission should conduct a further inquiry to determine the extent to which systems not covered by the Cable Act or the rules should be subject to signal carriage rules, technical requirements and other regulations similar to those applied to cable systems.

22. DOJ in its comments, states that the Commission's must-carry rules would not, as a practical matter, need to be applied to "classic" cable systems (*i.e.*, systems that retransmit only broadcast signals) since these systems will generally respond to demand for retransmission of those signals desired by consumers. In its reply comments, DOJ indicates that the Commission does retain authority over these systems and suggests that the Commission could seek further comment on whether such systems should remain subject to the "array of signal carriage regulations" historically applied in cable television systems.

23. With regard to the retransmission of "superstations," the majority of commenters on this issue support the Commission's proposals in this matter.[20] They believe that satellite-received superstations should not be included within the meaning of television broadcast signals contained in the exception to the definition of a cable television system. The commenters generally agree that such television broadcast signals be limited to only those signals received in a conventional manner. In this regard, DOJ states that the Commission has discretion in this matter but suggests that a reasonable way to deal with this

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[14] With respect to data processing services or use of data bases, we believe that the distinction between cable and non-cable services occurs with regard to where the data processing takes place. For example, downloading of data to a home computer that then is used to manipulate or process the information would still be considered a cable service.

[15] *See* House Report at 41–44.

[16] Section 602(6) of the Cable Act.

[17] The existing definition of a cable system is contained in § 76.5(a) of the Commission's rules, 47 CFR 76.5(a).

[18] The staff estimates that about ten to twelve percent of all cable facilities, serving less than two percent of all subscribers, carry only broadcast signals.

[19] The carriage rules cited by the commenters include sports blackout, technical standards, network nonduplication protection and the mandatory carriage or must-carry rules.

[20] *See, e.g.*, comments of Pennsylvania Cable Television Association (PCTA), NYC, and DOJ

problem is to include such systems as cable systems.

24. Most commenters object to our proposal to include SMATV systems serving multiple unit dwellings not under common ownership, control or management as cable systems only if they use public rights-of-way. Some SMATV, cable and municipal interests submit that the Cable Act is not intended to alter the present status of non-commonly owned multiple unit dwellings. Austin Satellite Television, Inc. *et al.*, for example, states that the Commission proposal to include such facilities in the exemption would require "otherwise legitimate cable systems" to utilize public rights-of-way in order to be considered cable systems. The City of St. Louis, NYC, the Municipal Coalition and the National League of Cities (NLC) agree and state that the Cable Act imposes new regulations on SMATVs that use public rights-of-way and serve commonly owned, controlled or managed multiple unit dwellings.

25. Another issue which some commenters address is the interpretation of the phrase "use of public rights-of-way." Private Cable Systems, Inc. and Direct Satellite Communications, Inc. suggest that the definition of the term should remain a local responsibility and that the revised definition should not automatically subject SMATV systems to federal cable regulation.[21] In its reply, NTIA, on the other hand, declares that Congress did intend to include sytems which make incidental use of public rights-of-way in the cable system definition. Furthermore, NCTA/CATA, TCI, the National Association of State Cable Agencies (NASCA), and the City of Austin state that, regardless of their status under the Cable Act, SMATVs should be subject to the same regulatory obligations as cable systems.

26. Several commenters were concerned with the impact of the definition on small cable systems and SMATV operations. The Microwave Communications Products Division of the Hughes Aircraft Company (Hughes) states that this new definition will render many older and small cable systems ineligible for CARS licenses. Hughes believes that such systems should continue to be eligible for CARS licenses. Hughes does not believe that grandfathering these existing small systems is the appropriate solution. Hughes proposes that the CARS eligibility rules be amended to incorporate the existing Commission definition of "cable system."

27. After reviewing the record, we believe that adoption of the definition of a cable system contained in the Cable Act is appropriate. We concur with DOJ, which states in its comments, that the Commission cannot define cable systems to include systems that retransmit only broadcast signals given the clear language to the contrary in the Cable Act. Accordingly, facilities that merely retransmit broadcast signals will not be considered cable systems for purposes of the Cable Act or the Commission's rules to the extent indicated herein. With respect to the status of "superstations," we believe that such signals which emanate well beyond the local viewing area should not be considered broadcast television signals for the limited purpose of the broadcast-only exclusion contained in the definition of a cable system. To do otherwise would preclude from regulation many systems which the Congress clearly intended to include within the scope of the Cable Act's definition of a cable system. On the other hand, we agree with the commenters that this proceeding is not the appropriate place to decide the status of signal carriage requirements for such rebroadcast only facilities. Accordingly, at this time, facilities now subject to signal carriage rules will continue to remain subject to those same requirements. Facilities constructed after the effective date of these rules and not meeting the definition of a cable system contained in the Cable Act, however, will no longer be subject to any signal carriage requirements. With regard to the exclusion of facilities serving multiple unit dwellings, we will include as cable systems only such facilities that use public rights-of-way. Further with respect to CARS eligibility, we believe that CARS facilities should be limited to only those systems which qualify as cable systems under the revised definition.[22] We will, however, grandfather existing systems which hold CARS licenses as of the effective date of this action. As a final matter, we emphasize that any regulations which are inconsistent with the policy of the statute or place a burden on interstate communications will continue to be regarded as in conflict with federal regulatory policy.[23]

Sections 611 and 612—Use of Cable Channels

28. Sections 611 and 612 of the Cable Act concern the use of cable channels. Section 611 specifies that a franchising authority may establish requirements to designate channels for public, educational or governmental (PEG) use. In addition, section 611 prohibits the cable operator from exercising any editorial control over the PEG channels. Section 612 establishes those conditions under which a cable operator must designate channels for commercial use by persons unaffiliated with the cable operator. The term "commercial use" is defined in section 612(b)(5)(B) as the provision of video programming, whether or not for profit. Cable systems with fewer than 36 activated channels are not required to designate any channel capacity for commercial use. Cable systems with 36 or more activated channels must designate a certain percentage of their capacity for commercial use.[24]

29. Section 612 also provides a right of action for any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available. The first avenue of relief is the Federal court system. However, section 612 also provides that parties may petition the Commission for relief upon a showing that a cable operator or a multiple system operator (MSO) has repeatedly violated this section.[25] The

[21] Direct Satellite notes, for example, that it is not unusual for a commonly-owned group of multi-unit dwellings to be situated on both sides of a public street or for a developer to dedicate streets to a local municipality following construction

[22] It should be noted, however, that such cable facilities may be eligible for microwave systems above 18 GHz in the private radio services and can also lease channel capacity from common carriers.

[23] *See*, for example, *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), *recon. denied* FCC 84-206 (May 14, 1984), *aff'd sub nom. New York State Commission Cable Television v FCC*, 749 F.2d 804 (D.C. Cir. 1984).

[24] Systems with 36 to 54 activated channels must designate 10 percent for commercial use and systems with 55 or more must designate 15 percent. Except for systems with more than 100 channels, must-carry channels and channels which cannot be used due to technical and safety requirements (e.g., aeronautical channels) are subtracted from the system's total capacity for the purposes of determining the percentage of designated commercial channels. In addition, any fractional amount of a channel is rounded up to the next whole number of channels.

[25] Three or more adjudicated violations would generally constitute a pattern or practice of abuse with respect to a single cable operator. However three adjudications on three different cable systems all controlled by an MSO may not necessarily constitute such a pattern. Nevertheless, to the extent that a few violations which might otherwise appear to be isolated are found to be the result of corporate headquarter decisions, directives or actions, these actions may be grounds for a Commission finding that an MSO has engaged in a pattern of abuse. *See* House Report at 53-54.

Commission is also authorized to establish any additional rule or order, including a rate schedule, if it finds that there is a pattern or practice of abuse.

30. *Commercial Channel Access Disputes.* In order to implement the provision of the Cable Act concerning commercial channel access disputes, we proposed in the *Notice* to follow the administrative procedures set forth in § 76.7 of the Commission's rules. Section 76.7 provides procedures for petitions for special relief whereby an aggrieved party may petition the Commission for a ruling or file a complaint. We requested comment on this approach as well as other remedial procedures such as the show cause procedures contained in § 76.9 of the Commission's rules.

31. Most parties commenting on this matter favor the use of the special relief procedures proposed in the *Notice.* For example, cable parties and other interests generally endorse the use of the special relief procedures contained in § 76.7 of our rules for adjudication of commercial channel access disputes. Several commenters suggest, however, that specific language be added to the proposed rule to indicate that three prior adjudications are required before the special relief procedures may be invoked.

32. The Cable Television Access Coalition (Access Coalition) and Connecticut PUC contend that the burden of proof in these matters should be on the cable operator and not the petitioner. For this reason, they propose that a show cause procedure be used. NYC, in its comments, suggests that an aggrieved party should be able to choose any course of action, *e.g.*, special relief, show cause of forfeiture proceeding.

33. Some commenters express concern over what constitutes commercial leased access in terms of rate discrimination. The Access Coalition claims the "Commission should emphasize that rate structures * * * must fall within a reasonable scope * * *."

34. After reviewing the comments and replies, we conclude that the administrative procedures proposed in the *Notice* are the most appropriate means of adjudicating commercial channel access disputes. The special relief procedures afford the Commission significant flexibility in conducting a proceeding and in determining an appropriate remedy. While such special relief procedures do place the burden of proof on the petitioner, we believe that this burden is not unreasonable and is consistent with the prior adjudication standard set forth in the Cable Act.[26] Therefore, we are amending our rules to include a new rule section on commercial channel access as proposed in the *Notice.* This new rule section will specify that the special relief provisions contained in § 76.7 shall be used in the case of commercial channel access disputes. We will also specify in this rule section that three prior adjudications are necessary before the Commission will entertain petitions regarding commercial channel access. This action in no way limits the sanction provisions, such as show cause orders and forfeitures, which the Commission may take in response to commercial channel access disputes.

35. With respect to the issue of establishing rules to ensure reasonable rates for commercial leased access, section 612(f) of the Cable Act states that "there shall be a presumption that the price, terms, and conditions for use of [commercial] channel capacity . . . are reasonable and in good faith unless shown by clear and convincing evidence to the contrary." We, therefore, do not believe that additional rules or regulations are appropriate or necessary and will not modify our rules at this time to include language specific to "reasonable" rates for commercial leased access. This action does not prevent parties from filing commercial access dispute petitions that have met the prior adjudication standard based upon unreasonable rates, terms and conditions.

36. *Other Issues.* A number of other issues were raised by the commenters regarding the requirements of sections 611 and 612 of the Cable Act. The law firm of Farrow, Schildhause, Wilson & Rains (Farrow) raises a number of constitutional questions regarding access channels. Farrow suggests that the forced opening of a cable system to PEG and commercial access may be the taking of private property for public use without just compensation or an improper restriction on the First Amendment rights of cable operators. Farrow suggests that the Commission consider raising these constitutional questions and staying access obligations while this question is being litigated. Farrow also proposes that the Commission allow special relief petitions against franchising authorities to permit an operator to test the constitutionality of section 612(h) of the Cable Act. This subsection allows a franchising authority to prohibit a local cable system from carrying leased channel programming that local authorities consider obscene.

37. With respect to the constitutional questions raised by Farrow concerning channel access, similar access matters have been before the courts and have been found to be constitutional.[27] Further, the Commission is charged with implementing the Cable Act in a timely fashion. We do not believe that grant of a stay of all channel access obligations, until all constitutional questions regarding the Cable Act are resolved, is appropriate here.

38. Western Communications, Inc. (WCI) and Gill Industries, in their comments, request clarification of the commercial channel access requirement. They are concerned that a cable operator could be required to permit commercial channel leasees access to the computer systems and associated hardware used by the cable operator.[28] They state that making such access mandatory would not be "reasonable" under section 612(c)(1) of the Cable Act.[29] We concur with the commenters on this issue. We find no basis either in the legislative history or in the Cable Act that would require cable operators to afford mandatory access to control systems by third party commercial channel leasees. However, to the extent that a cable system deliberately configures itself technically to preclude commercial access, such action would likely be viewed as a direct attempt to thwart Congressional intent and could result in sanctions being imposed by a court of competent jurisdiction.

39. As a final matter, Capital Cities Cable, Inc. (Cap Cities) and Hogan & Hartson request clarification concerning the definition of activated channels. Cap Cities contends that the language of the Cable Act is ambiguous. Hogan & Hartson, in its comments, requests clarification on the use of aeronautical channels and channels that have been designated for commerial uses prior to the effective date of the statute.

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[26] There must be three or more adjudicated violations before an aggrieved party may petition the Commission. Furthermore, the special relief process may also protect MSOs from frivolous complaints of violating this section.

[27] *See, e.g., Berkshire Cablevision of Rhode Island v. Burke,* 571 F. Supp. 976 (D.R.I. 1983), *appeal docketed,* No. 83-1900 (1st Cir. Oct. 27, 1983) (state agency jurisdiction question certified to R. I. Supreme Ct., — A. 2d — (R. I. Sup. Ct. Feb. 20, 1985) and returned to 1st Cir. for constitutional question).

[28] In addressable cable systems, each converter/descrambler is normally controlled by a central computer which uses an integrated program to authorize program choices, automatically generate billing information, and produce reports and accounts for the cable system.

[29] This section of the Cable Act states that the cable operator may establish rates, terms or conditions for commercial use that are sufficient to ensure that such use will not adversely affect the operation of the cable system.

Specifically, it believes that the Commission should declare that channel availability will be judged by the aeronautical rules under which the cable operator elects to operate and that commercial use which commenced prior to December 29, 1984, may still be deemed commercial use for section 612 purposes.

40. Section 612(b)(5)(A) of the Cable Act defines activated channels as "those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use." We do not believe that it is necessary at this time to define "activated channel" in our rules. We believe that the intent of the statute is clear. For purposes of compliance with the access requirements of the statute, we will consider "activated channels" to include all channels used for the provision of video and other programming services generally available to subscribers, *i.e.*, any channel used to provide cable service to subscribers. In addition, those channels not carrying any programming but capable of delivering cable service to subscribers without additional engineering modification of the system will be considered activated for the purposes of access channel allocation.[30]

41. With respect to the questions of aeronautical and prior commercial use, we agree with the commenters on both issues. In determining the base of channels to which the commercial channel percentage requirement is applied, it is up to the cable system to declare under which aeronautical rules it chooses to operate. Commercial use applicants cannot force cable operators to alter the aeronautical channel system under which they operate in order to affect channel capacity. As for prior commercial uses, we see no reason that a channel designated for commercial use before the effective date of the statute cannot continue to be used for the purposes of satisfying this requirement.

Section 613—Ownership Restrictions

42. Section 613 of the Cable Act establishes restrictions on the ownership and operation of cable television systems by local television broadcasters and local telephone companies.

43. *Cable/Broadcast Station Restrictions.* Section 613(a) of the Cable Act prohibits the ownership of a cable system by a television broadcast licensee whose predicted Grade B contour covers any portion of the cable community. This provision is the same in substance as § 76.501(a)(2) of the Commission's rules. Accordingly, we did not propose any change to this rule in the *Notice*.

44. Several commenters, such as WCI and TCI, agree that section 613(a) of the Cable Act and § 76.501(a)(2) of the Commission's rules are equivalent and that no changes should be made to our rules. NYC recommends the adoption of the specific language of the Cable Act. The NLC believes that there is no need to retain this rule since it duplicates the statute. Marsh Media Ltd. (Marsh) believes that any television/cable crossownership rules are unconstitutional and that the Commission should refrain from enforcing these statutory provisions.

45. We believe that our current rule is appropriate and should be maintained. As the rule is currently worded, it has the same effect as section 613(a) of the Cable Act. Therefore, we believe there is no need to substitute the language of the statute, as NYC suggests. We believe that our rules should contain the substance of the significant provisions of the Cable Act. Accordingly, we will not adopt the NLC's suggestion to eliminate this rule.

46. *Cable/Telephone Company Restrictions.* Section 613(b) of the Cable Act establishes regulations pertaining to cable system ownership by a common carrier within its telephone service area. Section 613(b)(1) makes it unlawful for a common carrier to provide video programming to subscribers in its telephone service area, either directly or indirectly through an affiliate. Under section 613(b)(2), a common carrier is prohibited from providing pole or conduit space, or channels of communications, to any entity that it owns or controls, if these facilities are to be used for the provision of video programming directly to subscribers. These provisions of the Cable Act are similar to the cable/telephone company ownership prohibitions contained in §§63.54 and 63.55 of the Commission's rules. In the *Notice*, we proposed only to replace the term "cable television service" with "the provision of video programming" language contained in the Cable Act.

47. Many commenters agree with our proposal to amend Part 63 of our rules by substituting "the provision of video programming" for "cable television service." BellSouth states that this amendment would permit telephone companies to provide other programming services, which was the intention of the Cable Act. The joint comments of 105 cable operators (Cable Operators) favor this proposal but add that the Commission should explicitly state that all non-textual video services including pay cable and pay-per-view are within the definition of video programming.

48. Several commenters believe that clarifications may be needed if the language of the statute replaces the wording of our rules. For example, NTIA states that the Commission should ensure that such an amendment will not prevent telephone companies from continuing to offer broadband video transport services under tariff. Centel Communications Company (Centel) believes that we should make it clear that this change in terminology has no effect on our decision to permit affiliates of telephone companies to have blanket Section 214 authorization when they propose to offer cable service outside their telephone service area.[31]

49. A few commenters believe that we should not change "cable television service" to "the provision of video programming." The Joint Cable Operators, Florida Cable Television Association and Cox Cable Communications, Inc. (Cox) state that the intent of section 613(b) is to codify current Commission rules and, therefore, we should retain these rules as presently written. NYNEX sees no need for this change. However, if the rules are amended as proposed, they believe that the definition of "video programming" should also be adopted.

50. Several commenters address other issues not specifically mentioned in the *Notice*. The NLC believes that those rules of Part 63 that duplicate the Cable Act should be deleted. The U.S. Telephone Association (USTA) suggests replacing the term "telephone common carrier" with "common carrier." GTE believes the more appropriate term is "any common carrier * * * in its service area," as used in section 613(b), because

[30] For example, channels that are currently set aside for future expansion of services on the cable system would be counted as "activated channels" whether or not new subscriber equipment would be necessary to receive such services. (It should be noted that there is no requirement that the cable operator provide any such new subscriber equipment necessary to receive channels designated for commercial use.) Additional system capacity that would require new equipment to be installed throughout the cable system would not be considered activated channels for the purpose of determining commercial channel requirements. In this regard, the mere absence of a cable headend processor would not, in and of itself, be an indication of lack of system capacity.

[31] *Report and Order*, Docket 84-28, 49 FR 2133 (1984).

these rules are meant to apply only to traditional exchange telephone companies. Centel states that Note (1)(a) of § 63.54 of our rules is ambiguous and should be modified to allow voluntary cooperation between telephone and cable companies.[32] Telephone and Data Systems Inc. and TDS Cable Communications Company (TDS) comments that Note 1, as currently written, makes it difficult to ascertain what type of "relationship" is permissible without a case-by-case clarification.

51. Farrow believes that telephone companies proposing to offer only broadcast signals on cable systems should not be exempt from the crossownership restrictions. It states that section 613(b)(1) seems to make this clear when the section provides that telephone companies may not sell video programming. However, Farrow indicates that problems may arise since section 602(6) changes the definition of a cable system to exempt systems carrying only broadcast signals. GTE disagrees and states that pure retransmission systems should be exempt.

52. Several cellular radio operators, such as the Cellular Telecommunications Division of Telocator Network of America, Inc. (Cellular), state that the application of crossownership restrictions to non-wireline common carriers is not justified by the policies and proposes of section 613 and would not be in the public interest. Metro Mobile CTS, Inc. comments that the basis of the crossownership restrictions relates to the unique monopoly position held by local landline telephone exchange carriers in their telephone service areas. Non-wireline cellular operators will not have a monopoly. Further, cable operators are not dependent on non-wireline carriers for pole attachments or transmission capacity. Therefore, non-wireline carriers have no incentive for abuse, like landline carriers, and should not be affected by these restrictions. GTE, in its reply comments, believes that there is no reason to incude wireline cellular operators, if non-wireline common carriers are exempted.

53. We will substitute the language of the Cable Act, "provision of video programming," for the term "cable television service" in Part 63 of our rules. We believe that this change is sufficient to make the substance of our rules conform to the statute. The Cable Act is quite clear that its intention is to restrict only the direct provision of video programming to subscribers by common carriers in the same areas as they provide telephone service.[33] In this regard, we believe that the provisions of section 613(b)(1) also apply to telephone companies proposing to offer only broadcast signals on their cable systems. While such cable systems may be exempt from other provisions of the Cable Act, it is clear that these cable systems provide video programming directly to subscribers. Therefore, without a waiver from the Commission, ownership of such a system by a common carrier within its telephone service area would be prohibited.

54. Finally, we will not apply the telephone company/cable crossownership restriction to non-wireline cellular operators and other radio common carriers.[34] Cellular operators provide telephone service to their subscribers using radio communications and do not have telephone service areas in the traditional sense. We have not applied these restrictions to nonwireline common carriers in the past and nothing in the Cable Act or its legislative history indicates that we should change this policy.

55. *Attribution of Ownership.* In the *Notice*, we requested comment on the issue of attribution for the purposes of defining ownership and control as it relates to cable system ownership by a common carrier. While the legislative history specifically states that the Commission's attribution rules apply for broadcast station-cable system crossownership, it is silent on the issue of common carriers. We note that the current Commission attribution standards differ for common carriers and broadcast stations.

56. DOJ and numerous cable interests recommend that we retain the current attribution rules. NCTA/CATA states that we should not modify the attribution limits without specific direction from Congress, as the cable and common carriers rules differ fundamentally in origin and purpose. TCI believes that the attribution standards should not be relaxed since common carriers are not subject to multiple ownership rules and there is the potential for extensive passive ownership. Hogan & Hartson, in its reply comment, states that relaxation of the attribution rules would subvert the independence of the cable industry.

57. A few commenters suggest changes to the attribution rules at this time. Several of these parties favor adoption of the same standards for common carriers as for broadcasters and cable operators. Among them, the American Council of Life Insurance (ACLI) believes that the purpose of section 613 is to develop a uniform approach to ownership restrictions. If Congress had intended a different standard for common carriers, it would have said so in the legislative history, in their view. Further, ACLI states that the current low standard unduly inhibits the availability of investment capital. BellSouth proposes to amend the attribution rules to permit the ownership of telephone companies and cable systems as long as the common parent company's ownership in the cable system is limited to no more than 50 percent of the entire ownership of the cable system.

58. We do not believe that it is appropriate to modify the attribution rules in this proceeding. First, the commenters have not submitted sufficient evidence to indicate the necessity of such an action at this time. Second, there is nothing in the Cable Act or legislative history that indicates that Congress believed this change would be disirable. Specifically, the House Report states that it is "the intent of section 613(b) to codify current FCC rules concerning the provision of video programming over cable systems by common carriers."[35] Accordingly, we will at this time maintain the current attribution limits for common carriers with regard to restrictions on cable ownership.

59. *Rural Crossownership Exemption.* Section 613(b)(3) of the Cable Act exempts telephone common carriers from the ban on cable system ownership in rural areas as defined by the Commission. Under this subsection of the Cable Act, telephone companies will be able to own cable systems that serve rural areas without applying to the Commission for waivers. The House Report indicates that the intent of section 613(b)(3) of the Cable Act is to eliminate all legal and administrative barriers preventing a common carrier

[32] Note (1)(a) of § 63.54 states:

As used above, the terms "control" and "affiliate" bar any financial or business relationship whatsover by contract or otherwise, directly or indirectly between the carrier and the customer except only the carrier-user relationship.

[33] The Cable Act defines "video programming" as that which is comparable to the programming provided by a television broadcast station in section 602(16). We interpret this to include broadcast stations, superstations, satellite delivered cable networks and pay cable whether the subscriber fee is on a per channel or per program basis.

[34] For similar reasons, these crossowneership restrictions will not apply to wireline cellular operators in areas in which they operate cellular systems but do not provide wireline telephone service.

[35] *See* House Report at 56.

from providing rural cable television service.[36] According to the House Report, the Commission's role is to define "rural area" and to certify that a service area meets this definition. The *Notice* made no specific proposal for this certification procedure.[37]

60. The Commission's rules currently permit telephone company ownership of a cable system in rural areas, as defined in § 63.58, when "no cable television system is under construction or in existence within the proposed cable television service area." In other cases, the telephone company must apply for a waiver. In the *Notice*, we proposed to expand the exemption from the waiver process by deleting the phrase "if no cable television system is under construction or in existence within the proposed cable television service area" from our rules. The Commission's definition of rural area is based on population criteria using U.S. Department of Commerce, Bureau of the Census, definitions and statistics. We proposed no changes to this definition in the *Notice*.

61. Several telephone company interests and NTIA agree with our proposal to simply delete the qualifying phrase from § 63.58 of our rules. These parties believe that such an action is sufficient to make our rules consistent with the Cable Act.

62. Many cable interests argue that the deletion of the qualification for exemption is not justified by the legislative history or intent of the Cable Act.[38] They state that section 613(b) of the Cable Act was amended after the House Report that the Commission relied on was written. They quote later House comments that the "policy of subsection 613(b) is that telephone companies should not provide video programming directly to subscribers in their telephone service areas." As viewed by cable operators such as the Mid-America Cable Television Association, this statement indicates an absolute ban on the provision of cable service by telephone companies in their service areas including rural areas. Further, these companies argue that the Commission exemption for rural areas was designed only "to allow them [telephone companies] to own cable systems where cable service would otherwise be denied to local residents."[39] Therefore, they state there are no grounds for eliminating the qualifying statement from our rules.

63. The Community Antenna Television Association (CATA) comments that the Commission has previously recognized the importance of independent cable service wherever possible as a matter of public policy and in the interest of fair competition. They believe that the qualification limiting telephone company ownership to those areas where independent cable service is impractical is an integral part of the definition of rural area. Thus, it should not be eliminated. Further, this limitation is justified by a "demonstrated pattern of abuse by telephone companies which results when these companies are unfettered in their dealings with cable systems," according to CATA.[40]

64. With regard to the definition of rural areas as it is now written, several telephone interests agree with our proposal to continue to define rural areas in terms of population. A few cable commenters, Southwestern Bell and DOJ state that this definition should be modified. Southwestern Bell believes that a broader definition is needed to bring cable service as rapidly as possible to rural areas, as Congress intended. However, they make no specific suggestion on how this should be accomplished. DOJ and others state that the definition could be improved by basing it upon a population density standard. DOJ states that the definition should be "crafted to further the policy objective of prohibiting telephone-cable crossownership except in those markets where an unaffiliated cable system would not be economically feasible." Further, DOJ notes that population density has traditionally been a yardstick used by the cable industry to determine potential viability of cable systems. Among the other commenters, Mid-America recommends that the definition include a density standard of less than 10 households per route mile.

65. A further concern of commenters is the process that a telephone company will be required to use to certify that the proposed cable service area is rural. Commenters representing telephone interests assert that the application procedures for certification pursuant to section 214 of the Communications Act of 1934, as amended, and § 63.01 of the Commission's rules are too burdensome and should be modified or eliminated. Clarks Telephone Company *et al.* states that a simple certification that the area is rural should be substituted for the 214 application. TDS believes that all that is required for certification is a map showing the boundaries of the area to be served and a statement that it meets the Commission's definition of a rural area. Eagle Telecommunications, Inc./Colorado, among others, proposes that telephone companies certify that their service area is rural in conjunction with their cable operator registration statement.[41]

66. The cable operators that commented on this issue believe that nothing in the Cable Act or the legislative history exempts telephone companies serving rural areas from the requirements of section 214. TCI, for example, asserts that telepnone companies should demonstrate that the proposed service area is rural in their section 214 applications. In addition, TCI states that telephone companies should also be required to project that the likely future population growth in the area (TCI suggests this be done for perhaps five years) will not remove the area from the rural category. Further, TCI believes any rural exemption request should be put on public notice and formal notification should be given to local cable operators. In its reply, Hogan & Hartson argues that the elimination of the requirements of section 214 is contrary to the instructions of the U.S. Court of Appeals for the D.C. Circuit.[42]

67. It is clear from the statute and the comments of the Congress that section 613(b)(3) is intended to permit telephone company ownership of cable systems in their rural service areas without any qualifications. The amendments made to section 613 after the House Report was written have no effect on subsection (b)(3). The legislative comments referred to by the objecting cable interests were addressing a general policy. Congress has stated that cable systems in rural areas are exceptions to this policy. The proposed legislation in the House Report includes this subsection exactly as it

[36] See House Report at 56–57.

[37] Currently a telephone company that proposes to offer cable service and qualifies for an exemption from § 63.58 of our rules files for section 214 authority by submitting the information described in § 63.01 of our rules and certifies that the service area is rural and that it has applied for a franchise.

[38] Cong. Rec. October 1, 1984, at H10438.

[39] Cong. Rec. October 1, 1984, at H10436.

[40] The CWA disagrees with this position. It states that the most practical means for providing cable service in rural areas is to have telephone companies offer it. These operations would be conducted with the necessary safeguards of all line-of-business operations.

[41] For example, this position was generally supported by the National Telephone Cooperative Association, TDS and BellSouth.

[42] *National Cable Television Association, Inc. v. FCC*, 747 F.2d 1503 (D.C. Cir. 1984). In that decision, the Court required the Commission to consider whether "allowing a local phone company to provide cable services will reduce the public convenience and necessity by allowing the local phone company to engage in anti-competitive practices."

was adopted.[43] While the Commission's previous policy was to limit telephone company ownership of cable systems without the grant of a waiver to those areas where there would not be independent cable ownership, the provisions of the Cable Act require that we modify this policy. Accordingly, the exemption qualification will now be eliminated from our rules.

68. The Cable Act and legislative history state that the Commission is responsible for defining "rural area." There is no indication that Congress disapproves of the Commission's current definition. From our experience, these criteria generally define areas that are indeed rural, and are unlikely to be served by independent cable systems. Accordingly, we will not modify the existing definition of rural areas, as given in § 63.58. For cable systems that qualify under our definition of rural, we will adopt an abbreviated process for granting section 214 authority. In doing so, we will eliminate the burden of submitting the detailed information required by § 63.01 of our rules. Instead, we will adopt a new § 63.09 which will require submission of basic information on the system providing video programming and certification that the proposed service area is rural under one of the definitions contained in § 63.58 of our rules. The Part 63 applications will be put on public notice and the public will be given an opportunity to file objections. We believe that this procedure will meet the requirement that we certify that a proposed cable system will serve a rural area without burdening either the telephone company or the Commission. We note that the Cable Act does not specifically address the issue of section 214 authority and the certification process. However, the legislative history emphasizes the need to expedite the provision of cable service to rural areas. We believe that this simple process minimizes the administrative burden and is an important means to accomplish this goal. Finally, we do not agree with those commenters that suggest that a telephone company should be required to project the future population growth of the rural area it proposes to serve. We believe that such a requirement is not in keeping with the intent of this section of the Cable to foster the provision of cable service and that estimates of population growth would be highly speculative at best.

69. *Waivers.* Section 613(b)(4) of the Cable Act permits the Commission to waive these crossownership restrictions in those circumstances where a waiver is justified in accordance with § 63.56 of its rules. TCI comments that a telephone company seeking a waiver should have the burden of demonstrating that it is unlikely that independent cable service would otherwise be provided in the foreseeable future. NYNEX states that the Commission should take steps to prevent the situation whereby once a telephone company demonstrates an interest in filing for a waiver, an independent cable company states its intent to construct a cable system, thereby precluding the telephone company. Viacom International Inc. (Viacom) comments that the Commission should ascertain whether a telephone company is subject to line-of-business restrictions by the AT&T consent decree, before a waiver is granted. If so, we should ascertain whether DOJ approval is likely.

70. We note these comments. However, we believe that our current waiver rules and procedures balance the concerns of all parties. We also note that the Cable Act specifically states that "waivers shall be made in accordance with § 63.56 * * * (as in effect on September 20, 1984)." Accordingly, we will make no changes to § 63.56 of our rules at this time.

71. *Other Matters.* Section 613(c) of the Cable Act gives the Commission the authority to enact rules relating to local crossownership between cable systems and other media of mass communications.[44] Given this authority, we stated in the *Notice* that we believed that this was an appropriate time to consider whether the cable crossownership restrictions should apply to other competing media of mass communications, such as MDS.

72. The cable interests commenting on this issue generally believe that it is unnecessary to apply cable crossownership restrictions to additional mass media, especially MDS. For example, Cap Cities states that cable and MDS typically serve different classes of subscribers with different services and that the situations where they are head-to-head competitors are the exception, rather than the rule. Viacom believes that we should not adopt cable ownership restrictions for these other competing media, unless there is evidence that such restrictions are necessary. DOJ comments that restrictions of this nature would be premature, since there is no indication of concentration of ownership of these other video technologies.

73. Other commenters on this issue believe either that there is a definite need for additional ownership restrictions or there may be such a need. The NLC recommends the initiation of a separate rule making proceeding to consider the possibility of new rules. The Connecticut PUC urges adoption of crossownership restrictions for all other media, including print, at this time.[45] TRAC/H. Geller/D.Lampert (Geller) in reply comments, states that crossownership should be prohibited between a cable operator and either an MDS licensee or a customer-programmer of MDS. While MDS has had difficulty completing with cable, MMDS will be the main competitor to cable, according to Geller. Southwestern Bell states that equity requires crossownership bans for all competing media. The Anchorage Telephone Utility concurs with this opinion in its reply comments. It believes that:

> If the FCC imposes cross ownership restrictions on local broadcasters and telephone companes on the theory that it will prevent establishment of media monopolies, it must either apply the same restrictions to other competing media or eliminate the restrictions for all competing media.

74. We do not believe that additional ownership regulations are appropriate at this time. We are not aware of any concentration of ownership of the alternative video delivery systems, especially by cable operators. Further, there is no evidence that there is likely to be a problem in the foreseeable future. We again note that we have the authority to establish additional rules. If we deem such restrictions necessary, we will institute the appropriate rule making proceeding to consider the establishment of additional ownership restrictions.

75. Section 613(e) enables a state or franchishing authority to own a cable television system as long as editorial control is exercised through a separate entity in order to preclude undue

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[43] *See* House Report at 6, 104. This subsection is quite clear and simple. It states that "[t]his subsection shall not apply to any common carrier to the extent such carrier provides telephone exchange service in *any* rural area [as defined by the Commission]." [Emphasis added.]

[44] Section 613(g) of the Cable Act defines "media of mass communications" as it is defined earlier in section 309(i)(3)(c)(i) of the Communications Act of 1934, as amended. Media of mass communications are defined as:

> Television, radio, cable television, multipoint distribution service, direct broadcast satellite service and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee

[45] TCI also comments that the Commission should not repeal its ban on network ownership of cable systems.

government control of programming. In the *Notice* we stated that we did not believe that this provision of the Cable Act has any impact on our rules. Accordingly, no proposal was made and we will take no further action relating to this section.[46]

76. Section 613(f) of the Cable Act grandfathers any combination of interests held on July 1, 1984, to the extent such interests were not inconsistent with applicable Federal or state law or regulations on that date. In the *Notice*, we indicated that we believe this provision is consistent with our rules. Accordingly, we proposed no changes. Nothing in the comments has convinced us otherwise.[47]

Sections 621 and 622—Franchise Requirements and Fees

77. Sections 621 and 622 of the Cable Act concern franchising requirements and fees. Under section 621, franchising authorities are authorized to grant one or more franchises within their jurisdiction.[48] This section also sets forth certain conditions regarding the construction of cable systems and the use of public rights-of-way. In addition, section 621 requires that franchise authorities assure that no class of potential residential cable subscribers is denied service due to income class. Finally, this section of the Cable Act gives the Commission authority to require the filing of informational tariffs for intrastate, non-cable communications services. Section 622 of the Cable Act limits the franchise fee paid by the cable operator to the franchising authority to no more than five percent of gross revenue.

78. *Use of Public Rights-of-Way.* In the *Notice*, we indicated that section 621 delineates certain conditions regarding the construction of cable systems over public rights-of-way. We stated that cable system construction is authorized over public rights-of-way and through easements designated for compatible uses. The *Notice* also stated that a property owner that has already granted or is obligated to grant an easement for utilities cannot deny cable access. However, the cable franchisee must ensure the safety and appearance of the property accessed through the easement and must bear the costs of the installation, operations or removal of the equipment.

79. Several commenters requested clarifications of this language. Pacific believes that differences between the terms "designated for compatible uses" used in the *Notice* and "dedicated for compatible uses" used in the Cable Act may result in future misinterpretations of this section. A few commenters (e.g., Oxford Development Corp. and Direct Satellite Communications, Inc.) claim that the statutory language should not be construed to mean that franchised cable operators have "mandatory access" rights. Other commenters suggest that the Commission should codify rules to define the Cable Act's easement requirements and obligations and the circumstances of liability under section 621(a)(2) of the Cable Act.

80. We agree with the commenters on the use of the terms "dedicated." Our use of the phrase "designated for compatible uses" in the *Notice* was not intended to be any more or less encompassing than the phrase "dedicated for compatible uses" used in the Cable Act.[49] With respect to the access issue, the House Report states that "[a]ny private arrangements which seek to restrict a cable system's use of such easements or rights of way which have been granted to other utilities are in violation of this section and not enforceable."[50] Based on the legislative history and the clear language of the statute, we find that a cable system does have the right to access through an easement as long as the other conditions of the section are met. Furthermore, we believe that the language and provisions of these sections of the Cable Act are generally self-explanatory and that they need not be codified by our rules.[51]

81. *"Redlining" Prohibition.* In the *Notice*, we stated that section 621 requires that a franchising authority assure that no class of potential residential cable subscribers be denied cable service due to income status. (This practice of denying service to lower income areas is commonly called "redlining"). We stated that the frachising authority must require that all areas of the franchised area be wired. However, we indicated that the franchising authority could award separate franchises within its jurisdiction.

82. Many cable interests claim that the Commission has misinterpreted this section of the Cable Act. These commenters assert that the *Notice* indicates that all areas of the franchise area must be wired when in fact this is not the case. NCTA/CATA, in its comments, indicates that the intent of this section is to prevent "redlining" and does not require wiring of those houses that are too remote to wire economically. We agree that the intent of this section was to prevent the exclusion of cable service based on income and that this section does not mandate that the franchising authority require the complete wiring of the franchise area in those circumstances where such an exclusion is not based on the income status of the residents of the unwired area.

83. *Informational Tariffs.* Section 621(d)(1) authorized the Commission to collect informational tariffs for intra-state, non-cable services offered by a cable system that would be subject to regulation by the FCC if provided on a common carrier basis. In the *Notice*, we suggested that the Commission did not need the information at this time but retains the right to collect this information in the future.

84. Several telephone company interests state that we should collect this information in order to monitor the state of the industry. Southwestern Bell is concerned that without filing tariffs, telephone companies may not find out about such services that may be common carrier in nature. DOJ claims we should require tariffs because the beneficial data they would yield outweighs the marginal cost associated with their use. Pacific, however, suggests we should not require tariffs to be filed and that this requirement is best left to the states. NCTA/CATA, in its reply comments, states that there is no basis for requiring tariffs. It indicates

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[46] The Connecticut PUC seeks a clarification as to whether a cooperative of municipalities may hold an interest in a cable system. We do not believe that this type of ownership would be in conflict with the Cable Act as long as editorial control is exercised through an entity separate from the franchising authority.

[47] Marsh was the only party to address this issue. In its comments and reply comments, Marsh contends that we should change the grandfathering date of July 1, 1970, of § 76.501 of our rules to the July 1, 1984, date of the Cable Act. Also, for the purposes of grandfathering the Commission should recognize executory as well as cognizable interests. These arguments are the same as those made by Marsh in a petition for reconsideration in Docket 20423. That proceeding will resolve the question of the extent that Marsh's own cross-interest is grandfathered. Marsh appears to be the only cable/broadcast entity that might be affected by a change in our rules. Accordingly, we do not believe these issues need be addressed here and will, therefore, give them full and appropriate treatment in the separate proceeding.

[48] Recently, the courts have questioned a franchising authority's right to grant an exclusive franchise. *See Preferred Communications, Inc. v. City of Los Angeles et al.*, No. 84-5541, slip op. (9th Cir. Mar. 1, 1985).

[49] Examples of such include easements dedicated for electric, gas or other utility transmission. *See* House Report at 59.

[50] *See* House Report at 59.

[51] In this regard, we believe that any disputes which may occur as a result of the provisions of this section are best settled at the local level utilizing the remedies available therein.

that such a tariff requirement would be unduly burdensome and unnecessary

85. We continue to believe that the filing of informational tariffs at this time is unnecessary. We have recently taken action to reduce tariffing requirements for non-dominant common carriers and we see no reason to impose such a new requirement on cable systems.[52] We believe that we can effectively monitor this situation through trade publications and other materials. Therefore, we will not require that informational tariffs be filed, but we do reaffirm our authority to require them in the future should such action be deemed necessary.

86. *Franchise Fees.* Sections 622 of the Cable Act specifies that the franchise fee paid by the cable operator to the franchising authority be no more than five percent of gross revenue. This section also prohibits the Commission or any other Federal agency from regulating the amount of the franchise fee or the use of the funds derived from the franchise fee

87. In the *Notice*, we proposed to delete § 76.31 of our rules concerning franchise standards. This rule limits the franchise fee to three percent of gross revenue with a five percent fee obtainable upon a showing of reasonableness. This rule also contains suggested, but not mandatory, procedures for the local fanchising process.[53] These provisions are generally dealt with in section 621 and other sections of the Cable Act.

88. In general, comments from individual cities and the NLC support deletion of the Commission's franchise fee rules. These parties also contend that section 622(i) of the Cable Act specifically precludes the commission from establishing any regulations that deal with the resolution of disputes between franchising authorities and cable operators. Several commenters suggest that the franchise rules and standards should be retained in some form. The Town of Islip, N.Y., supports retaining § 76.31's recommended procedures for all new franchises and would have the Commission supervise negotiation of renewal between the operator and franchising authority. The American Civil Liberties Union (ACLU) recommends retaining the timely wiring standard found in § 76.31.

89. NCTA/CATA, in its comments, suggests rewording § 76.31 to specify that the franchise fee may not exceed five percent. NCTA/CATA also indicates that the Commission should define what is and is not to be included in the fee. In addition, NCTA/CATA suggests that the Commission specify relief procedures for cable operators seeking enforcement and interpretation of the provisions. A number of other cable interests support deleting the existing rule, but request that the Commission retain and assert its jurisdiction over any disputes that may occur regarding franchise fees. Hogan & Hartson, in its reply comments, states that the "Commission should exercise its jurisdiction to regulate franchise fees * * * to prevent the balkanization that will result if such disputes are left to the courts." Hogan & Hartson also states that the Commission should rule that § 76.31 of the rules was in effect until December 29, 1984, the effective date of the Cable Act. Miami Cablevision echoes this position and further states that the Commission's rules (§ 76.31) should be applied in full force to those fee controversies pending with the Commission on December 29, 1984.

90. After examining the record, we believe our initial proposal to eliminate § 76.31 of the rules concerning franchise requirements and fees is the appropriate course of action. Section 622(i) of the Cable Act clearly states that "[a]ny Federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section." We believe that this provision renders our rules invalid with respect to setting franchise fee limits.[54] Section 622 of the Cable Act spells out quite clearly the terms of the franchise fee and how it is defined and administered. Therefore, there is no need for us to further define these matters.[55] We believe that any disputes involving the franchise fee are best resolved through the courts. Accordingly, we are deleting § 76.31 of the rules, entitled "Franchise standards." In addition, we are also deleting § 76.30 concerning applicability of § 76.31.[56]

Section 623—Regulation of Rates

91. Section 623 of the Cable Act specifies the manner in which subscriber rates for cable services may be regulated. In particular, the regulation of basic cable service is permitted by a franchising authority whenever a cable system is not subject to effective competition.[57] The Cable Act specifically charges the Commission with the responsibility of defining effective competition and establishing standards for rate regulation. In addition, the Cable Act requires that the Commission submit a report to Congress within six years on the effect of competition in the marketplace as it relates to rate regulation of cable systems.

Definition of Effective Competition

92. In the *Notice*, we recognized the desirability of defining "effective competition" in a manner that can be easily interpreted and readily applied by a franchising authority within its community or communities. On the other hand, we noted that the definition chosen should also permit the correct identification of those situations where a cable system may have significant market power. The *Notice* also reviewed the actions taken by several states in deregulating cable television service.

93. In the *Notice*, we sought comment on what constitutes effective competition and what kinds of signals or services compete with basic cable service. We also requested comment on defining effective competition in terms of the availability of off-the-air signals in the cable system's community. In this regard, we indicated that if such a signal complement criterion were chosen, one approach would be to define effective competition in a given market as the presence of four unduplicated broadcast signals, including the programming of the three major networks. We also

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[52] *See Fourth Report and Order*, CC Docket 79-252, 48 FR 52452 (November 18, 1983). *See also Fifth Report and Order*, CC Docket 79-252, 49 FR 34824 (September 4, 1983).

[53] For example, these recommendations include that: (1) The franchisee's qualifications and construction arrangements should be approved by the franchising authority as part of a full public proceeding affording due process; (2) initial and renewal franchises should not exceed 15 years; and, (3) construction should be significant within the first year of certification and be completed under a reasonable timetable; etc.

[54] In this regard, the House Report states:

Subsection 622(i) prohibits any agency of the United States, including the FCC, from regulating the amount of the franchise fee or the use to which funds collected through the fee will be put. The current FCC regulations which restrict the use of franchise fee revenues to cable-related uses and permit franchise fees of 5 percent only if a waiver is granted by the FCC are invalid by the terms of this legislation. See House Report at 65.

[55] As far as reinstating petitions that were pending prior to December 29, 1984, we decline to return them to active status. The Commission no longer has regulatory interest in adjudicating petitions that have been rendered moot by the Cable Act

[56] Section 76.30 states that the existing franchise fee rule is applicable only to systems with 1000 or more subscribers.

[57] Section 623(g) of the Cable Act grandfathers for two years any existing state law which provides for any limitation or preemption of regulations by local franchising authorities. This regulation applies to cable systems franchised after the effective date of these rules, and to all cable systems after December 29, 1986. The Cable Act grandfathers certain franchise rate obligations during the two intervening years.

suggested that in determining whether a signal was available in a franchise area the predicted Grade B contour might be a more approapriate criterion than one based on either a specific mileage zone (*e.g.*, 35 miles) or the Commission's must-carry rules. Finally, comments were requested on whether a penetration level criterion should be included in the definition of effective competiton.

94. Most of the parties filing comments or reply comments in this proceeding addressed the issues raised in this section of the *Notice*.

95. *Signal Complement Criteria.* Althought little consensus can be found among the commenting parties, they generally suggest defining effective competition based on some form of signal complement criterion. Well over half of the commenters feel that the proposed requirement of four off-the-air broadcast signals is too strict. Cox, NTIA and Time Inc., for example, suggest a three signal criterion. NCTA/CATA, Hogan & Hartson, and comments submitted by the law firm of Fleischman and Walsh, P.C. on behalf of various cable television interests (VCTI), in comments representive of most cable interests, argue for a two signal criterion.[58] Other commenters argue that the four broadcast signal criterion suggested in the *Notice* is insufficient to ensure effective competition. DOJ and the Telecommunications Research and Action Center (TRAC) assert that a minimum of five broadcast signals is necessary in order for there to be effective competition with cable service.[59] The National Federation of Local Cable Programmers suggests seven signals. The NLC proposes requiring a total of ten signals including five alternative delivery channels.[60]

96. Several of the parties suggesting additional (more than four) signals also indicate that the statute requires that the Commission define the circumstances in which a "cable system" is not subject to effective competition. These parties state that a standard based on alternatives to "basic cable service" only, as suggested in the *Notice*, is not appropriate given the statutory language. This view was expressed by NLC and the City of New York, among others. DOJ and a number of other parties believe that the Commission was correct in limiting the question of effective competition to basic cable service. These parties note that franchise rate regualtion authority is limited to regulation of basic cable service.

97. Several parties in their reply comments criticize the Department of Justice's proposals for an effective competition standard based on five signals. They state that DOJ provides little justification other than supposition and intuition. On the other hand, an empirical study by NCTA/CATA was cited by many as providing factual support for a standard based on fewer than three signals.

98. After full consideration of the record on this issue, we continue to believe that a standard for defining effective competitive based on the availability of off-the-air broadcast signals in the cable system's community is appropriate. In adopting this definition, we do not mean to minimize the importance of the various alternative sources of video programming such as multipoint distributing services, direct satellite reception, and video cassette recorders.[61] Such services are significant providers of video programming services and do, in fact, offer competition to cable services.[62] Congress has already made the decision that nonbasic service should not be subject to such regulation at either the federal or local levels.[63] This decision appears to have been made based, at least in part, on a belief that alternative video delivery systems provided sufficient existing or potential competition to nonbasic services that rate controls would be counterproductive. However, the Cable Act requires the Commission to look at competition for the limited purpose of determining in what situations rate regulation of basic cable service may take place. For the most part, programming provided by basic cable service includes local, over-the-air signals and other services. Therefore, we believe that a standard based on the reception of terrestrial television signals is appropriate and provides a reasonable benchmark for determining effective competition with basic cable service. Furthermore, we feel that this standard meets the congressional intent of an administratively manageable standard for the Commission, franchising authorities and cable operators.

99. *Number of Signals Required.* The number of over-the-air broadcast signals required to provide effective competition to basic cable service must be sufficient to allow viewers adequate and significant programming choices. Further, the number of signals should ensure that the basic tier offering does not become a source of market power for the cable operator. Based on the record in this proceeding, we believe that three broadcast signals are the minimum number of signals needed to meet these objectives. A limited statistical sampling of two, three, four and five signal markets using Arbitron viewing data provides further evidence to support this conclusion.[64] In

[58] Both Cox and VCTI also argue that foreign broadcast station signals (*e.g.*, Canadian and Mexican) represent effective competition in some cable markets and should be counted for this purpose. Section 76.5(b) of our rules defines television broadcast station to include any "station licensed by a foreign government," and accordingly any such stations will be included.

[59] DOJ also suggests that other criteria be considered in addition to the signal complement.

[60] In addition to NLC, a number of commenters (irrespective of their views on the number of signals) support the inclusion of various alternative delivery systems in our effective competition standard. *See, e.g.*, comments filed by the U.S. Conference of Mayors, VCTI, TRAC, and the U.S. Catholic Conference. Other parties argue that the programming provided on these systems (STV, MDS, MMDS, and DBS) is most substitutable with that provided on the pay cable channels and therefore should not be included.

[61] In this regard, we note that the Cable Act amends section 705 of the Communications Act of 1934, as amended, to permit the reception by individuals of any satellite cable programming for private viewing. This action significantly increases the programming options available to all viewers. We also note that the Commission has proposed preemption of certain restrictive local zoning regulation of satellite receive-only antennas. *See Notice of Proposed Rule Making*, CC Docket No. 85-87, FCC 85-144, adopted March 28, 1985.

[62] *See Report and Order* in Docket No. 83-670, 49 FR 33588 (August 23, 1984); *Report and Order* in Docket No. 19142, 96 FCC 2d 634 (1984); *Report and Order* in Docket No. 83-1009, 49 FR 31877 (August 8, 1984) and *Memorandum Opinion and Order* in Docket No. 83-1009, 50 FR 46666 (February 1, 1985).

[63] Some commenters express concern that cable systems may have market power in the provision of nonbasic service and that this power could be extended to their provision of basic service. Therefore, these commenters contend, rate regulation of basic service should be permitted whenever there is a lack of competition in nonbasic service. We believe the commenters' argument is based upon a concern about the marketing practice of cable operators whereby consumers can subscribe to a pay tier only if they *also* subscribe to the basic. This marketing practice, often called a "tying arrangement," is addressed in the antitrust literature. We believe that the commenter's argument is incorrect. This is so because a cable operator has the ability to charge a price for nonbasic service that is the most profitable. He, therefore, has no incentive to raise basic service rates in order to earn increased profits. Thus, we believe that the manner in which cable operators market basic and nonbasic services represent an efficient business practice and is not a threat to the competitive provision of basic service. "The law's theory of tying arrangements is merely another example of the discredited transfer-of-power theory, and perhaps no other variety of that theory has been so thoroughly and repeatedly demolished in the legal and economic theory." *See* Robert H. Bork, *The Antitrust Paradox*, 1978, p. 372. Accordingly, we see little point in determining whether a cable system may have market power in the provision of a service that a franchising authority is prohibited statutorily from regulating.

[64] *See* Arbitron *1982 County Coverage Surveys, Cable-Controlled.*

comparing the cable viewership of the programming which is most likely to be included in the basic tier with the off-air local broadcast viewership, we found that in two signal markets the viewership share of such programming could be as large or larger than the off-air viewership of the typical local station in such a market. This could potentially be a source of market power for the cable operator. In three signal markets, the cable viewership of such basic programming was in general less than the off-air viewership of a single local signal.[65] In the worst case, the impact of the provision of basic service programming would be comparable to adding one more competitior to a (three competitor) market. Further support for the reasonableness of an effective competition standard of three signals can be found in the economic literature. In an empirical study of American industry, Kwoka demonstrated that the presence of a third competitor of sizable market share may be sufficient to guarantee competition in a given industry.[66] For the case at hand, involving at least three broadcast signals and a cable system, there will generally be not just a third but a fourth competitor of sizable market share. Accordingly, we feel that the programming of basic cable service is not likely to be a significant source of market power in these circumstances and that retaining the four signal standard proposed in the *Notice* could subject a number of cable systems to unnecessary rate regulation.

100. Therefore, after careful consideration of the arguments presented as to the appropriate number of broadcast signals required for effective competition with basic cable service, we have decided to relax the effective competition standard proposed in the *Notice*. We now conclude that the existence of three or more off-the-air broadcast signals in the cable market provides viewers with adequate programming choices and presents an effective constraint on the market power of a cable system in the provision of basic service. We recognize that many cable systems provide a number of services in addition to the retransmission of off-the-air signals. For example, a cable system may typically provide additional broadcast signals, access channels, and certain satellite delivered programming on its basic cable tier.[67] Nevertheless, we do not believe that a cable system gains significant market advantage by the provision of this additional programming in those markets where there are sufficient (*i.e.*, three or more) off-the-air broadcast signals.[68] Accordingly, a cable system will be considered to face effective competition whenever the franchise market receives three or more unduplicated broadcast signals.[69]

101. *Program Content of Signals.* In the *Notice*, we proposed that the programming of three major networks be included as part of the signal complement requirement. A number of commenters support this network programming requirement. For example, DOJ, NLC, the Department of Defense, and TRAC concur with this position. These parties believe that a cable system could conceivably gain market power by importing a signal which provides network programming not receivable off-the-air in the franchise area. Several commenters, NCTA/CATA, VCTI, NTIA, Heritage Communications, Inc., Hogan & Hartson, and California Cable Television Association (CCTA), among others, oppose any programming content requirement.[70] In its comments, VCTI argues that past Commission policies (*e.g.*, spectrum allocation, must-carry rules, etc.) have not been based upon some "entitlement" of viewers to the programming of the three major networks. In addition, VCTI points out that independent and noncommercial programming have become increasingly popular and that the presence of either in a market may contribute more to programming diversity than the offering of a third network affiliate.

102. After weighing the arguments presented on both sides of the issue, we conclude that a programming content requirement based on major network programming should not be included in the Commission's standard for effective competition.[71] We continue to have significant First Amendment concerns with any requirement based on the programming content of broadcasters. We also note that such a requirement would not be consistent with our past efforts to foster alternative program sources. For these reasons, we will not adopt such a requirement.

103. *Signal Availability Standard.* The *Notice* indicated that if a broadcast signal standard is chosen, a method must also be developed for determining when a signal is available in a given franchise area. A number of approaches were suggested in the *Notice* including counting all signals within a specific mileage zone (*i.e.*, the 35-mile zone) and a standard based on the Commission's must-carry rules.[72] In the *Notice*, we suggested a standard based on counting stations that placed a predicted Grade B signal contour over the cable community. Comment was also requested on whether a penetration level should be included in our definition of effective competition.

104. Most cable interests and certain other parties suggest counting a signal if it meets any of the must-carry requirements. For example NCTA/CATA, VCTI, TCI, Cap Cities and CCTA, argue that a signal should be counted if it satisfied any one of a number of criteria, such as Grade B, significantly viewed, 35-mile, or must-carry. NTIA, Hogan & Hartson and Time, Inc., support the Grade B contour criteria proposed in the *Notice*. They indicate that the Grade B proposal is the

[65] Viewership of basic cable services (excluding must-carry signals) ranged from three quarters to approximately equal to the off-the-air viewership of the typical local signal, which in this sample was about 33%. We feel that a market or viewership share of 33% or less is a reasonable indication of lack of market power. *See U.S. v. Aluminum Co. of America et al.*, 148 F. 2d 416, 424 (1975).

[66] *See* John E. Kwoka, "The Effect of Market Share Distribution on Industry Performance," *Review of Economics & Statistics*, Vol. LXI, No. 1, February 1979, pp. 101–109.

[67] Examples of satellite delivered programming or cable networks are the Entertainment and Sports Programming Network and Cable News Network.

[68] The existence of market power depends on both the level of demand for a particular product and the elasticity of that demand. For these additional basic services to be a source of market power, it must first be shown that a significant demand exists for these services and that such demand is relatively inelastic. None of the commenters were able to present any evidence to support either of these contentions. In fact, several of these same commenters readily concede that no market power is obtained from the provision of some of these additional services, such as the public access channels. In this regard, it should also be noted that most satellite services presently provided on cable systems either are not rated or have very small viewing shares according to the national rating services.

[69] Furthermore, we also agree with those commenters that state that it was the intent of the Cable Act to significantly deregulate the provision of cable service. We believe that a requirement of five or more signals would not have the effect that Congress clearly intended.

[70] CCTA also argues that duplicated signals should be counted. It notes that programming duplication is not an issue in either television license renewal or must-carry requirements.

[71] It should be noted, however, that in the vast majority of markets with three or more unduplicated signals, the programming of the three major networks is provided.

[72] Must-carry signals include all television stations within a 35-mile zone, certain Grade B contour signals and signals that have attained significantly viewed status within the cable community. *See* §§ 76.54, 76.55, 76.57, 76.59 and 76.61 of the Commission's rules.

most cost-efficient and easiest to administer alternative.

105. The majority of the parties associated with the local franchise process and a number of other commenters support a stricter standard for counting signals. NLC and TRAC argue that the 35-mile zone criterion should be used. ACLU and the Cable Television Information Center support using the Grade A city contour. Several commenters, for example, the National Association of Towns and Townships, the Vermont Department of Public Service, DOJ and the Department of Defense argue for a standard based on "actual" as opposed to predicted reception. In addition, a requirement that cable penetration be less than 70% was supported by several of these parties including the NLC and TRAC.[73] These commenters cite penetration as a good indicator of the dependence of viewers on cable service for adequate reception of local broadcast signals.

106. The choice of an appropriate signal reception criterion is a difficult one. The use of any of the above alternatives will result in some cable systems being judged to have effective competition when in fact reception of three or more signals may not always be possible in the franchise area. On the other hand, some cable systems will be judged, whatever the alternative chosen, to not face effective competition when in fact the majority of homes in the franchise area are receiving more than three broadcast signals. Since no compelling arguments were given to the contrary, we believe that weight should be give to the administrative convenience of implementing a signal availability test.

107. Furthermore, given the intent and purposes of the Cable Act, we feel that in developing a standard for the purposes of rate regulation, it is more appropriate to favor a presumption that competition does in fact exist rather than to assume that consumers will make no efforts to seek out alternatives to basic cable service. Clearly, in this regard, there is considerable evidence viewers do take significant measures, such as improved antennas, use of rotors and amplifiers, to receive broadcast signals they deem desirable even if those viewers are in areas with fringe or marginal reception. Accordingly, at this time, a signal will be counted for purposes of effective competition if it places a predicted Grade B contour over any portion of the cable community or is significantly viewed within the cable community.[74] However, in order to ensure that franchise authorities are permitted to rate regulate in those areas where there is not effective competition, franchise authorities may submit showings and engineering studies to indicate that such signals are in fact not available anywhere within the cable community. Such studies shall include field strength measurements made in accordance with § 73.686 of the Commission's rules.

108. With regard to any additional criterion based on cable penetration figures, we are unconvinced that such statistics are reliable indicators of broadcast reception problems. We believe that cable subscriber penetration is determined by a number of factors other than the availability of off-the-air signal reception. More specifically, price, quality of service, income and area viewing tastes will all have a significant impact on the demand for cable service and the resulting subscriber penetration of cable service within a particular area. We find that the adoption of a penetration standard would be arbitrary and unjustifiable for the thousands of cable communities that not only have varying television reception, but also include viewing households with divergent incomes and tastes. We are also sympathetic to commenters' arguments that a penetration criterion would penalize cable operators who have attained substantial subscriber penetration by providing low-priced popular cable offerings and services. In this regard, we believe that a penetration standard could create a disincentive for cable operators to upgrade the quality and level of the services they now provide. Accordingly, we conclude that adoption of a cable penetration criterion as part of the effective competition standard would not be in the public interest.

109. Several commenters express concern that some cable systems may be susceptible to disruption in their long term plans due to the nature of our definition of effective competition. For example, a system operating in a market within three Grade B contours could become subject to rate regulation if one of the broadcast stations should go dark (even temporarily), reduce its power, or directionalize its signal. In this regard, Cox, in its comments, proposes that once a market satisfies the criteria for effective competition, it cannot be reclassified. While we are sympathetic to a cable operator's desire for regulatory certainty, we believe that this solution would be contrary to the intent of the statute and would ignore those situations where effective competition might be removed. Accordingly, in those situations where a cable system has been found previously to be subject to effective competition but subsequently was found to not be subject to effective competition due to changed circumstances in the cable system community, the cable system shall be exempt from rate regulation for a period of at least one year. We believe that this one year period will allow a cable operator sufficient time to make the transition from an unregulated to a regulated entity.

Standards for Rate Regulation

110. Section 623 of the Cable Act also requires that the Commission establish standards for the regulation of basic cable rates by a franchising authority. In the *Notice*, we noted that this involves not only specifying what services can be regulated but also in what manner. Thus, we must define "basic cable service" for the purpose of rate regulation and establish the standards for such rate regulation. These issues are discussed in turn.

111. *Definition of Basic Cable Service.* Section 602 of the Cable Act defines basic cable service as "any service tier which includes the transmission of local television broadcast signals." The House Report encourages the Commission "to fashion a definition of basic cable service most appropriate to achieve the purpose of the regulations consistent with the provisions of Title VI." In this context, we stated in the *Notice* that it was appropriate to include "significantly viewed" as well as local signals. Accordingly, we proposed defining basic cable service as "any service tier(s) which include(s) the retransmission of must-carry television

[73] Several states have such a penetration requirement for statewide deregulation of cable systems. DOJ proposes a variation based on the maximum penetration level of basic service. Specifically, it suggests basic-only subscribers must be less than 20% of all subscribers for there to be effective competition.

[74] We believe that "significantly viewed in the cable community" will give a more accurate analysis of those signals that are available in the cable community and eliminate any problems this standard may have within hyphenated communities. In addition, a number of parties submitted comments on the issue of availability of broadcast signals from television translators. For example, VCTI, Cox, and Hogan & Hartson present arguments for the inclusion of such signals in the determination of effective competition. We agree that broadcast signals of tanslator stations should be considered. However, in view of the varying power and the relatively small geographic service area of translator stations, we believe that it is inappropriate to count translators on an equal basis with broadcast stations. Accordingly, signals of translator stations shall be counted only if such stations are located within the cable community, provided, however, that translators used to retransmit a station already providing a Grade B contour or significantly viewed within the cable community may not be considered for this purpose.

broadcast signals as defined in §§ 76.55 to 76.61 of the rules."

112. There is considerable disagreement among the parties with respect to the Commission's discretion to develop a definition of basic cable service for the purposes of rate regulation different from that contained in section 602 of the Cable Act. NCTA/CATA states that the Cable Act generally reflects Congressional endorsement of the Commission's prohibition on regulation of rates for optional services and therefore gives the Commission discretion to alter the definition of basic cable service in developing standards for rate regulation. In this regard, it quotes extensively from the House Report:

> The Committee wishes to stress that it intends to give the Commission flexibility in promulgating these regulations. The definition in section 602 of basic cable service is intended primarily for use in determining the extent of regulation that will be permitted during the * * * transition period. The regulations of the Commission under this subsection serve a different purpose—defining the circumstances and extent of regulation that may occur beyond the transition period.

NCTA/CATA does not, however, support the Commission's proposed definition. It states that the definition in the statute as well as our proposed modification would permit regulation of multiple tiers of basic service where a cable system offers a lowest-priced basic tier that includes retransmission of local broadcast signals and also offers another tier at a single, higher price that includes everything on the lowest-priced tier plus additional services. NCTA/CATA states that while the statute permits this practice during the two-year transition period as the result of a political compromise, the Commission's preemption policies and the Cable Act's endorsement of the Commission's prohibition on regulation of rates for optional services requires that the Commission prevent such rate regulation from continuing beyond the transition period. Thus, NCTA/CATA recommends that the Commission make clear that basic cable service includes no more than the lowest priced tier of service that includes all local broadcast signals. In addition, NCTA/CATA urges the Commission to affirm that basic cable service includes only the retransmission of local broadcast signals and that any ancillary services provided along with basic service should not be deemed "basic service." Thus, NCTA/CATA asserts, regulated cable systems would be free to remove or retier any of these other services. Such a statement, NCTA/CATA asserts, would simply reaffirm the Commission's fundamental policy in this area,[75] and nothing in the Cable Act requires the Commission to set aside its previous decisions.[76]

113. NTIA states that the Commission "clearly has the power, and probably a mandate to adopt a definition of 'basic cable service' different than the one contained in section 602(2) in order to further effectuate the purposes of the Cable Act." NTIA proposes that the Commission adopt a definition of basic cable service which is based on the retransmission of unaltered broadcast television signals rather than one based on must-carry signals, as proposed in the *Notice*. NTIA states that this alternative definition would ensure that franchising authorities whose cable systems are outside of all television markets (*i.e.*, areas where there are no signals which cable operators are required to carry under the must-carry rules) have the authority to rate regulate the basic service of these cable systems if they are not subject to effective competition. NTIA states that this proposal more fully carries out the intent of the statute.

114. The Department of Justice believes that the Cable Act sanctions the Commission's decision to preempt state and local rate regulation of all but basic cable television service. However, it states that it is not clear whether the Commission has discretion under the Cable Act to define basic cable service. It states that the Cable Act does not authorize the Commission to define basic cable service either generally or for purposes of section 623. "While the legislative history does suggest that the Commission may 'fashion a definition of basic cable services most appropriate to achieve the purpose' of its 'effective competition' criteria, * * * it seems apparent that the Commission could not define 'basic cable service' inconsistently with the Act, *e.g.*, limited to the must-carry channels." DOJ believes, however, that the Commission's proposed definition of basic cable service that interprets local television broadcast signals as the must-carry signals is a proper interpretation of the statute, supported by the legislative history.

115. NLC states, in its reply comments, that the Commission's responsibilities under section 623(b) of the Cable Act should be construed in the context of the plain language of the Cable Act and the purpose of the section to allow for rate regulation in communities when the cable system is not subject to effective competition. NLC agrees with DOJ that the Commission has little discretion to fundamentally alter the definition of basic service contained in the Cable Act. In this regard, NLC states that Congress considered and ultimately rejected both definitions of basic service proposed by the various cable parties (*i.e.*, must-carry signals and the lowest priced tier which includes the must-carry signals). NLC states that the definition of basic service contained in the Cable Act is intended to establish regulatory certainty and stability where conflicting court decisions created confusion with respect to the proper definition of basic service. NLC believes that the definition contained in the statute establishes the necessary distinction between basic and nonbasic services.

116. After careful consideration of the full record in this proceeding including the statute, the legislative history and the comments, we conclude that the Commission does have the discretion to fashion a definition of basic cable service different from that contained in section 602(2) of the Cable Act for the purpose of developing rate regulation standards. While some tension may be created by adopting a definition of basic service for section 623(b) of the Cable Act that differs from the definition in section 602(2), we believe that there is legislative guidance that permits such a change. First, in adopting appropriate regulatory standards we must keep in mind the underlying purposes of the Cable Act which are articulated in section 601. Foremost among these is the intent of the statute to establish "standards which encourage the growth and development of cable systems * * *, assure that cable communications provide * * * the widest possible diversity of information sources and services to the public" and "promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic

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[75] *See Community Cable TV, Inc.* (hereinafter *Community*), 95 FCC 2d 1204 (1983) and *Community Cable TV, Inc.* (Reconsideration), 56 RR 2d 735 (1984).

[76] The individual cable interests that filed are in general agreement with NCTA/CATA's proposed definition of basic cable service, giving equal support to the concept that basic cable service should include either (1) must-carry signals only; or (2) the lowest-priced tier which contains the must-carry signals. In addition, they state that cable operators must retain the freedom to retier ancillary services out of "basic service" granted them by the Commission's decision in *Community*. These parties include PCTA, TCI, Cap Cities, VCTI, New Jersey Cable Television Association, Time (reply comments), CCTA, Cox, Cable Operators and Hogan & Hartson. We also note that several parties urge that the PEG channels be included in the definition of basic service. These parties include TCI, the City of Boston, the U.S. Catholic Conference, and the New York Citizens' Committee for Responsible Media.

burden on cable systems." We believe that we must implement section 623(b) consistent with these statutory goals.

117. Reflecting these procompetitive goals of the statute, section 623 preempts rate regulation of all cable services provided by those cable systems subject to effective competition. In this regard, it is consistent with the Commission's long-standing policy to preempt local regulation of nonbasic or "pay" cable services, based on the premise that "unnecessary rate and tariff requirements can stifle price competition and service and marketing innovation." [77] As most recently reaffirmed in *Capital Cities Cable, Inc. v. Crisp*, only "preemption of state and local regulation can assure cable systems the breathing space necessary to expand vigorously and provide a diverse range of program offerings to potential cable subscribers in all parts of the country." [78] We also note that in preempting rate regulation of basic service of these cable systems, section 623 goes even further than the Commission's preemption policy. The Cable Act authorizes local rate regulation only for the provision of basic cable service for those cable systems not subject to effective competition and gives the Commission the responsibility to prescribe rules to make effective the national policy with respect to rate regulation of these systems. We believe that the statute and legislative history give the Commission broad discretion to implement this provision consistent with the provisions of Title VI.

118. With this mandate in mind, and in light of the comments, we are convinced that the definition of basic cable service contained in section 602(2), even with the modification proposed in the *Notice*, should not be applied to section 623(b).[79] To do so, we believe, could induce an expansion of rate regulation of cable systems that is inconsistent with the basic goals of the statute. Such a definition of basic service would permit a franchising authority to regulate multiple tiers of cable service where a cable system prices its tiers on a cumulative rather than an incremental basis.[80] Thus, while some cable systems subject to these provisions would have one regulated tier, many systems could have multiple tiers under regulation, and some systems could have all their tiers regulated.[81] Most of these regulated tiers would include services that are universally considered to be "pay" services. This is an unreasonable outcome for two reasons. First, if at all possible, a regulation should not be so constructed that its impact depends upon the manner in which the service is marketed or delivered, as would be the case with this proposed definition.[82] Second, this definition would permit rate regulation of services which has been determined on numerous occasions in the past are best provided on an unregulated basis.[83] Nothing in the statute supports a determination that we must permit the pay services of these cable systems to be rate regulated. We, therefore, intend to modify the definition proposed in the *Notice* and adopt the following definition of basic cable service for rate regulation purposes:

> Basic cable service is the tier of service regularly provided to all subscribers that includes the retransmission of all must-carry broadcast television signals as defined in §§ 76.55 to 76.61 of the rules, [or, in the absence of at least three must-carry signals, any unaltered broadcast television signals] and the public, educational and governmental channels, if required by a franchising authority under Section 611 of the Communications Act.[84] [85]

This definition of basic service resolves the problems created by the definition contained in section 602(2) of the Cable Act. In addition, it creates a reasonable, historically based, demarcation between basic and nonbasic services which will permit the rate regulation of only the core or "basic" offering of those cable systems not subject to effective competition.[86] We believe, therefore, that it is consistent with the goals of the statute and longstanding Commission policy.

119. As a final matter, we note the comments made by some parties that the definition of basic cable service adopted in section 602(2) is inconsistent with our decision in *Community*.[87] These parties believe that the statute intentionally reject the policies underlying that decision. We believe that a fair reading of the statute would not support that conclusion. We determined, in *Community*, that the cable operator must have discretion in the selection and packaging of its programming services consistent with First Amendment freedoms and the rigors of the economic marketplace. In this regard, we stated that a cable operator "is free to add, delete, or realign its service as long as the basic

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[77] *See Community* at 740.

[78] *See Capital Cities Cable Inc. v Crisp*, 104 S. Ct. 2694 (1984).

[79] The definition of basic cable service contained in section 602(2) applies to section 623(c) which sets forth the scope of permissible rate regulation during a two-year "transition period" before the Commission's rate regulation rules become effective for all cable systems. This definition of basic service is appropriate for this subsection because we believe this subsection endeavors to paint a broad brush of permissible activity so as not to cause any immediate dislocations in existing agreements between franchising authorities and cable systems.

[80] We note that the legislative history of section 602(2) indicates that Congress contemplated that "basic cable service" as defined therein could include multiple tiers of "basic service." See House Report at 40. However, the House Report also indicates that the Commission should not be bound by the section 602(2) definition, except during the two year period between the passage of the Cable Act and the effectiveness of rate regulation under Section 623. *See* House Report at 66. Accordingly, the fact that the section 602(2) definition of basic tier can include multiple tiers is not controlling within the context of section 623. For these purposes, we believe the better definition of "basic service" should be limited to a single tier.

[81] For example, consider the following cases:

Cable system I provides service as follows: Tier A—"must-carry" signals and access channels

Tier B—satellite delivered services such as ESPN and CNN

Tier C—pay services such as HBO and Showtime

Cable system II, according to its franchise agreement, provides the same services as follows: Tier A—"must-Carry" signals and access channels

Tier B—"must-Carry" signals and access channels + satellite delivered services such as ESPN and CNN

Tier C—Tier A and B services + pay services such as HBO and Showtime.

While both cable systems are providing the same services, under the section 602(2) definition of basic cable service Tier A on Cable system I could be regulated by the franchising authority while Tiers A, B, and C on Cable system II could be subject to rate regulation. We believe that such a result is clearly not intended by the statute.

[82] In this regard, we disagree with the comments of the NLC that the definition of basic cable service contained in the statute establishes the necessary distinction between basic and nonbasic services. On the contrary, we believe that this definition fails to draw any meaningful distinction between these two services.

[83] *See United States v. Midwest Video Corp.*, 406 U.S. 649 (1972); *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); *New York State Commission on Cable Television v. FCC*, 669 F.2d 58 (2d Cir. 1982); *Brookhaven Cable TV, Inc. v. Kelly*, 573 F.2d 765 (2d Cir. 1978), *cert. denied*, 441 U.S. 904 (1979).

[84] This definition is preferable to the "lowest priced" tier proposal of many of the cable interests. In general, we believe it is imprecise to define a service by its price. Further, in this instance, such a definition would appear inappropriate as the price of the tier in question is to be determined by the regulatory authority

[85] For purposes of rate regulation under section 623 of the Cable Act, superstations or satellite delivered television signals shall not be considered unaltered broadcast television signals as defined in basic cable service. *See* paragraph 27 *supra*. Further, where a cable system carries a large number of unaltered broadcast signals, the Commission may consider waiver requests for permission to refier these signals.

[86] In *Community*, we stated that basic subscriber service consists of that service regularly provided to all subscribers, and that basic service must contain all the signals mandated by the Commission's rules.

[87] *See* comments of DOJ and NLC.

service contains all the signals mandated by the Commission's rules."[88] We believe that the statute goes far to ensure that no restrictions are placed on cable systems that unnecessarily restrict this freedom.

120. Several sections of the Cable Act place limits on a franchising authority's power to regulate cable programming services. Section 624 specifies that for new franchises, and renewals of existing franchises, the franchising authority may not require a cable system, either directly or indirectly, to provide particular video or other information services or even a broad category of such services. Further, the franchising authority may only enforce requirements in the franchise for broad categories of these services. Section 625 specifies procedures available to cable operators in seeking modifications of their franchise obligations. With regard to programming, it provides in subsection (a) that a cable operator may obtain modification of a requirement for services contained in its franchise if it demonstrates to the franchising authority or in court that the "mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification." Subsection (c) permits the cable operator upon 30 days' advance notice to the franchising authority to rearrange, replace or remove a particular cable service if the service becomes unavailable or is available only with substantially higher copyright fees for which the operator has not otherwise been specifically compensated. Subsection (d) provides that a cable operator may freely retier or repackage services where the tiers involved are not subject to rate regulation. Finally, section 9(b) of the Cable Act grandfathers any retiering, repricing or deletion of services pursuant to the *Community* decision, as of September 26, 1984.

121. We believe that the Cable Act does not substantially alter the Commission's *Community* decision and that these sections of the Cable Act, taken together, afford the cable operator substantial freedom to replace and retier its services. Section 625(d) gives cable operators complete freedom to retier and repackage programming services among the tiers that are exempted from rate regulation, notwithstanding any provisions in the franchise agreement to the contrary.[89] When the Commission's rules become effective after the two-year transition period, the majority of cable systems will be exempted from all rate regulation. Most cable operators will, therefore, have complete freedom to retier and repackage all their "basic" and "pay" programming services. Those cable operators subject to rate regulation will have their freedom to retier and repackage restricted somewhat by the statute, but this constriction is applicable only to programs on their regulated tiers. In addition, any cable operator subject to regulation may obtain a modification of a franchise programming obligation under section 625(a) after demonstrating to the franchising authority that the proposed modification will maintain the mix, quality and level of the programming services. While this provision may in fact limit the cable operator's freedom somewhat during the two-year transition period, we do not believe it will be burdensome after this period because most cable systems will not have any regulated tiers of service and, of those systems that do, only the one tier that contains basic cable service will be regulated.

122. *Regulatory Process.* Section 623 of the Cable Act also specifies that the Commission has the responsibility of developing the procedures and methodologies which a franchising authority must follow in regulating basic cable service rates. In the *Notice*, we proposed a number of administrative procedures for the rate setting process. For example, we indicated that there should be formal notice to the public, an opportunity for interested parties to make their views known, and a formal statement when a decision on a rate matter is made. We also stated that rate of return regulation of basic cable service was inappropriate due to its inherent costliness and complexity. We, therefore, proposed in the *Notice* a comparable rate method that would set the regulated basic cable service rate equal to the level in comparable unregulated markets. To ensure greater flexibility and ease of implementation, we also proposed a plus or minus ten percent "zone of reasonableness" of the average rate of the comparable cable systems.

123. Few objections were raised with the adminstrative procedures proposed in the *Notice*. Accordingly, we will require franchising authorities in exercising their right to regulate basic rates to provide (1) formal notice of a rate standard (or change thereof) to the public; (2) opportunities for interested parties to make their views known, at least through written submissions; and (3) a formal statement (including summary explanation) to the public when a decision on a rate matter is made. In response to concern expressed in comments filed by City of Winona, MN, we acknowledge that such procedures would not be binding in the two year transition period provided for exsiting franchises.

124. Many parties urge the Commission to assume the role of arbiter of last resort in disputes between cable operators and franchising authorities. Due to the large and growing number of cable systems and the limited resources of the Commission, our role must necessarily be limited. At this time, we view our responsibilities as largely restricted to the interpretation of our new rules and to those areas where the Cable Act calls specifically for Commission intervention. We believe that other matters must generally be settled through public hearings, negotiations, and, if necessary, by the courts.

125. With regard to the method employed by the franchising authority in establishing basic cable rates, a majority of commenters opposed the "comparable rate" method proposed in the *Notice*. The reason most often cited is the inherent complexity of objectively choosing "comparable" cable systems. As NTIA notes, "the problems associated with determining comparability could bog down rate proceedings and result in costly litigation." The majority of commenters feel that rates should be established through negotiation, although some believe that this might include the "comparable rate" or some other methods as optional tools. After deliberation, we concur that the means by which the appropriate regulated rate is determined is best decided consistent with the statute by the local franchising authority.

126. Many commenters, for example, NCTA/CATA, NTIA, Cable Operators, Hogan & Hartson, and TCI, recommend that cost increases be automatically allowed without the delay and cost of franchising authority approval. Such "pass-thru's" would be presumably in excess of the annual 5% automatic rate increase to which most cable systems are entitled. Most commenters suggest that such "pass-thru's" should be based on identifiable cost increases. For

[88] *See Community* at 9. *See also* In re: Cox Cable New Orleans, Inc. v. City of New Orleans, *Memorandum Opinion and Order*, FCC 85-106, adopted March 5, 1985.

[89] Unlike *Community* which permitted unrestricted deletion (with no replacement) of a programming service, we believe that the Cable Act prevents cable systems from deleting a program service except where the particular category of programming is no longer available, or available only at a substantially higher, uncompensated price.

example, increases in programming costs caused by increased distant signal copyright fees. Other commenters, such as the Cable Operators, suggest that cost increases based on the Consumer Price Index should be allowed without franchising authority approval. It is our view that the value of an automatic pass through of costs is the avoidance of *pro forma* administrative proceedings. Accordingly, our rules will permit cable systems to automatically pass through any readily identifiable increase (or decrease) in cost which is entirely attributable to the provision of basic service, *e.g.*, the price of programming appearing on the basic service tier and copyright fees for retransmission of distant broadcast signals appearing on the basic service tier. These rate increases may be taken in addition to the 5% automatic annual increase to which most cable systems are entitled. Furthermore, they may be taken by any cable system which is not otherwise entitled to the 5% automatic anual rate increase.[90] All other rate increases must be obtained through good faith negotiation with the franchising authority.

127. As a final matter, the rules we are adopting today which implement the rate regulation provisions of the Cable Act, delineate what a franchising authority may do in the way of rate regulation. This authority, however is permissive. The Cable Act does not, in any way, require franchising authorities to regulate rates where they find such regulation unnecessary or inappropriate. Indeed, we recognize that rate regulation in many instances may be inefficient and counterproductive to the provision of cable services within a franchise community.[91]

128. *Six Year Report.* Section 623(h) of the Cable Act requires the Commission to submit a report to Congress in six years regarding rate regulation of cable services, including recommendations for legislative changes. In the *Notice*, we proposed that this study would include an economic study of cable rates and offerings as they relate to local demographic and market characteristics as well as the degree of regulatory control. While much of the necessary data could be obtained from trade publications, a formal submission of data may be required of a random sampling of cable operators. This submission could be a much simplified version of the former annual cable financial report (FCC Form 326), as suggested by the U.S. Catholic Conference in its reply comments. To minimize the cost and burden of the study, only a random sample of regulated and unregulated cable systems would be utilized. In its comments, the National League of Cities emphasizes the importance it attaches to this study and suggests several data to be collected or calculated, including rates, offerings, penetrations, subscriberships, and rates of return. The California Department of Consumer Affairs in its comments recommends that the study include: (1) National and state trends in basic service rates; (2) the status of alternative delivery technologies, such as MDS, DBS, LPTV or telephone carriers; (3) the change in the number and mix of channels offered as part of basis services; (4) a summary of complaints filed with the FCC; and (5) a summary of the availability and use of leased access channels. These and other suggestions are appreciated and will be given due consideration at the time of actually designing and implementing the study.

Section 624—Regulation of Services, Facilities, and Equipment

129. *Lockboxes.* Section 624 of the Cable Act states that "[i]n order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber." In the *Notice*, we sought guidance from the commenters regarding the appropriate remedy for the failure of a cable operator to abide by this subsection of the Cable Act.

130. Comments submitted by the Municipal Coalition, the Office of Cable Television of the District of Columbia, and the reply comments of NLC, state that the FCC has no jurisdiction to punish a cable operator for failure to comply with the "lockbox" requirement. VCTI states that the Commission retains jurisdiction in this area. NCTA/CATA in its reply comments, states that the Commission retains general authority since the Cable Act is to be incorporated in the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*, and section 1 of the Act gives the Commission the duty to execute and enforce the provisions of the Act.

131. The cable parties ask that the Commission clarify the meaning of this section of the statute. For example, TCI asks that the Commission state that cable operators should not be required to provide a lockbox for commercial access channels. VCTI states that the obligation to provide a lockbox should be triggered upon a judicial finding that programming is obscene or indecent. Hogan & Hartson states that these devices need only be provided to restrict viewing of programming reasonably regarded as obscene or indecent under local community standards and not for protection against all programming. Finally, all the cable parties state that the Commission should ensure that franchise authorities will not penalize them for technical problems associated with lockboxes. For example, lockboxes may cause interference on adjacent channels or they may be unable to block one channel without blocking an entire tier.

132. We believe we have the authority to ensure that the lockbox provisions of Section 624 of the Cable Act are carried out. In this regard we intend to adopt the procedures pursuant to 47 CFR 76.7 *Special relief*, to afford the public, cable operators and franchising authorities a vehicle to ensure implementation of section 624. We also believe that we should clarify the cable operators' responsibilities with respect to this provision. Thus, we believe that the cable operator must provide, upon subscriber request, by sale or lease, a lockbox for any channel over which it has editorial control. (This would exclude commercial access, PEG and must-carry channels.) We do not believe that a judicial or local community finding of obscenity should be a prerequisite for triggering the cable operator's obligation. Indeed, we believe that the provision for lockboxes largely disposes of issues involving the Commission's standard for indecency,[92] and would also be a significant factor in cases related to obscenity and similar offensive programming.[93] Finally, with regard to lockbox technical problems, we expect cable entities to use quality state of the art equipment and we need not resolve this issue at this time.

133. *Technical Standards.* Section 624(e) of the Cable Act allows the Commission to set technical standards related to facilities and equipment

[90] It should be noted that section 623(e) specifies that a fixed basic service rate will not preclude the use of the 5% automatic annual increase by the cable operator.

[91] In light of the discretion we have granted franchising authorities with respect to implementing the rate regulation standard, it bears emphasis that the Cable Act specifically prohibits the regulation of a cable system as a common carrier or a public utility by reason of providing any cable service. (See section 621(c) of the Cable Act. *See also* House Report at 60.) Furthermore, we note that neither a cable operator nor a franchising authority may waive mandatory sections of the Cable Act in reaching franchise agreements.

[92] *See FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).

[93] *See Miller v. California*, 413 U.S. 15 (1973).

required by a franchising authority pursuant to a franchise agreement. This provision does not affect the authority of a franchising authority to establish standards regarding facilities and equipment in the franchise that are not inconsistent with standards established by the FCC.

134. The parties that commented generally support our proposal. Storer and VCTI request that the Commission reaffirm its 1974 policy statement preempting technical standards. [94] In particular, the parties recommend that we include the preemption policy in our rules.

135. In this *Report and Order* we reaffirm our policy on federal preemption of cable TV technical standards. We did not propose any changes in our preemption policy in the *Notice* and we adopt none now. In the *Notice*, we addressed the narrower issue of whether we should make any changes in the standards we have already adopted. In this regard, we note that the Commission recently adopted a *Notice of Proposed Rule Making* which proposes to revise or delete existing technical standards for cable. [95] It proposes no change in our preemption policy. We believe any revisions in our technical standards are most appropriately dealt with in that proceeding.

Section 639—Obscenity

136. Section 639 of the Cable Act establishes the Federal standards and criminal penalties applicable to the transmission of any cable service which is obscene or otherwise unprotected by the Constitution. Any violation is punishable by a fine of up to $10,000 and/or by imprisonment for up to two years. Section 76.215 of our rules provides that "[n]o cable television system operator when engaged in origination cablecasting shall transit or permit to be transmitted on the origination cablecasting channel or channels material that is obscene or indecent." We stated in the *Notice* that these criminal provisions supersede our rule and we therefore proposed to delete § 76.215 of our rules.

137. NCTA/CATA, TCI and Viacom filed comments in support of the Commission's proposal. They state that it is appropriate to delete our rule in deference to the statute. The parties specifically note that the "lockbox" provision of section 624 of the Cable Act provides added justification for deleting § 76.215 of our rules.

138. The NLC states in its reply comments that the Commission has the authority under section 624(f)(2)(A) of the Cable Act to enforce § 76.215 of our rules. However, NLC also states that it is an open question whether government restrictions on indecent materials over cable systems are permissible under the First Amendment. Morality in Media (Morality) states that section 639 of the Cable Act does not specifically prohibit the transmission of indecent material, as does our rule. Therefore, in the opinion of Morality, the new legislation does not supersede the Commission rule. In addition, they state that colloquys in both houses of Congress indicate that Congress expected the Commission to retain its present rule on indecent origination cablecasting. Morality, therefore, proposes that the Commission preserve the indecency concept in § 76.215 of the rules as a separate standard.

139. After careful review of all the comments, we believe it is appropriate to delete § 76.215 of our rules. We believe that our rule is duplicative of and indeed surpassed by other statutory provisions and, thus, the public will continue to be protected from obscene and indecent programming on cable systems despite its deletion. We note in this regard that obscene and other "offensive" programming on cable is restricted in three other provisions of the Cable Act. Section 612 gives the franchising authority the power to prohibit or restrict programming which, in the judgment of the franchising authority is obscene or "in conflict with community standards in that it is lewd, lascivious, filthy or indecent or is otherwise unprotected by the Constitution of the United States." Section 624 allows cable operators and franchising authorities to specify in a franchise or renewal agreement that obscene or otherwise unprotected programming can be prohibited or restricted. In addition, section 624 requires cable operators to offer lockboxes that will enable viewers to restrict the viewing of any given channel. Finally, section 638 maintains all existing criminal and civil causes of action against cable operators and programmers based on the content of their services, including obscenity and other similar laws.

Section 4—Pole Attachments

140. Section 4 of the Cable Act amends section 224(c) of the Communications Act of 1934 by adding a new paragraph section 224(c)(3). This addition provides that a state will not be considered to be regulating the rates, terms and conditions for pole attachments for section 224(c)(1) purposes unless it has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments and takes final action on individual complaints within the time limits specified in the Cable Act. This is in addition to the present requirement that states certify to the Commission that they regulate pole attachments under section 224(c)(2). In the *Notice*, we proposed to amend our rules to reflect the new language contained in the Cable Act by requiring a state to include a statement in its certification that the state has issued and made effective rules and regulations implementing its regulatory authority over pole attachments and to enclose a copy of the rules and regulations with the certification.

141. Several parties submitted comments on our proposed rule change. Most of the cable interests state that the Cable Act requires that the Commission no longer accept a state's *pro forma* certification of compliance with section 224(c). These commenters state that, under the Cable Act, the FCC now has the responsibility to review each state's certification to determine whether in fact the state has complied with the requirements of section 224(c). In this regard, they state that our proposed rule does not explain precisely what constitutes "rules and regulations implementing the state's regulatory authority over pole attachments," and therefore does not meet the intent of the statute. The parties offer modifications to our rules. For example, NCTA/CATA, Michigan Cable Television Association and Hogan & Hartson state that the Cable Act should be interpreted to require that the state's regulations (1) be cable-specific and (2) define with reasonable certainty the methodology used in effecting pole relief. In addition, the Cable Operators propose that in addition to the filing of detailed documentation regarding the determination of certification, states be required to submit a report of any pole attachment rate decisions each year and that the Commission review these rates and consider decertifying the state if the rates fall outside a zone of reasonableness.

142. BellSouth and Pacific, on the other hand, generally support the Commission's proposed rule changes. BellSouth, however, proposes that the rules be revised to recognize that tariffs on file with the state commission be *prima facie* evidence that the state is

[94] *See Report and Order*, Docket No. 20018, 31 RR 2d 1187 (1974).

[95] *See Notice of Proposed Rule Making*, MM Docket No. 85-38, FCC 85-66, adopted February 12, 1985.

regulating pole attachments and to clarify that a state is not required to issue its rules and regulations by the effective date of the Cable Act. Texas Power and Light Company *et al.* states that no new rules are required because the statute is clear on its face. It states that problems can be handled on a case-by-case basis.

143. After review of the comments and replies, we believe that our proposed rule, with one minor change, is the most appropriate interpretation of our new statutory mandate. Thus, we will add to the certification requirement that a state shall certify that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments. We disagree, however, with the commenters who argue that the Commission has the responsibility to review each state's certification to determine whether the state's rules and regulations comply with section 224(c). Indeed there are no requirements in the statute as to the contents or format of the state's rules and regulations. Moreover, there is no indication in either the statute or the legislative history that Congress intended that the rules and regulations adopted by the state must be cable specific or that the Commission should define the methodology to be followed by the states. The legislative history of the original section 224 made it clear that receipt of "certification from the State shall be conclusive upon the Commission" and that the "FCC shall defer to any State regulatory program operating under color of State law."[96] Further, no rate-setting formula was imposed on the states. Congress believed "the States should have maximum flexibility to develop a regulatory response to pole attachment problems in accordance with perceived State or local needs and priorities."[97] There is nothing in the legislative history of the Cable Act that indicates Congress has reversed this position or has now empowered this Commission to act as an arbiter as to the content or form of the rules and regulations adopted by each state. The new section 224(c) merely makes it clear that a state will not be considered to be regulating pole attachments unless it has issued and made effective rules to implement that authority. While we will not define the methodology to be followed by the state, we believe that the rules and regulations should include a specific methodology which has been made publicly available in the state. Therefore, we will require that a state certify that its rules and regulations include a specific methodology for regulating pole attachments. Accordingly, if the state certifies that it has rules in place which include a specific methodology, which has been made publicly available in the state, we will not inquire further unless a complaint is filed with us that alleges that a party attempted to file a complaint at the state level and could not because of the lack of appropriate procedures or that the complaint it filed with the state remained unresolved 180 days after the complaint was filed (or within the applicable period prescribed for final action if the state's rules provide for resolution within 360 days after the filing of a complaint). We believe that the requirement for a timely resolution of complaints should obviate any concern on the part of cable operators that some states may certify prematurely to the Commission that they have issued and made effective rules and regulations. Moreover, since the Commission will not examine the contents of the state's rules and regulations, we have decided that it would be unnecessarily burdensome to require that each state submit a copy of its rules and regulations along with its certification. Thus, we will delete this requirement from the proposed rules. We will, however, require that the state certify that its rules and regulations include a specific methodology. We are not persuaded to adopt the rules proposed by BellSouth. The Commission will not inquire whether tariffs are on file in a particular state, but will rely on the certification by the state. The certification may be made at any time, and the Commission will revise its list as states certify or decertify.

[96] See S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977) at 17.

[97] *Id.*

Regulatory Flexibility Final Analysis

144. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need for and purpose of the rules.* The Cable Communications Policy Act of 1984 establishes guidelines for the regulation of cable service in the areas of ownership, channel usage, franchise, rate and service regulations. The Cable Act directs the Commission to take the appropriate action in these areas in order to encourage the growth and development of cable services as well as to assure that cable systems are responsive to the needs and interests of the communities they serve. As a result of this mandate, we have eliminated some rules, modified others, and promulgated new rules. In so doing, we believe that the stability and certainly essential for continued growth and development of the cable industry has been enhanced.

II. *Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a resut*—A. *Issues Raised.* No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. However, as a result of implementing certain tenets of the Cable Act, systems with less than 50 subscribers are now subject to Part 76 of the Commission's Rules. Also, all systems that were previously exempt from the franchise standards in our rules are now subject to the franchise standards that appear in the Cable Act. On the other hand, systems that only retransmit broadcast signals, previously subject to the Commission's cable rules, are now exempt as a result of adopting the definition of cable system that appears in the Cable Act.

B. *Assessment.* Since there were no specific comments directed to the initial regulatory flexibility analysis, the Commission views the initial analysis as correct and no additional asessment is necessary.

C. *Changes made as a result of such comments.* None.

III. *Significant alternatives considered and rejected.* The Commission considered all the alternatives presented in the *Notice* and considered all the timely filed comments directed to the various issues in the *Notice*. After carefully weighing all aspects of this proceeding, the Commission has adopted the most reasonable course of action under the mandate of the Cable Act.

145. Accordingly, it is ordered that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and the Cable Communications Policy Act of 1984, Parts 1, 63, 76 and 78 of the Commission's Rules and Regulations are amended as set forth in the attached Appendix B. Pursuant to the requirements of Section 623(b)(1) of the Cable Communications Policy Act of 1984 and the authority contained in the Administrative Procedure Act, 5 U.S.C. 553(d)(3), these rules and regulations are effective April 28, 1985.

146. It is further ordered that this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1068, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—List of Commenters

Initial Comments

1. Aberdeen, SD
2. Adams-Russell Cable Services Division of Adams-Russell, Caribbean Communications Corporation, Joseph S. Gans, Inc., Jones Intercable, Inc., Mid-Coast Cable Television, Inc., Multivision Northwest, Inc., Muncy TV Corporation, Satellite Syndicated Systems Cable Television of Southwest, Inc., and Service Electric Cable TV, Inc.
3. Addison, IL
4. American Civil Liberties Union
5. American Council of Life Insurance
6. Association of Independent Television Stations, Inc.
7. Association of Maximum Service Telecasters, Inc.
8. Athens, OH
9. Austin Satellite Television, Inc., Cablecom Corporation and Cable Dallas, Inc.
10. Austin, TX
11. BellSouth Corporation
12. Booth American Company
13. CBS Inc.
14. 105 Cable Operators
15. Cable Television Access Coalition, Inc.
16. Cable Television Information Center
17. Cable World, Inc.
18. California Cable Television Association
19. California Department of Consumer Affairs
20. Capital Cities Cable, Inc.
21. Carbondale, IL
22. Casco Cable Television, Inc. and Casco Cable Television of Bath, Maine
23. Catawba County, NC
24. Cellular Telecommunications Division of Telocator Network of America, Inc.
25. Centel Communications Company
26. Mayor and Council of Chestertown, MD
27. Gary L. Christensen
28. City Club of New York
29. Clarks Telephone Company, Delta County Tele-Comm. Inc., Ducor Telephone Company, Eastern Nebraska Telephone Company, Golden West Telephone Cooperative, Inc., North-west Telephone Company, The Orwell Telephone Company and the Volcano Telephone Company
30. Clearwater Communications, Inc.
31. Communications Workers of America
32. Community Antenna Television Association
33. Connecticut Department of Public Utility Control
34. Contra Costa County, CA, Public Works Department
35. Consumers Power Company
36. Corporation for Public Broadcasting
37. Cox Cable Communications, Inc.
38. Cumberland, MD
39. Department of Justice
40. Detroit Edison
41. Direct Satellite Communications, Inc.
42. District of Columbia, Office of Cable Television
43. Dubuque, IA, Cable Regulatory Commission
44. Eagle Telecommunications, Inc./Colorado
45. Eastern Shore Association of Municipalities
46. Elmwood Park Cable Commission
47. Farrow, Schildhause, Wilson & Rains
48. Florida Cable Television Association, Inc.
49. Florida League of Cities
50. GTE Service Corporation
51. Gill Industries
52. Guam Cable TV and Northern Marianas Cable TV Corporation
53. Hallandale, FL
54. Heritage Communications, Inc.
55. Hogan & Hartson for Cable Operators and State Cable Associations
56. Hughes Aircraft Company, Microwave Communications Products
57. Huntsville, AL
58. Indianapolis, IN
59. Inkster, MI
60. Islip, NY
61. Joint Cable Operators
62. Keene, NH
63. Kentucky Educational Television Authority
64. Mayor, Longview, TX
65. Los Angeles, CA
66. Louisiana Community Cablevision, Ltd.
67. Lake, MD
68. Major League Baseball
69. Mankata, MN
70. Marsh Media, Ltd.
71. Marshall, MN
72. Maryland Municipal League
73. Metro Companies
74. Metro Mobile CTS, Inc.
75. Miami Cablevision
76. Michigan Cable Television Association
77. Mid-America Cable Television Association, Kansas CATV Association, Nebraska Cable Communications Association and Missouri Cable Television Association
78. Montana Cable Television Association
79. Monticello, NY
80. Morality in Media
81. Morganton, NC
82. Motion Picture Association of America, Inc.
83. Municipal Coalition
84. National Association of Broadcasters
85. National Association of State Cable Agencies
86. National Association of Towns and Townships
87. National Basketball Association, National Hockey League, North American Soccer League and Major Indoor Soccer League
88. National Broadcasting Company, Inc.
89. National Cable Television Association, Inc. and the Community Antenna Television Association
90. National Federation of Local Cable Programmers
91. National League of Cities
92. National Telecommunications and Information Administration
93. National Telephone Cooperative Association
94. New England Cable Television Association, Inc.
95. New Hartford, NY
96. New Jersey Board of Public Utilities
97. New Jersey Cable Television Association
98. New York Citizens' Committee for Responsible Media
99. City of New York
100. New York Telephone Company and New England Telephone and Telegraph Company
101. North Area Cable Television Authority
102. North Carolina Cable Television Association
103. Omaha, NE
104. County of Orange, CA
105. Oregon Cable Communications Association
106. Pacific Bell and Nevada Bell
107. Pennsylvania Cable Television Association
108. Private Cable Systems, Inc.
109. Redmond, WA
110. Richey Cable, Inc.
111. Rochester, MN
112. Romulus, MI
113. St. Joseph, MI
114. St. Louis, MO
115. San Diego, CA
116. Cable Television of Greater San Juan, Inc.
117. Santa Barbara, CA
118. Santa Cruz, CA
119. Scottsdale, AZ
120. Southern Cablevision of Corbin, Inc. and Ayco Cable, Ltd.
121. Southwestern Bell Telephone Company
122. Southwestern Oakland Cable Commission
123. SPACE (The Satellite Television Industry Association)
124. Storer Communications, Incorporated
125. Sweetwater, FL
126. Taconic Telephone Company
127. Tele-Communications, Inc.
128. Telephone and Data Systems, Inc., and TDS Cable Communications Company
129. Troy, MI
130. United Church of Christ, Office of Telecommunication
131. United States Conference of Mayors
132. United States Telephone Association
133. Various Cable Television Interests
134. Vermont Department of Public Service
135. Viacom International Inc.
136. Western Communications, Inc.
137. Mayor and Commissioners, Westernport, MD
138. Winona, MN
139. Wyoming Association of Municipalities
140. Yukon, OK

Reply Comments

11. Adams-Russell Cable Services Division of Adams-Russell, Caribbean Communications Corporation, Joseph S. Gans, Inc., Jones Intercable, Inc., Mid-Coast Cable Television, Inc., Multivision Northwest, Inc., Muncy TV Corporation, Satellite Syndicated Systems Cable Television of Southwest, Inc., and Service Electric Cable TV, Inc.
2. Ameritech Operating Companies
3. Anchorage Telephone Utility
4. Association of Independent Television Stations, Inc.

5. Association of Maximum Service Telecasters, Inc. and National Association of Broadcasters
6. Austin Satellite Television, Inc., Cablecom Corporation and Cable Dallas, Inc.
7. BellSouth Corporation
8. Boston, MA
9. 105 Cable Operators
10. California Cable Television Association
11. Capital Cities Cable, Inc.
12. Carolina Beach, NC
13. Casco Cable Television, Inc., and Casco Cable Television of Bath, Maine
14. Communications Workers of America
15. Cox Cable Communications, Inc.
16. Department of Defense
17. Department of Justice
18. Direct Satellite Communications, Inc.
19. Eagle Telecommunications, Inc./ Colorado
20. Florida Cable Television Association, Inc.
21. GTE Service Corporation
22. Gill Industries
23. Guam Cable TV and Northern Marianas Cable TV Corporation
24. State of Hawaii
25. Heritage Communications, Inc.
26. Hogan & Hartson for Cable Operators and State Cable Associations
27. Joint Cable Operators
28. Marsh Media, Ltd
29. Media General Cable of Fairfax County, Inc.
30. Miami Cablevision
31. Michigan Cable Television Association
32. Mid-America Cable Television Association, Kansas CATV Association, Nebraska Cable Communications Association and Missouri Cable Television Association
33. Mid-America Capital Resources, Inc.
34. Morganton, NC
35. National Association of State Cable Agencies
36. National Cable Television Association, Inc. and the Community Antenna Television Association
37. National League of Cities
38. National Telecommunications and Information Administration
39. National Telephone Cooperative Association
40. New England Cable Television Association
41. New York Citizens' Committee for Responsible Media
42. City of New York
43. New York Telephone Company and New England Telephone and Telegraph Company
44. North Carolina Cable Television Association
45. Oxford Development Corporation
46. Pacific Bell and Nevada Bell
47. Pennsylvania Cable Television Association
48. Rogers U.S. Cablesystems, Inc.
49. Cable Television of Greater San Juan, Inc.
50. Signal Master, Inc.
51. SPACE (The Satellite Television Industry Association)
52. Tele-Communications, Inc.
53. Telecommunications Research and Action Center
54. Telecommunications Research and Action Center, Henry Geller and Donna Lampert
55. Telephone and Data Systems, Inc., and TDS Cable Communications Company
56. Texas Power and Light Company, Alabama Power Company, Mississippi Power and Light Company and South Carolina Electric and Gas Company
57. Time Incorporated
58. United States Catholic Conference
59. United States Conference of Mayors
60. United States Telephone Association
61. Various Cable Television Interests
62. Waitfield Cable, Ardmore Data and Broadband Services, Inc., Elkhart Cable Co. Cross Cable Television, Moultrie Telecommunications, Inc., Citizens Telephone Corp. and United Communications Association, Inc.
63. Western Communications, Inc.

Appendix B

Parts 1, 63, 76, and 78 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. Section 1.1414 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§ 1.1414 State certification.

(a) If the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

* * * * *

(e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

(1) Within 180 days after the complaint is filed with the state, or

(2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS

1. The Table of Contents of Part 63 is amended by adding in the proper sequence the following heading for new § 63.09 and by revising the headings to § 63.54 and § 63.57 to read as follows:

§ 63.09 Special provisions relating to projects under § 63.58.

* * * * *

§ 63.54 Facilities for provision of video programming by a telephone common carrier in its telephone service area.

* * * * *

§ 63.57 Availability of pole (conduit) rights to cable operators.

* * * * *

§ 63.01 [Amended]

2. Paragraph (r) of § 63.01 is removed.

3. A new § 63.09 is added to read as follows:

§ 63.09 Special provisions relating to projects under § 63.58.

(a) Applications of telephone common carriers proposing to construct and operate or acquire and operate systems providing video programming in rural areas within their telephone service areas either directly or indirectly through affiliates pursuant to § 63.58 need submit only the following information in lieu of that required by § 63.01:

(1) Applicant's name, address and telephone number. This information shall also be submitted for Applicant's affiliate, if applicable;

(2) Whether Applicant or its affiliate will construct, own and operate, or acquire and operate, the cable system;

(3) Location of the proposed system (city, town or village, county, and state);

(4) Certification that the area proposed for service is rural as defined in § 63.58, and as derived from the most recently published statistics of the U.S. Department of Commerce, Bureau of the Census;

(5) Certification that Applicant is franchised to provide the service pursuant to Title VI of the Communications Act, and date of franchise; and

(b) An original and two copies of the application shall be furnished to the Secretary, Federal Communications Commission, Washington, DC 20554. Applicant shall furnish a copy to the Governor of the state in which the line is to be constructed or acquired, and also to the Secretary of Defense, Attn. Special Assistant for

Telecommunications, Pentagon, Washington, DC 20301.

4. Section 63.54 is amended by revising the heading and paragraphs (a) and (b) to read as follows:

§ 63.54 Facilities for provision of video programming by a telephone common carrier in its telephone service area.

(a) No telephone common carrier subject in whole or in part to the Communications Act of 1934 shall engage in the provision of video programming to the viewing public in its telephone service area, either directly, or indirectly through an affiliate owned by, operated by, controlled by, or under common control with the telephone common carrier.

(b) No telephone common carrier subject in whole or in part to the Communications Act of 1934 shall provide channels of communications or pole line conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such telephone common carrier, where such facilities or arrangements are to be used for, or in connection with, the provisions of video programming to the viewing public in the telephone service area of the telephone common carrier.

5. Section 63.55 is revised to read as follows:

§ 63.55 Affiliation showings.

Except as provided for in § 63.56, applications by telephone common carriers for authority to construct and/or operate distribution facilities for channel service to cable systems in their service areas shall include a showing that the applicant is unrelated and unaffiliated, directly or indirectly, with the proposed cable operator.

6. Section 63.56 is amended by revising paragraphs (a), (b)(2) and (3), (c), (d) and (e) to read as follows:

§ 63.56 Waivers.

(a) In those areas where the provision of video programming to the viewing public demonstrably could not exist except through a cable system owned by, operated by, controlled by, or affiliated with the local telephone common carrier, or upon other showing of good cause, the provisions of §§ 63.54 and 63.55 may be waived, on the Commission's own motion or on petition for waiver, if the Commission finds that the public interest, convenience and necessity would be served thereby.

(b) Telephone company waiver requests may enjoy a rebuttable evidentiary presumption to the effect that cable service could not presently exist except through a cable system operated by, controlled by, or affiliated with the local telephone common carrier, if the waiver request includes:

(1) * * *

(2) A demonstration that the proposed service area has a density of less than thirty households per route mile of coaxial cable trunk and feeder line;

(3) Evidence that notice was given by newspaper advertisement(s) or other appropriate means, of waiver petitioner's intention to construct and/or operate the proposed cable system, including the name of the newspaper, the date(s) of the advertisement(s) and the area in which the newspaper is distributed; and

(4) * * *

(c) Telephone company waiver requests shall not enjoy the rebuttable evidentiary presumption of paragraph (b) of this section, and shall contain the showings required by the Commission, including notice as specified in § 63.56(b)(3), if the proposed service area has a density of thirty or more households per route mile of coaxial cable trunk and feeder line.

(d) Interested persons may submit comments on, or opposition to, the petition for waiver within thirty days after the Commission gives public notice that the petition has been filed. Upon good cause shown in the petition for waiver, the Commission may specify a shorter time for such submission. Comments or oppositions shall be served upon the petitioner, and shall contain a complete and detailed showing, supported by affidavit, of any facts or considerations relied upon. An opposition may seek to rebut the evidentiary presumption of paragraph (b) of this section by a showing that:

(1) The density of the area to be served is thirty or more households per route mile; or

(2) The opposing party has a present intention to offer nonaffiliated cable service.

Evidence in support of the showing in paragraph (d)(1) of this section must be submitted within the public notice period. Evidence in support of the showing in paragraph (d)(2) of this section must be submitted within the public notice period unless an extension of time requested within that period is granted for good cause shown; evidence must include financial, technical, and other data sufficient to show the opposing party's ability to institute essentially the same service to approximately the same number of households within the same time frame as proposed by the waiver petitioner. Extensions will generally not be granted for a period to exceed thirty days.

(e) The petitioner may file a reply to the comments, or oppositions, within thirty days after their submission, and shall serve copies upon all persons who have filed pleadings.

* * * * *

7. Section 63.57 is revised to read as follows:

§ 63.57 Availability of pole (conduit) rights to cable operators.

Applications by telephone common carriers for authority to construct and/or operate distribution facilities for channel service to cable systems shall include a showing (in addition to the conditions set forth in the above sections) that the independent cable system proposed to be served had available, at its option, and within the limitations of technical feasibility, pole attachment rights (or conduit space, as the case may be) at reasonable charges and without undue restrictions on the uses that may be made of the channel by the operator. This availability must exist not only at the time of the authorization but also prior to the operator's decision to seek an award of a local franchise, if such is required, and such policy of the applicant must be made known to the local franchising authority. Separate documents, attesting to the above conditions, by the cable operator and, where applicable, by the appropriate local franchising authority must be annexed to the application.

8. Section 63.58 is amended by revising the introductory text to paragraph (a) and the Note to read as follows:

§ 63.58 Exemption.

(a) A telephone common carrier shall be exempt from the provisions of §§ 63.54 through 63.56 if the proposed service area contains none of the following:

* * * * *

Note.—The Census Bureau has defined some incorporated places of 2,500 inhabitants or more as "extended cities." Such cities consist of an urban part and a rural part. If the proposed service area includes a rural part of an extended city, but otherwise includes no territory described in paragraph (a)(1), (2) or (3) of this section, an exemption shall apply.

* * * * *

PART 76—CABLE TELEVISION SERVICE

1. Section 76.5 is amended by revising paragraphs (a) and (ll); by adding new paragraphs (ii), (jj), and (kk) (presently marked (ii)—(kk) [Reserved]); by adding

new paragraphs (oo), and (pp); and by designating the existing Note to paragraph (a) as Note (1) and adding a new Note (2) to read as follows:

§ 76.5 Definitions.

(a) *Cable system or cable television system.* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that services only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-or-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facililty shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

Note 1: * * *

Note 2.—The provisions of Subpart D and F shall also apply to all facilities defined previously as cable systems on or before April 28, 1985.

* * * * *

(ii) *Affiliate.* When used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(jj) *Person.* An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(kk) *significant interest.* A cognizable interest for attributing interests in broadcast, cable, and newspaper properties pursuant to §§ 73.3555, 73.3615, and 76.501.

(ll) *Cable system operator or operator.* Any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

* * * * *

(oo) *Cable service.* The one-way transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, "other programming service" is information that a cable operator makes available to all subscribers generally.

(pp) *Basic cable service.* For the purposes of regulating rates of cable systems found not to be subject to effective competition, basic cable service is the tier of service regularly provided to all subscribers that includes the retransmission of all must-carry broadcast television signals as defined in §§ 76.55 to 76.61 of the rules [or, in the absence of at least three must-carry signals, any unaltered broadcast television signals] and the public, educational and governmental channels, if required by a franchising authority under Title VI of the Communications Act.

2. A new § 76.10 is added to read as follows:

§ 76.10 Channel access enforcement.

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available.

(b) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may petition the Commission for relief upon a showing of three prior adjudicated violations. Records of previous adjudications resulting in a court determination that the operator has violated the provisions of the Communications Act concerning commerical channel access shall be considered as sufficient for the showing necessary under this section.

(c) Petitions filed with the Commission in response to paragraph (b) shall be made in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

3. A new § 76.11 is added to read as follows:

§ 76.11 Lockbox enforcement.

Any party aggrieved by the failure or refusal of a cable operator to provided a lockbox as provided for in Title VI of the Communications Act may petition the Commission for relief in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

§ 76.30 [Removed]

4. Section 76.30 is deleted and removed.

§ 76.31 [Removed]

5. Section 76.31 is deleted and removed.

6. A new § 76.33 is added to read as follows:

§ 76.33 Standards for rate regulation.

(a) A franchising authority may regulate the rates of a cable system granted a franchise after December 29, 1984, and any cable system after December 29, 1986, subject to the following conditions:

(1) Only basic cable service as defined in § 76.5(pp) may be regulated;

(2) Only cable systems that are not subject to effective competition may be rate regulated. A cable system will be determined to have effective competition whenever at least three unduplicated signals serve the cable community. Signals shall be counted if they place a Grade B contour (as defined in § 73.683 of our rules) over any portion of the cable community, are significantly viewed within the cable community (as defined by § 76.54 of our rules) or are translator stations located within the cable community, provided that the translators are not used to retransmit stations already providing Grade B contour or significantly viewed signals within the cable community. The Commission may grant exceptions to this standard where the franchising authority demonstrates with engineering studies in accordance with § 73.686 of the Commission's rules and other showings that such signals are not in fact available within the community.

(3) A cable system once determined to be subject to effective competition shall not be subject to regulation for one year after any change in market conditions which would cause it to be determined not to be subject to effective competition.

(4) A cable system may automatically pass through to the basic service rate without franchising authority approval cost increases that are readily identifiable and entirely attributable to the provision of basic service. Rate increases of this type may be taken in addition to the automatic 5% annual rate increase to which the cable system may

be entitled under the Title VI of the Communications Act.

(b) For franchises granted on or before December 29, 1984, a franchising authority may, until December 29, 1986, to the extent provided in the franchise agreement:

(1) Regulate the rates for the provision of basic cable service;

(2) Require the provision of any tier of service without charge (disregarding any installation or rental charge for equipment necessary for receipt of such tier); and

(3) Regulate the rates for the initial installation or the rental of one set of the minimum equipment necessary to receive basic cable service.

(c) Any state or local law in existence on December 29, 1984, which limits or preempts regulation of rates for cable service by any franchising authority shall remain in effect until December 29, 1986, to the extent that it provides for such limitation or preemption.

(d) In establishing any rate for the provision of basic cable service by cable systems subject to paragraph (a) of this section, the franchising authority shall: (1) Give formal notice to the public; (2) provide an opportunity for interested parties to make their views known, at least through written submissions; and (3) make a formal statement (including summary explanation) when a decision on a rate matter is made.

§ 76.215 [Removed]

7. Section 76.215 is deleted and removed.

PART 78—CABLE TELEVISION RELAY SERVICE

1. Section 78.13 is amended by adding a Note to read as follows:

§ 78.13 Eligibility for license.

* * * * *

Note.—The provisions of this section shall apply to any facility holding a license or other authorization on or before April 28, 1985.

[FR Doc. 85-10468 Filed 5-1-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Parts 2 and 97

[PR Docket No. 84-960; RM-4781; RM-4784]

Amendment To Implement Allocation of Additional Frequencies for the Amateur Radio Service, the Radio Amateur Civil Emergency Service, and the Amateur-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Radio Service rules to add the 10.100–10.150 MHz and the 24.890–24.990 MHz frequency bands. These frequency bands are being added for amateur operation in order to implement the Final Acts of the 1979 World Administrative Radio Conference.

EFFECTIVE DATE: June 22, 1985.

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

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Allocations, Radio.

47 CFR Part 97

Amateur radio, Civil defense, Satellites.

First Report and Order

In the matter of amendment of Parts 2 and 97 of the Commission's Rules to Implement allocation of additional frequencies for the Amateur Radio Service, the Radio Amateur Civil Emergency Service and the Amateur-Satellite Service; PR Docket No. 84-960, RM-4781, RM-4784.

Adopted: April 25, 1985.
Released: April 26, 1985.

By the Commission.

1. In the *Notice of Proposed Rule Making*, 49 FR 40611 (October 17, 1984) in this proceeding, we proposed to implement certain frequency band allocations to the Amateur Radio Service pursuant to our *Second Report and Order* in General Docket No. 80-739, 49 FR 2357 (January 19, 1984). Specifically, we proposed: (1) To add the 10.100–10.150 MHz frequency band to the Amateur Radio Service and to the Radio Amateur Civil Emergency Service; (2) to add the 24.890–24.990 MHz frequency band to the Amateur Radio Service and to the Amateur-Satellite Service; and (3) to add the frequency band 902–928 MHz to the Amateur Radio Service. We also proposed to remove the 420–430 MHz band from the Amateur Radio Service north of Line A. (Line A is defined in Section 97.185(c)(5) of the Commission's rules).

2. We received thirty-two comments and reply comments in response to the *Notice of Proposed Rule Making*. There was unanimous support for implementing the 10.100–10.150 MHz and 24.890–24.990 MHz bands in the Amateur Radio Service. Several commenters, however, opposed allocation of the 902–928 MHz band to the Amateur Radio Service. Also, many commenters expressed disapproval of the proposed action for the 420–430 MHz band.

3. The American Radio Radio Relay League (ARRL) urged in its reply comments that noncontroversial actions in this proceeding not be delayed by unrelated contested matters. We agree. We adopt this *First Report and Order* dealing only with the 10.100–10.150 MHz and 24.890–24.990 MHz bands. The matters of the 902–928 MHz band and the 420–430 MHz band north of Line A for amateur operation will be considered in a subsequent Report and Order.

4. *Thirty Meters.*[1] We proposed to add the 10.100–10.150 MHz band to the Amateur Radio Service for operation by General, Advanced or Amateur Extra Class licensees using what are now designated [2] as A1A or F1B (including J2B) emissions. We proposed no special power limitation for this frequency band.

5. Twelve commenters, including the ARRL, urged a 200 watt maximum peak envelope power (PEP) transmitter output for this band, consistent with the current conditions under which amateur operators have been permitted to use the band pending the outcome of this proceeding. They argued that with this band's propagation characteristics 200 watts permit effective domestic and global communications and minimizes the risk of interference in the band. The ARRL saw a 200 watt limitation as consistent with the need to share this band with Fixed Service stations worlwide. For these reasons, we are modify the proposed thirty meter rules and adopting final rules to include a 200 watt PEP transmitter output limitation on amateur transmissions in this band.

6. *Twelve Meters.*[3] We proposed to add the 24.890–24.990 MHz band to the Amateur Radio Service for operation by General, Advanced and Amateur Extra Class licensees using what are now designated as A1A or F1B (including J2B) emissions in the 24.890–24.930 MHz subband and A1A, F3E, G3E, A3C, A3F, F3C and F3F emissions in the 24.930–24.990 MHz subband.

7. John Perlick and three other amateur operators joining in his comments as well as Richard Little, Robert Heiderstadt and Vernon Shearer,

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[1] The frequencies between 10.100 and 10.150 MHz are commonly referred to in the amateur community as the thirty meter band.

[2] See the new frequency and emission tables in the *Order*, 50 FR 13792 (April 8, 1985).

[3] The frequencies between 24.890 MHz and 24.990 Mhz are commonly referred to in the amateur community as the twelve meter band.

urged a lower maximum power limitation (200–250 watts) for transmitter PEP output in this band. However, the ARRL argued against any reduction of the standard power limitation in this band, in large part because, unlike the thirty meter band, there will not be a continued sharing arrangement between amateur operators and Fixed Service users. We concur that there is no need to impose other than the ordinary (1500 watts PEP) power limitation on this band.

8. Because of the required temporary sharing of this band with Fixed Service users pursuant to footnote US248 to the Table of Allocations (47 CFR 2.106), amateur operators must operate on a secondary basis to these users until July 1, 1989. We proposed to codify this by amending footnote US248; the final rule we are adopting makes this amendment to US248 and also amends Part 97 to reflect this restriction.

9. Donald Chester disputed the proposed imposition of subbands at twelve meters. While as a general policy we favor voluntary band plans, there are instances where subbands are in order, such as to assure consistency with the recommended band plans of the International Amateur Radio Union (IARU).[4] With regard to the twelve meter band, the IARU adopted a resolution recommending that the lower portion of the band be used for telegraphy, and the upper portion of the band be devoted to radiotelephony.[5] We believe that Region 2 consistency and international harmony will best be served by the subbands and we are therefore retaining them in the final rules.

10. *Matters applicable to twelve and thirty meters.* Some comments sought to limit the twelve and thirty meter bands to various classes of amateur operators. Larry E. Jones wanted to dedicate the thirty meter band to Novice class use. Arthur Usher wanted to set aside either or both bands exclusively for Amateur Extra class or Amateur Extra and Advanced class use. We believe that we have found an acceptable balance between licensing incentives and operating privileges. The thirty meter band, with a maximum power limit of 200 watts PEP, will provide amateur operators above Technician their first opportunity for low-power experimentation and narrow-band operation free of interference from stations operating at greater power levels without resorting to the Novice bands. The twelve meter band will allow FCC-licensed amateurs to communicate with amateurs in over forty other countries which have authorized its use, and will be structured in a manner consistent with Region 2 IARU recommendations. We therefore decline to adopt the alternatives proposed by Jones and Usher, and instead adopt rules authorizing each band for General, Advanced and Amateur Extra class use.

11. The ARRL commented that implementation of the twelve and thirty meter bands would require its amateur station W1AW to expand its simultaneous bulletin and telegraphy practice transmissions to these bands in order to retain its limited exemption from the prohibitions of § 97.112 of the rules. The ARRL said that this would not necessarily increase W1AW's coverage and requested that § 97.112(b)(2) be amended to require operation on six medium or high frequency amateur bands instead of on all them. We agree that this amendment is warranted. We are therefore amending § 97.112(b)(2) to require operation on only six medium or high frequency bands.

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

13. The Commission has certified in accordance with section 605 of the Regulatory Flexibility Act that these rules do not have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radiocommunication (see 47 CFR 97.3(b)). Moreover, equipment for the twelve meter band will use state-of-the-art technology. Equipment is already available for and amateurs are operating in the thirty meter band.

14. In view of the foregoing, it is ordered, That Parts 2 and 97 are amended as set forth in the attached Appendix. This action is taken pursuant to the authority contained in sections 4(1) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)).

15. It is further ordered, That these rule amendments are effective 0001 UTC, June 22, 1985.

16. For information concerning this proceeding contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554 (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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

Appendix

PART 2—[AMENDED]

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. The following sentence is added to footnote US 248 to the Table of Allocations in Part 2:

§ 2.106 Table of frequency allocations.

* * * * *

US 248—

* * * * *

* * * Also, in the interim, transmissions of stations in the amateur service shall not cause harmful interference to operations in the fixed and mobile services outside the United States and stations in the amateur service shall make all necessary adjustments (including termination of transmission) if harmful interference is caused.

* * * * *

PART 97—[AMENDED]

2. In § 97.7 the kilohertz entries for the General, Advanced and Amateur Extra classes are revised, and new subparagraphs (11) and (12) are added to paragraph (b) to read as follows:

§ 97.7 Control operator frequency privileges.

(a) The following transmitting frequency bands are available to amateur radio stations having a control operator of the license class designated, subject to the limitations of paragraph (b) of this section:

Control operator license class and meter band	Terrestrial location of the amateur radio station			Limitations (See paragraph (b) of this section)
	ITU Region 1	ITU Region 2	ITU Region 3	
* * * * *				
		Kilohertz		
General:				
160		1800–2000	1800–2000	
80	3525–3750	3525–3750	3525–3750	
75		3850–4000	3850–3900	
		5167.5		9

[4] *See Order,* In the Matter of Elimination of Band Plans and Emission Restrictions in the Amateur Radio Service, Mimeo No. 6670 (September 18, 1984).

[5] *See Regional 2 News,* Journal of the International Amateur Radio Union, IARU Region 2, No 14, January, 1981, at page 4.

Control operator license class and meter band	Terrestrial location of the amateur radio station			Limitations (See paragraph (b) of this section)
	ITU Region 1	ITU Region 2	ITU Region 3	
40	7025-7100	7025-7150	7025-7100	1
40		7225-7300		1
30	10100-10150	10100-10150	10100-10150	11
20	14025-14150	14025-14150	14025-14150	
20	14225-14350	14225-14350	14225-14350	
15	21025-21200	21025-21200	21025-21200	
15	21300-21450	21200-21450	21300-21450	
12	24890-24990	24890-24990	24890-24990	12
10	28000-29700	28000-29700	28000-29700	
* * *	*	*	*	
		Kilohertz		
Advanced:				
160		1800-2000	1800-2000	
80	3525-3750	3525-3750	3525-3750	
75	3775-3800	3775-4000	3775-3900	
		5167.5		9
40	7025-7100	7025-7300	7025-7100	1
30	10100-10150	10100-10150	10100-10150	11
20	14025-14150	14025-14150	14025-14150	
20	14175-14350	14175-14350	14175-14350	
15	21025-21200	21025-21200	21025-21200	
15	21225-21450	21225-21450	21225-21450	
12	24890-24990	24890-24990	24890-24990	12
10	28000-29700	28000-29700	28000-29700	
* * *	*	*	*	
		Kilohertz		
Amateur:				
160		1800-2000	1800-2000	
Extra:				
80/75	3500-3800	3500-4000	3500-3900	
		5167.5		9
40	7000-7100	7000-7300	7000-7100	1
30	10100-10150	10100-10150	10100-10150	11
20	14000-14350	14000-14350	14000-14350	
15	21000-21450	21000-21450	21000-21450	
12	24890-24990	24890-24990	24890-24990	12
10	28000-29700	28000-29700	28000-29700	

* * * * *

(b) Limitations:

* * * * * *

(11) This band is allocated to the fixed service on a primary basis outside the United States and its possessions. Transmissions of stations in the Amateur Radio Service in this band are secondary to foreign fixed service use in this band.

(12) Until July 1, 1989, transmissions of stations in the amateur service shall not cause harmful interference to operation in the fixed and mobile services outside the United States. Stations in the amateur service are required to make all necessary adjustments (including termination of transmission) if harmful interference is caused.

2. Section 97.61 is amended by adding four frequency bands to paragraph (a), the 10100–10150 kHz band to be added between the bands 7150–7300 kHz and 14000–14350 kHz, and the 24890–24990, 24890–24930 and 24930–24990 kHz bands to be added between the bands 21200–21450 kHz and 28000–29700 kHz; and by revising subparagraph (3) of paragraph (b) as follows:

§ 97.61 Authorized emissions.

(a) Emissions table:

Frequency band	Emissions	Limitations (see paragraph (b) of this section)
* * * * *		
Kilohertz		
10100–10150	A1A, F1B	
* * * * *		
24890–24990	A1A	
24890–24930	F1B	
24930–24990	A3E, F3E, G3E, A3C, F3C, A3F, F3F	3
* * * * *		

(b) * * *

(3) J3E, R3E and H3E emissions may also be used.

* * * * *

3. Paragraph (d) of § 97.67 is revised to read:

§ 97.67 Maximum authorized transmitting power.

* * * * *

(d) The peak envelope power output (transmitter power) of each amateur radio transmitter shall not exceed 200 watts when transmitting in any of the following frequency bands:

(1) 3700–3750 kHz;

(2) 7050–7075 kHz when the terrestrial location of the station is within Regions 1 or 3;

(3) 7100–7150 kHz;

(4) 10100–10150 kHz;

(5) 21100–21200 kHz; or

(6) 28100–28200 kHz.

* * * * *

4. Subparagraph (2) of paragraph (b) of § 97.112 is revised to read:

§ 97.112 No remuneration for use of station.

(b) * * *

(2) The station schedules operations on at least six (6) allocated medium and high frequency amateur bands using reasonable measures to maximize coverage.

* * * * *

5. Section 97.185 is amended by revising the text of paragraph (b) before the table of Frequency or Frequency bands, by adding the frequency band 10100–10150 kHz between the bands 7245–7255 kHz and 14047–14053 kHz in the table, and by adding subparagraph (1) of paragraph (c) to read as follows:

§ 97.185 Frequencies available.

(a) * * *

(b) In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of section 606 of the Communications Act of 1934, as amended (47 U.S.C. 706), RACES stations and amateur radio stations participating in RACES will be limited in operation to the following frequencies and frequency bands unless otherwise directed by the President of the United States, by a person or persons designated by the President of the United States or by the FCC on behalf of the President of the United States:

FREQUENCIES AND FREQUENCY BANDS

kHz	Limitations
* * * * *	
10100–10150	1
* * * * *	

(c) *Limitations* (1) This band is allocated to the fixed service on a primary basis outside the United States and its possessions. Transmissions of stations in the Amateur Radio Service in this band are secondary to foreign fixed service use in this band.

* * * * *

5. Section 97.415 is revised to read:

§ 97.415 Frequencies available.

The following frequency bands are available for space operation, earth operation and telecommand operation:

FREQUENCY BANDS [1]

kHz	MHz	GHz
7000–7100 14000–14250	144–146 [2] 435–438	24.00–24.05

FREQUENCY BANDS [1]—Continued

kHz	MHz	GHz
21000-21450		
24890-24990		
28000-29700		

[1] Unless otherwise specified in this subpart the rules regarding authorized emission modes (§§ 97.61 and 95.65) and authorized transmitting power (§ 97.67) are applicable for each of the listed frequency bands.
[2] Stations operating in the Amateur-Satellite Service shall not cause harmful interference to other stations between 435 and 438 MHz. (See International Telecommunication Union Radio Regulations, RR 664 (Geneva, 1979).)

[FR Doc. 85-10591 Filed 5-1-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 84-959; RM-4774; FCC 85-199]

Amateur Radio Service Rules to Include Additional Authorized Emissions for the Frequency Band 1800-2000 kHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Radio Service Rules to authorize additional emissions in the 1800-2000 kHz frequency band. The amendment accommodates the growing use of radioteleprinter techniques by amateur operators using personal computers. The effect of the amendment is that it benefits amateurs by allowing them experimental latitude in their choice of emissions in this band.

EFFECTIVE DATE: June 17, 1985.

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

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio.

Report and Order

In the matter of amendment of § 97.61 of the amateur radio service rules to include additional authorized emissions for the frequency band 1800-2000 kHz; PR Docket No. 84-959, RM-4774.

Adopted: April 22, 1985.
Released: April 25, 1985.
By the Commission.

1. On October 4, 1984, the Commission adopted a Notice of Proposed Rule Making (49 FR 40194, October 15, 1984) proposing to amend the amateur radio rules to authorize additional emissions for the 160 meter band (1800-2000 kHz). Six comments were filed in this proceeding. All of the commenters supported the proposal, except Racal Survey, Inc. (Racal). Racal said that the additional emissions should be confined to the 1800-1900 kHz band and not be authorized for the 1900-2000 kHz band. Further, Racal urged the Commission to make clear that any action in this proceeding would not affect any other decisions that the Commission might make in dealing with the Radiolocation Service.

2. The American Radio Relay League, Inc. (ARRL) had confined its original request for rule amendment to the addition of F1 emission (now designated as F1B). In commenting on the proposed rules, which would allow other emissions as well, ARRL stated no objection to these emissions and offered to develop a voluntary band plan for their use. Other commenters showed a marked interest in these other modes of emission. Donald Chester wrote: "There is no reason to single out the 1.8-2.0 MHz band for more restrictive emission mode privileges than those which amateurs enjoy on the other bands." The Society for Promotion of Amplitude Modulation stated:

". . . experimentation with several different modes of operation is beneficial to the individual amateur and amateur radio." The comment from the Coachella Valley Amateur Radio Club best sums up the reasons for authorizing a variety of new emissions in this band:

> With the increase of computers for RTTY use in amateur radio, new frontiers are being explored by amateurs. With the new innovations like AMTOR and packet radio here now there is no reason to stifle their use on 160 meters. The present roadblocks on 160 meters must be pushed aside to allow new growth of amateur activity in the new frontiers on the 160 meter band.

3. In light of the comments, we believe that there are good reasons for authorizing the emissions in the 160 meter band as proposed. The present limitation restricting emission modes in this band to telegraphy and telephony is no longer necessary since that limitation was designed to protect the discontinued LORAN-A radionavigation systems. In addition, the use of radioteleprinter has proliferated because of the availability of personal computers. Therefore, additional emission modes are needed so that amateurs can experiment with radioteleprinter techniques.

4. We will authorize these emissions throughout the entire 160 meter band without specifying particular subbands within the 160 meter band where a particular type of emission may be used. However, we urge amateurs to adhere to the voluntary bandplan which ARRL will develop. Although we are not confining these additional emissions to the 1800-1900 kHz band as urged by Racal, we reiterate that amateur use of the 1900-2000 kHz band is the subject of a Commission proceeding in PR Docket 84-874. Our action here does not in any way limit our discretion in that proceeding. Amateurs are again cautioned that no equities will accrue for investment in equipment which operates only in this band.

5. In view of the foregoing, it is ordered, that Part 97 is amended as set forth in the Appendix hereto. This action is taken pursuant to the authority contained in sections 4(i) and 303 (e) and (r) of the Communications Act of 1934, as amended. It is further ordered, that these rule amendments shall become effective June 17, 1985.

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

7. It is further ordered, that this proceeding is terminated.

8. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632-4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 97—[AMENDED]

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

Section 97.61 is amended by designating the table as paragraph (a) and revising its first entry to read, as follows:

§ 97.61 Authorized emissions.

(a) Emissions table:

Frequency band	Emissions	Limitations (see paragraph (b) of this section)
1800-2000 kHz	A1A, F1B, A3E, F3E, G3E, A3C, F3C, A3F, F3F.	3
. . . . .		

[FR Doc. 85-10597 Filed 5-1-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment.

CROSS REFERENCE: See the "Notices" Section of this **Federal Register** for a related document (FR Doc. 85–10632) published by DoD on Progress Payment Rates.

SUMMARY: The Deputy Secretary of Defense has directed that, effective May 1, 1985, revisions be made to DoD's contract financing policies with respect to progress payment rates.

DATES: Effective May 1, 1985. Comments must be received on or before June 30, 1985. Please cite DAR Case 85–74 in all correspondence to this issue.

ADDRESS: Interested parties should submit comments to: Defense Acquisition Regulatory Council, ATTN: Executive Secretary, OUSDRE(AM)(DARS) c/o OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301–3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, DAR Council, OUSDRE(AM)(DARS), c/o OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301–3062, telephone (202) 697–7268.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84–1 through 84–3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

Interim Changes to 48 CFR Parts 232 and 252

The Deputy Secretary of Defense has directed that, effective May 1, 1985, the following revisions be made to DoD's contract financing policies.

1. The customary progress payment rate for other than small business concerns be lowered from 90% to 80%;

2. The customary rate for small business concerns be lowered from 95% to 90%;

3. The targeted rate for contractor's investment under flexible progress payments be increased from 5% to 15% (upper and lower bands would also be modified accordingly); and

4. Billing periods remain on a monthly basis.

On April 22, 1985, the DAR Council approved deviations to the Federal Acquisition Regulation and revisions to the DoD FAR Supplement to implement the above direction. These policy changes are expected to be incorporated into all contracts awarded on or after May 1, 1985. This makes it necessary for contracting officers to modify outstanding solicitation provisions to the maximum extent practicable. However, it is recognized that there are special contracting situations which required additional guidance.

Contract Awards In-Process

There may be cases where potential contractors have already responded to solicitations and the progress of the contract action may not allow for timely or practical application of the new contract financing rules. An example might be a competitive award where the contracting officer has already received "Best and Final" offers. Another example might be where sealed bids, received in response to an invitation for bids which included provision for progress payments, have been opened by the contracting officer. Such cases must be governed by sound judgment which balance the Department's intent to reduce contract financing with the overall best interests of the Government. Where application of the lower progress payment rates is deemed to be impractical, the action must be expressly approved through normal contract approval or clearance processes and fully documented in the contract files. These will not be regarded as unusual progress payments within the meaning of FAR 32.501–2.

Previously Priced Contract Actions

It is recognized that there is a time lag between when agreement on contract price is reached between the contracting parties and when the contract is ultimately awarded or definitized. Therefore, if the definitive contract price for the goods or services to be delivered under a contract action was agreed to prior to May 1, 1985, the higher progress payment rate (i.e., 90% or 95%) may be used. On the other hand, if a definitive contract price has not been established prior to May 1, 1985, the contracting officer will incorporate the lower rate. This includes previously awarded letter contracts or similar arrangements. As a rule, the date when price agreement was reached is reflected in the Certificate of Current Cost or Pricing Data (reference FAR 15.804–5).

Modifications to Existing Contracts

Amendments, modifications, supplemental agreements, changes, etc., to existing contracts will generally be financed at the progress payment rate established in the existing contract. The addition of new work to an existing contract, which could have been executed as a separate contract, to retain the higher progress payment rates is unacceptable.

Basic Ordering Agreements

Prompt action should be taken by the contracting officer to modify basic ordering agreements to incorporate the new contract financing policy. All orders placed prior to May 1, 1985, shall be financed at the rate in effect on the date of placement. All orders placed on or after May 1, 1985, shall be financed at the lower rate, unless a definitive order price was previously established.

Foreign Military Sales (FMS)

There are no changes to the progress payment rates for FMS contracts at this time.

Under authority of section 22(d)(1) of the Office of Federal Procurement Policy Act, the Deputy Under Secretary (Acquisition Management) has issued the following waiver:

To eliminate progress payment rates which are excessive in relation to the current inflation and interest rates, there is an immediate need to reduce progress payment rates to more appropriate levels. Accordingly, I hereby determine that compliance with the requirements of section 22(a) of the Office of Federal Procurement Policy Act is impracticable and do hereby waive such requirements.

(Signed) Mary Ann Gilleece,

Deputy Under Secretary, Acquisition Management.

19 April 1985 (Date)

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 232 and 252 is amended as set forth below.

1. The authority for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

232.501-1 [Amended]

2. Section 232.501-1 is amended by adding in the second sentence between the word "the" and the words "CASH II" the words "applicable DoD cash flow computer model (e.g."; and by removing in the second sentence the words "computer program" and inserting in their place the words "or CASH III)".

232.502-1 [Amended]

3. Section 232.502-1(S-71) is amended by removing in the third sentence of paragraph (1) the words "(i.e., 90% or 95%)"; by removing in the third and fourth sentences of paragraph (2) the percentage figure "5%" and inserting in both places the percentage figure "15%"; by removing in the first sentence of paragraph (4) the words "CASH II" and inserting in their place the words "CASH III"; and by removing in paragraph (7) the percentage figures "7%", "3%", and "5%", and inserting in their place the percentage figures "17%", "13%", and "15%" respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232-7004 [Amended]

4. Section 252.232-7004 is amended by removing in the title of the clause the date "APR 1984" and inserting in its place "MAY 1985"; and by removing in the text of the clause the percentages "five percent (5%)", "seven percent (7%)", and "three percent (3%)", and inserting in their place the percentages "fifteen percent (15%)", "seventeen percent (17%)", and "thirteen percent (13%)", respectively.

[FR Doc. 85-10631 Filed 5-1-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173 and 175

[Docket No. HM-149D, Amendment 173-187]

Exceptions for Specified Quantities of Radioactive Materials

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Emergency final rule.

SUMMARY: The Materials Transportation Bureau (MTB) is renewing for two years the exceptions (statutory exemptions) for specified quantities of radioactive materials found in 49 CFR 173.4, 173.421-1 and 173.421-2. These exceptions permit the continued transportation by passenger-carrying aircraft of certain quantities of radioactive material under the existing restrictions. These materials do not present a significant hazard to passengers or crew on an aircraft. This action is necessary on an emergency basis because the existing exceptions will expire on May 3, 1985. Under the provisions of section 553 of the Administrative Procedure Act, agencies are permitted to issue a rule in final form when notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This emergency final rule, entitled "Exceptions for Specified Quantities of Radioactive Materials", has been determined not to be a major rule. Its effect will permit the continued transportation by passenger-carrying aircraft of certain quantities of radioactive materials. Delay in the renewal of these provisions would be contrary to the public interest because the limits imposed on the transport of these materials via passenger-carrying aircraft would have an adverse effect on the nuclear industry, and would disrupt routine and ongoing shipments which have been made safely for 10 years under the previous exceptions. Continuation of the exceptions will have a negligible environmental impact and will not impose any additional costs on shippers, carriers or consumers.

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On April 18, 1985, in accordance with the provisions of 49 CFR 106.31, the Department of Energy (DOE) requested the Materials Transportation Bureau (MTB) grant an emergency extension to May 3, 1987, to the provisions of 49 CFR 173.4, 173.421-1 and 173.421-2 to permit the continued transportation of specified quantities of radioactive material by passenger-carrying aircraft.

In accordance with section 107 of the Hazardous Materials Transportation Act (HMTA 49 U.S.C. 1806) governing exemptions, the exceptions provided in §§ 173.4, 173.421-1 and 173.421-2 are limited to two years unless reexamined and renewed. These exceptions expire on May 2 and May 3, 1985. Historically, these exceptions have been issued and subsequently renewed under Docket No. HM-149. The legal background and regulatory history of these exceptions can be found in Docket HM-149C (46 FR 24184) published on April 30, 1981, and in preceding amendments dating back to April 17, 1975 (40 FR 17141).

In accordance with 49 U.S.C. 1806 and 49 CFR 106.13, MTB has reexamined the provisions of the exceptions provided in §§ 173.4, 173.421-1 and 173.421-2. Predicated on this review, and based on the very limited hazard posed by the materials excepted by these sections, MTB is (1) extending the effective dates of these exceptions until May 2, 1987 and, (2) clarifying the wording in §§ 173.448(f) and 175.700(c). No substantive changes have been made by these amendments.

The following terms from the **Federal Register** Thesaurus of Indexing Terms apply to this emergency final rule.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR PART 175

Air carriers and radioactive materials.

In consideration of the foregoing, 49 CFR Parts 173 and 175 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 49 CFR 1.53(e), unless otherwise noted.

2. In § 173.4, paragraph (b) is revised to read as follows:

§ 173.4 Exceptions for small quantities.

* * * * *

(b) A package containing a radioactive material also must conform with the requirements of § 173.421(a) through (e) or § 173.422(a) through (f). After May 2, 1987, a package containing a radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

3. In § 173.421-1, paragraph (b)(2) is revised to read as follows:

§ 173.421-1 Additional requirements for limited quantities of radioactive materials and radioactive instruments and articles.

* * * * *

(b) * * *

(2) Sections 171.15, 171.16, 175.45, and 175.700(b) of this subchapter pertaining to the reporting of incidents and

decontamination if transported by aircraft. After May 2, 1987, it is also necessary to comply with §§ 173.448(f) and 175.700(c) of this subchapter.

4. In § 173.421–2, paragraph (d) is revised to read as follows:

§ 173.421–2 Requirements for multiple hazard limited quantity radioactive materials.

* * * * *

(d) After May 2, 1987, a limited quantity radioactive material classed other than radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

5. In § 173.448, paragraph (f) is revised to read as follows:

§ 173.448 General transportation requirements.

* * * * *

(f) No person may offer for transportation aboard a passenger-carrying aircraft any radioactive material that is intended for use in, or incident to, research, medical diagnosis or treatment.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

6. The authority citation for Part 175 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1806, 1807, 1808; 49 CFR 1.53(e), unless otherwise noted.

7. In § 175.700, paragraph (c) is revised and the statement of authority at the end of the section is removed as follows:

§ 175.700 Special limitations and requirements for radioactive materials.

* * * * *

(c) Except as provided in §§ 173.4, 173.421–1 and 173.421–2 of this subchapter, no person may carry any radioactive material aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

* * * * *

Note.—The Materials Transportation Bureau has determined that this emergency amendment is not a major rule under the terms of Executive Order 12291 or significant under DOT's regulatory procedures (44 FR 11034), and does not require Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4231, et seq.). A regulatory evaluation was not prepared prior to consideration of issuance of this rule, in view of the fact that this is an emergency rule.

Based on information available concerning size and nature of entities likely to be affected, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

Based on the potential adverse impact on shippers, carriers and consumers should relief from the compliance date not be granted, I have determined that, under 5 U.S.C. 553(b)(3) (B), public notice and an opportunity to comment would not be in the public interest, and this rule may be made effective in less than 30 days.

Issued in Washington, D.C. on April 29, 1985.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85–10706 Filed 5–1–85; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155–4175]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice establishing restrictions to reduce further the levels of fishing in 1985 for widow rockfish, the *Sebastes* complex of rockfish, and Pacific ocean perch taken off the coasts of Washington, Oregon and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary because these stocks are biologically stressed. These actions are intended to lower fishing rates and reduce biological stress and the probability of a fishery closure before the end of the year.

EFFECTIVE DATE: 0001 hours (Pacific Standard Time) April 28, 1985 until modified, superseded, or rescinded. Comments will be accepted until May 13, 1985.

ADDRESSES: Submit comments on these actions to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or Mr. E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten at 206–526–6150, E.C. Fullerton at 213–548–2575, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982, and final implementing regulations were published October 5, 1982 (47 FR 43964). This action supersedes those provisions in the **Federal Register** notice published January 15, 1985 (50 FR 2051) which limited landings of widow rockfish (*Sebastes entomelas*), the *Sebastes* complex of rockfish (all species of rockfish in the Scorpaenidae family except widown, Pacific ocean perch (*S. alutus*), shortbelly (*S. jordani*), and *Sebastolobus* species of rockfishes). The provisions for sablefish (*Anoplopoma fimbria*) published at 50 FR 2051 remain in effect.

As specified in the January notice, the Pacific Fishery Management Council (Council) reviewed the progress of the groundfish fishery at its April meeting in Portland, Oregon. The conditions of biological stress of widow rockfish and the *Sebastes* complex persist (first documented at 48 FR 8283, February 28, 1983); Pacific ocean perch also is considered stressed and is managed under the rebuilding schedule set forth in the FMP. The Council examined current management measures with the intent of avoiding overfishing and extending the fisheries as long as possible throughout the year. The best scientific data available through March 1985 indicated that the rate of landings of widow rockfish coastwide, and the *Sebastes* complex and Pacific ocean perch caught north of Cape Blanco must be reduced to avoid exceeding the 1985 harvest goals for these species. Accordingly, as specified in the FMP, the Secretary of Commerce (Secretary) announces by this notice measures recommended by the Council to further reduce landings of widow rockfish, the *Sebastes* complex of rockfish, and Pacific ocean perch.

The Council's recommendations for 1985 and actions taken by the Secretary on those recommendations are presented below. Because the vast majority of groundfish caught off Washington, Oregon, and California is taken from the fishery conservation zone (FCZ) 3–200 nautical miles offshore, all groundfish taken in ocean waters off Washington, Oregon, and California and retained or landed in violation of these restrictions will be treated as though they were taken in the FCZ, the same as in 1984.

Widow Rockfish

Council Recommendation

The Council recommended continuation of the 30,000-pound trip limit which allows only one landing a week above 3,000 pounds. However, it deleted the option to land 60,000 pounds once every two weeks. Further, if 90 percent (8,400 metric tons, mt) of the widow rockfish optimum yield (OY) quota is reached before the Council's July 10–11, 1985, meeting, then a trip limit for widow rockfish of 10 percent of all fish on board or 3,000 pounds (whichever is less) will go into effect, eliminating the target fishery. Under this incidental limit, landings of less than 1,000 pounds of widow rockfish will not be restricted. If the OY is reached, all landings of widow rockfish will be prohibited.

Rationale

In 1985, the coastwide OY for widow rockfish is 9,300 mt, the same as in 1984, but 26 percent above the 1985 acceptable biological catch (ABC) of 7,400 mt.

In 1984, the trip limit was set at 50,000 pounds in January, 40,000 pounds in May, and dropped to 1,000 pounds in September when only 100 mt of the OY was left. The OY was reached and on November 28, 1984, the widow rockfish fishery was closed. Biweekly trip limits were not allowed in 1984.

In hopes of avoiding a similar pattern in 1985, the Council recommended that in January the trip limit would be 30,000 pounds (20,000 pounds less then in 1984) and only one landing a week above 3,000 pounds would be allowed. An option for biweekly trips was included so that as much as 60,000 pounds could be landed once in a two-week period, but in only one landing above 3,000 pounds. Data available in March 1985 indicate that landings of widow rockfish are about the same as in 1984 despite the lower trip limits in 1985, and that OY will be reached before the end of the year if the fishing rates are not slowed. Almost half the OY had been landed by the end of March.

Projected landings may be somewhat high because of exceptionally good weather in the early part of the year and, although several large vessels departed to other fisheries in February, earlier than in 1984, this was not yet reflected in the projections. There also was testimony at the April Council meeting that effort on the widow rockfish fishery will be less intense in 1985 than 1984 because some vessels which fished in the whiting joint venture have been diverted to Alaska and thus will not be available to harvest as much widow rockfish this year.

In hopes that the projected landings are too high and that effort will decrease from last year, the Council recommended removing the biweekly option for widow rockfish trips. This option allowed fishermen more flexibility and was more likely to enable them to reach the limit than the weekly restriction. Removal of this option will be most detrimental to large vessels capable of landing more than 30,000 pounds in a trip, especially those traveling long distances to fishing grounds.

Secretarial Action

The Secretary concurs with the Council's recommendation and announces—

(1) No more than 30,000 pounds (round weight) of widow rockfish may be taken and retained, or landed, per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time. There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(2) If it is determined that 8,400 mt of widow rockfish will be taken before the July 10–11, 1985, Council meeting, the Secretary will publish a notice under § 663.23 establishing a trip limit which prohibits taking and retaining, or landing, more than 10 percent of widow rockfish of all fish on board or 3,000 pounds (in round weights) of widow rockfish, whichever is less, per vessel per trip. Landings of widow rockfish less than 1,000 pounds will not be restricted. If the 9,300 mt OY is reached, all landings of widow rockfish will be prohibited.

(3) These restrictions apply to all widow rockfish taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

(4) Landings of widow rockfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by the regulations at § 663.28.

Sebastes Complex

Council Recommendation

The Council recommended that the poundage limit be reduced by half, from 30,000 pounds per trip of the *Sebastes* complex which no more than 10,000 pounds could be yellowtail rockfish (*Sebastes flavidus*) to 15,000 pounds of the *Sebastes* complex per trip, of which no more than 5,000 pounds could be yellowtail rockfish, and maintained the provision that only one landing above 3,000 pounds could be made per week. It retained the option for biweekly limits: 30,000 pounds of the *Sebastes* complex, of which no more than 10,000 pounds is yellowtail rockfish, could be landed once in two weeks if the appropriate State agency is so notified prior to undertaking the trip. The Council recommended another option as well, a trip limit in which 7,500 pounds of the *Sebastes* complex, of which no more than 3,000 pounds is yellowtail rockfish, could be landed twice a week if the appropriate State agency is so notified in advance.

Rationale

The harvest guideline for the *Sebastes* complex of rockfish caught north of Cape Blanco remains the same in 1985 as in 1984—10,100 mt. Weekly trip limits in 1984 were adjusted to reduce landings from 30,000 pounds in January to 15,000 pounds in May and 7,500 pounds in August. Landings of the *Sebastes* complex in 1984 were about equal to the harvest guideline. However, landings of yellowtail rockfish from north of Cape Blanco, the only species in the complex known to be biologically stressed, remained unacceptably high in 1984 (over 50 percent above its ABC) in spite of limitations on the complex as a whole.

In 1985, the Council sought to reduce landings of yellowtail rockfish, recognizing that they often are caught together with other species in the complex. In January 1985, the trip limit for the complex as a whole was the same as in January 1984, but a separate limit on yellowtail rockfish was added such that 30,000 pounds of the *Sebastes* complex caught north of Cape Blanco, Oregon (42°50' N. latitude) could be landed per trip, of which no more than 10,000 pounds could be yellowtail rockfish; only one landing above 3,000 pounds could be made in a week. A biweekly option was included which enabled fishermen to land 60,000 pounds, but no more than 20,000 pounds of yellowtail rockfish once in a two-week period.

Data through March 1985 indicate that landings of the *Sebastes* complex are almost 20 percent higher than in 1984, and about 40 percent of both the harvest guideline for the *Sebastes* complex and the ABC for yellowtail will be landed by the end of April. Further reductions in landings are necessary if the harvest guideline and ABC are not to be exceeded before the end of the year.

The species composition in the *Sebastes* landings has changed in 1985. Over half the landings through March were yellowtail rockfish in 1984, compared with about 30 percent in 1985. Since the ABC of yellowtail rockfish is 27 percent of the harvest guideline for the *Sebastes* complex, measures to hold the *Sebastes* landings within the harvest guideline also may keep yellowtail landings at ABC if proportional reductions in the trip limits for yellowtail rockfish and the *Sebastes* complex are made.

The Council confirmed its intent to extend the fishery as long as possible during the year while keeping landings from exceeding the harvest guideline for the *Sebastes* complex and the ABC for yellowtail. Since the rate of landings for the *Sebastes* complex would need to be cut almost in half, the Council recommended halving the trip limit, hoping for a proportional reduction in landings.

The Council also heard testimony that the Dover sole fishery was unduly restricted by the *Sebastes* trip limits. Dover sole vessels normally land more than once a week, and it is not unusual to catch more than 3,000 pounds of *Sebastes* in a trip. Because only one landing above 3,000 pounds of the *Sebastes* complex is allowed in a week, these vessels are forced either to make only one landing or to discard incidentally-caught *Sebastes* over 3,000 pounds. Because these vessels do not target on the *Sebastes* complex and account for only a small part of the *Sebastes* landings, the Council agreed to minimize the impacts the *Sebastes* trip limits have on the Dover sole fishery by allowing landings to be made twice a week: 7,500 pounds of the *Sebastes* complex, of which no more than 3,000 pounds is yellowtail rockfish, may be landed per trip and only two landings above 3,000 pounds are allowed in a week. Both the biweekly and twice-weekly options would require advance notification to the State agency where the fish will be landed. (Even though half the weekly limit for yellowtail rockfish is 2,500 pounds, the twice weekly limit was kept at 3,000 pounds to conform with the provision which does not restrict landings of the *Sebastes* complex under 3,000 pounds.)

All other provisions remain the same as given at 50 FR 2051, January 15, 1985. The 40,000-pound trip limit still applies for the *Sebastes* complex caught south of Cape Blanco and notification procedures have been clarified but not changed.

Secretarial Action

The Secretary concurs with the Council's recommendations and announces—

(1) *Definitions.* (a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* species of rockfish (which includes idiot rockfishes). The *Sebastes* complex includes yellowtail rockfish (*Sebastes flavidus*).

(b) "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Sunday and ending 2400 hours Saturday local time.

(d) All weights are round weights, the weight of the whole fish.

(2) *General.* (a) These restrictions apply to all fish of the *Sebastes* complex taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

(b) There is no limit on the number of landings under 3,000 pounds of *Sebastes* complex allowed per week.

(c) It will be presumed that all fish of the *Sebastes* complex which are possessed or landed north of Cape Blanco (42°50' N. latitude) were caught north of Cape Blanco unless compliance with paragraph (3) can be demonstrated.

(3) *Operating both north and south of Cape Blanco in a trip.* Unless compliance with this paragraph can be demonstrated, fishing for any groundfish species during a single fishing trip must occur either north or south, but not on both sides, of Cape Blanco if more than 3,000 pounds of the *Sebastes* complex is landed from that trip. The vessel owner or operator must notify the State of Oregon before leaving port on a fishing trip of intent to fish in one area and possess or land in the other, in which case fishing may occur both north and south of Cape Blanco. If fishing occurs both north and south of Cape Blanco during a single fishing trip, then the restrictions on the *Sebastes* complex caught north of Cape Blanco apply.

This notification, submitted by telephone or in writing, should be made to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(4) *Restrictions on the Sebastes complex caught north of Cape Blanco.* (a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (4)(b) and (4)(c), no more than 15,000 pounds of the *Sebastes* complex, including no more than 5,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Cape Blanco. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period.

(b) *Biweekly trip limit.* If the appropriate agency is notified as required by this paragraph, up to 30,000 pounds of the *Sebastes* complex, including no more than 10,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Cape Blanco. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that two-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to make one landing of the *Sebastes* complex above 3,000 pounds every *two* weeks, which obligates the vessel owner and operator to use only the biweekly trip limit unless rescinded in writing.

The State of Oregon or California must receive a written notice declaring intent to use the biweekly limits before the first day of the first two-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the two-week period in which this rescission is to occur. The State of Washington must receive written notice declaring intent to use the biweekly limits postmarked at least seven days before the first day of the first two-week period in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; 53 Portway Street,

Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501.

(c) *Twice weekly trip limit.* If the appropriate agency is notified as required by this paragraph, up to 7,500 pounds of the *Sebastes* complex, including no more than 3,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Cape Blanco. Only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to make two landings of the *Sebastes* complex above 3,000 pounds in a one-week period, which obligates the vessel owner and operator to use only the twice weekly trip limit unless rescinded in writing.

The State of Orgeon or California must receive a written notice declaring intent to use the twice weekly limits before the first day of the first one-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the week in which this recission is to occur.

The State of Washington must receive a written notice declaring intent to use the twice-weekly limits postmarked at least seven days before the first day of the first week in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this recission is to occur. Notifications must be submitted to the same addresses given in paragraph (4)(b) of this section for biweekly trip limits.

(5) *Restrictions on the Sebastes complex caught south of Cape Blanco.* No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Cape Blanco. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Cape Blanco.

Pacific Ocean Perch

Recommendation

The Council recommended reinstating the trip limit which was implemented on August 1, 1984; no more than 20 percent of all fish on board or 5,000 pounds (in round weights), whichever is less, may be Pacific ocean perch caught north of Cape Blanco, Oregon (42°50′ N. latitude).

Rationale

Pacific ocean perch has been overfished and is managed under a 20-year rebuilding schedule. The OY is set in the FMP at 600 mt for the Vancouver area (47°30′ N. latitude to the U.S.-Canada border) and 950 mt for the Columbia area (from Cape Blanco at 42°50′ to 47°30′ N. latitude). On August 1, 1984, the federal trip limit for Pacific ocean perch was reduced to 20 percent of all fish on board, not to exceed 5,000 pounds, from 5,000 pounds or 10 percent, whichever was greater.

Even though the States of Oregon and Washington implemented this change on July 16, 1984, it was too late to slow landings in the Columbia area and this fishery was closed on August 16, 1984. (The federal trip limit could not have been revised earlier because it required an amendment to the FMP which was not effective until July 29, 1984.) However, landings in the Vancouver area were slowed. Projections made in July 1984 indicated that the OY would be reached in late October if the 5,000 pound/10 percent limit were maintained. The Vancouver area OY was not reached in 1984, however, due to the combined effects of weather, markets, and the revised trip limit which virtually eliminated day trip for 5,000 pounds.

The Council relaxed this trip limit in January 1985 by maintaining the 20 percent trip limit for Pacific ocean perch and removing the 5,000 pound limit. This action, taken in conjunction with biweekly trip limits for widow rockfish and the *Sebastes* complex, enabled fishermen to land as much as 24,000 pounds of Pacific ocean perch every two weeks (20 percent of the maximum, biweekly landings of widow rockfish and the *Sebastes* complex). A target fishery on Pacific ocean perch became feasible. Data available in March 1985 indicate that landings in the Vancouver area are four times higher than in 1984, and in the Columbia area are about the same as in 1984. Thus, the OYs for both areas could be reached before the end of the year if landings are not slowed. However, because some of the large vessels capable of making these catches departed the fishery in February, it is believed that the projections might be somewhat high. At its April meeting, the Council recommended a return to the previous limit, keeping in mind that landings have already been so high that OY in the Vancouver and possibly Columbia areas could be reached before the end of the year.

Secretarial Action

The Secretary concurs with the Council's recommendation and announces—

(1) For Pacific ocean perch caught north of Cape Blanco, Oregon (42°50′ N. latitude) no more than 5,000 pounds or 20 percent (in round weights) of all fish on board, whichever is less, may be taken and retained, or landed, per vessel per fishing trip.

(2) These restrictions apply to all Pacific ocean perch taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Inseason Adjustments

At its July 10–11, 1985, meeting in Los Angeles, California, the Council will review the data available through June 1985 and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries again in September or as needed in order to avoid overfishing and to extend the fisheries as long as possible during the year.

Other Fisheries

These limits for widow rockfish, Pacific oeean perch, and the *Sebastes* complex apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign processing vessels is limited by separate incidental retention allowances established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under § 663.10 also are subject to these restrictions except as may be otherwise specified in the permits.

Landings of groundfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by regulations at § 663.28.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the

Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If current fishing rates continue, the ABC levels for several species unquestionably will be exceeded in 1985. Prompt action to reduce those fishing rates is necessary to protect the *Sebastes* complex and reduce the probability of year-end closures of Pacific Ocean perch and widow rockfish fisheries in 1985. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions therefore are taken in final form effective April 28, 1985.

The public has had opportunity to comment on these actions at the Groundfish Select Group, Groundfish Management Team, Groundfish Advisory Subpanel, and Council meetings in March and April 1985 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**. This action may be modified or rescinded based on public comment.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

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

Dated: April 26, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85-10550 Filed 4-26-85; 4:01 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 50458-5058]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon and California

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

ACTION: Notice of 1985 management measures and request for comments.

SUMMARY: NOAA issues this notice establishing management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1985. Specific measures vary by fishery and area. Together they establish fishing seasons, quotas, legal gear, recreational daily catch limits, minimum sizes, and inseason management procedures for salmon taken in the fishery conservation zone (3–200 miles) off Washington, Oregon, and California. Similar regulations are being adopted for the territorial sea (0–3 miles) by Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the harvest equitably between the ocean commercial and recreational fisheries. The regulations also are calculated to allow salmon to escape the ocean fisheries to provide for treaty Indian and non-Indian inside fisheries and for spawning. These management measures were established using the procedures instituted by the framework amendment to the ocean salmon fishery management plan.

DATES: This notice will be effective from 0001 hours (Pacific Daylight Time) May 1, 1985, until modified, superseded or rescinded. Comments will be accepted until May 15, 1985.

ADDRESSES: Comments on this notice may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or Mr. E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

SUPPLEMENTARY INFORMATION:

Regulatory History

Regulations to implement the ocean salmon fishery management plan (FMP) were published on April 14, 1978 (43 FR 15629) as emergency regulations. From 1979 through 1983, the Pacific Fishery Management Council (Council) amended the FMP annually to establish each year's regulations based on salmon abundance estimates and social and economic factors affecting the fisheries.

The 1984 regulations were implemented on May 3, 1984, by emergency action (49 FR 18853) and extended on August 2, 1984 (49 FR 30948), without amending the FMP. These regulations lapsed on October 28, 1984, after 180 days.

Framework Amendment

Proposed regulations, developed by the Council to streamline the process and to avoid the need for annual amendments and the use of emergency rulemaking, were published on August 14, 1984 (49 FR 32414). Final regulations became effective on November 25, 1984 (49 FR 43679, October 31, 1984).

This framework amendment is a multi-year management plan which allows certain changes to be made annually in the management measures governing the fisheries without having to undergo the unwieldy FMP amendment and emergency regulations process. The framework process allows for more rapid and timely preseason changes in flexible measures including management boundaries and zones, quotas, seasons, recreational daily bag limits, fishing gear restrictions, and minimum lengths of fish for harvest. Even though the framework amendment process is faster, it still allows for full public comment.

The other management measures which are fixed and cannot be modified annually under the framework amendment can still be changed when necessary through the more lengthy FMP amendment process.

Schedule for Establishing or Adjusting Annual Management Measures

The schedule established by the framework amendment for setting the preseason management measures was used for 1985:

First week of March. The Council's Salmon Plan Development Team (Team) and staff economist prepared two reports for the Council, its advisors and the public. The first report, entitled "1984 Ocean Salmon Fisheries Review," summarizes the 1984 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1984. The second report, entitled "1985 Ocean Salmon Fisheries Stock Status Projections, Management Goals, and Regulation Impact Analysis," provides the 1985 salmon stock status projections and analyzes the effects on the stocks and FMP management goals if the 1984 regulations were used in 1985.

March 12–14. The Council met in Portland, Oregon, to develop proposed management options for 1985. Three options presenting various combinations of seasons, quotas and other management measures, calculated to protect the weak stocks and still provide for maximum harvests and time on the water for fishermen, were proposed for further analysis and public comment.

Third week of March. The Team and staff economist prepared a third report, entitled "Proposed Regulatory Options and Regulation Impact Analysis," which analyzes the effects of the proposed 1985 managemement options for distribution to the Council, its advisors and the public.

March 26, 27 and April 4. Public hearings on the proposed options were held in Seattle, Washington, Coos Bay and Astoria, Oregon, Eureka and San Francisco, California, and Boise, Idaho.

April 9–11. The Council met in Portland to adopt the final 1985 management measures and its

recommendations to the Secretary. The Team and staff economist prepared a fourth report, entitled "The Analysis of Impacts of Council Adopted 1985 Regulations," which analyzes the effects of the final recommendations for distribution to the Council, its advisors, and the public.

This notice constitutes the Secretary's approval of the Council's recommendations and establishes the management measures for the 1985 ocean salmon fisheries.

Resource Status. With four exceptions, salmon stocks returning to Washington, Oregon, and California (WOC) rivers and streams in 1985 are expected to be in as good for better condition than in 1984. The four stocks which have not improved from last year are Klamath River fall chinook, southern Oregon south-migrating chincook, Columbia River late coho and Skagit River coho. Some other stocks which contribute to the WOC ocean salmon fisheries are far short of historical levels, but are in better condition in 1985 than they have been in recent years.

Chinook Salmon Stocks. The Central Valley chinook stocks (primarily Sacramento River runs) are expected to return in numbers comparable to recent years and slightly higher than in 1984. These stocks are expected to permit a harvest at least as large as in 1984 and still allow sufficient return so that the number of spawners will fall within the escapement goal range. However, the Klamath River fall chinook stock is expected to be at an exceptionally low level of abundance. The age-three chinook returns to the Klamath in 1985 are estimated to be 27 percent below the previous low record since 1978, and the age-four chinook returns are predicted to be the second lowest since 1979. The total estimated ocean population of Klamath River chinook in 1985 is about 102,000 fish, which compares with the 1984 estimate of slightly over 130,000 fish. An escapement of 87,000 chinook into the river is needed in each of the next two years if the escapement rebuilding program is to stay on schedule toward the goal of 115,000 spawners by 1997. Last year, only 43,000–45,000 fish returned to the river and if the 1984 regulations were in effect with the 1985 estimated run size, the estimate is that only about 38,000 would return this year. The Klamath River chinook situation clearly demands drastic fishing curtailment.

Oregon coastal chinook stocks are divided into two groups—south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks which generally originate in central and northern Oregon streams. The southern stocks continue to be depressed, as they were in 1983 and 1984. These stocks were subjected to winter flooding in 1981–1982 and to El Niño in 1983. Restrictive measures that reduced the harvest of these fish last year need to be continued or made even more stringent to improve spawning escapements and turn around the decreasing population trends. North-migrating Oregon coastal chinook stocks are in stable condition. These runs continue to enjoy adequate escapement and will contribute to ocean fisheries at about the same rate as in recent years. These far north migrating stocks were not negatively affected by El Niño, and also should benefit from implementation of the U.S.-Canada salmon interception treaty. Ocean catches of these stocks in 1985 are expected to be greater than last year in the Cape Blanco to Cape Falcon area.

Columbia River chinook stock conditions are variable. Upriver spring and summer runs continue to be severely depressed. While these stocks are not taken in significant numbers in the WOC ocean fishery, every fish that possibly can be saved should be returned to the spawning areas. Lower river spring chinook runs continue to be in good condition and 1985 returns should be nearly as good as the excellent 1984 returns. The upriver bright fall chinook run will be at least as large as the 1984 return of 130,000 which was the largest since 1973. The Bonneville pool hatchery fall chinook return will be modestly better than 1984 and the lower river fall hatchery run will be about the same as 1984. The harvest of far north migrating runs of upriver spawners probably will not differ greatly from recent years, but lower river fall runs and hatchery stocks will be the primary target of ocean fisheries from Cape Falcon to the Canadian border, and will be only modestly more abundant than in 1984, which was the smallest return in recent years. Washington, coastal and Puget Sound chinook stocks primarily are taken north of the WOC fishery and will not be significantly affected by regulations imposed in the PFMC area.

Coho Salmon Stocks. Oregon coastal and Columbia River coho stocks are the primary components of the Oregon Production Index (OPI). The OPI is an annual index of coho abundance from Leadbetter Point, Washington, south through California. The 1985 OPI is 615,000 coho which is 7 percent less than the 1984 OPI of 658,700 coho and is an all-time low. To the 1985 OPI can be added 96,800 coho which is an independent estimate of the private hatchery production within the OPI area. Columbia River and Oregon coastal coho are managed as one stock under the framework of the OPI because they are largely intermixed in the ocean fisheries. However, Columbia River stocks are managed for full utilization of hatchery production, while Oregon coastal stocks are managed to achieve the rebuilding schedule for naturally spawning adults. Full utilization of Columbia River hatchery returns can usually be accomplished by management of the ocean fisheries and the inside gillnet and sport fisheries. The coastal coho spawning escapement in 1984 was 159,400 adult coho which exceeded the 135,000-fish spawning escapement goal by more than 24,000 fish. The current escapement rebuilding schedule adopted by the Council and included in the framework amendment increases the natural coho spawning escapement goal to 175,000 adult coho in 1985 and to 200,000 coho in 1987.

The preseason estimates indicate that Washington coastal and Puget Sound coho stocks will be more abundant than 1984 preseason predictions except for one Puget Sound stream, the Skagit River. The increases are expected to be slightly higher in Willapa Bay, moderately higher in Puget Sound (except for the Skagit River), substantially higher in north coastal streams and considerably higher in Grays Harbor. The lone exception, the Skagit River run, has been chronically low for several years. Reasonable ocean fisheries for coho, as well as inside fisheries, should be possible and appropriate in 1985 without jeopardizing spawning escapements.

Management Measures for 1985

The Council adopted ocean harvest and management measures for 1985 which, in most cases, were similar to options 1 or 2 of the March management options. One notable exception was the complete closure of the commercial fishery from Point Delgada, California, to Cape Blanco, Oregon, which was option 3. The measures are designed to protect the weak stocks discussed above, while at the same time allowing maximum harvest of runs with surplus stocks available to the ocean fisheries.

Both commercial and recreational fisheries from Point Delgada to the U.S./Mexico border will enjoy nearly the full historical fishing seasons. Sacramento River chinook is the primary stock taken in this area and these runs are in good condition. The harvests are expected to equal or exceed last year's. Spawning escapements should be in the upper end of the escapement goal range. Because Klamath River and southern Oregon

chinook runs are so severly depressed, no season will be allowed for the troll fishery in the area between Point Delgada, California, and Cape Blanco, Oregon. Even so, it is not expected that the spawning escapement goal for the Klamath River will be reached.

Coho quotas in the area south of Cape Falcon (troll 45,000 and recreational 170,000) are modestly higher than catches in 1984 (troll 43,500 and recreational 130,900). Although the 1985 OPI is lower than that for 1984 and the 1985 OPI spawning escapement goal for Oregon coastal wild coho is higher (175,000 in 1985 compared to 135,000 in 1984), a higher harvest was allowed by the Council for socioeconomic reasons. The Oregon Department of Fish and Wildlife (ODFW) recommended that the Council implement a new method of partitioning OPI coho. This methodology would have provided a higher estimate in 1985 of Oregon Coastal natural coho abundance and would have justified the higher ocean harvest for biological reasons unlike the OPI currently in use. The Team and the Scientific and Statistical Committee stated that although they endorsed the theory of the new method, it relies on too many untested assumptions. Because information is not available to determine whether the proposed new method of making stock forecasts is an improvement over the current methodology they recommended that the old method be used again this year. Even though the Council did not adopt ODFW's new methodology, its existence may have encourage the Council to take a somewhat greater risk than otherwise might have been taken in allowing a greater coho harvest south of Cape Falcon to alleviate the serious economic problems currently being faced by not only the Oregon fishermen but also the coastal communities and businesses dependent on fishing activities. Also, the fact that the OPI rebuilding schedule was exceeded in 1984 undoubtedly influenced the Council to accept the risk of not fully meeting the rebuilding schedule in 1985. As in 1984, most of the harvestable coho in the area south of Cape Falcon will go to the recreational fishery. The troll fishery again in 1985 will be largely dependent on chinook.

North of Cape Falcon, as in 1984, ocean and inside harvests, spawning escapement levels, and management measures for 1985 were established by the Council based on negotiations authorized by the U.S. District Court *U.S. vs. Washington, U.S. vs. Oregon,* and *Hoh Indian Tribe, et al vs. Baldrige* and involving all of the management entities and most user groups. Harvest levels in 1985 of both chinook and coho in this area are somewhat higher than the small harvest allowed in the ocean in 1984. The 1984 troll catch was 13,800 chinook and 37,500 coho compared with 1985 quotas of 50,900 chinook and 141,700 coho. The 1984 recreational catches were 7,000 chinook and 43,400 coho compared with 1985 quotas of 37,100 chinook and 201,400 coho. Ocean quotas and management measures were geared to protect the weakest stock in the area in 1985, which is Skagit River coho, as well as to minimize the WOC ocean harvest of Bonneville Pool hatchery chinook to insure they will return in sufficient numbers to meet hatchery requirements. Ocean regulations will allow an appropriate inside fishery in the north coastal streams and provide spawning escapements generally in the middle of the desired range of spawners. Puget Sound fisheries and escapements also will be good except for the Skagit River for which all parties have agreed to a reduced escapement for 1985.

The Makah, Quileute, Quinault, and Hoh treaty tribal ocean troll fishery will have a quota of 10,500 chinook and 75,000 coho during May-September compared with 1984 catches of 4,300 chinook and 43,400 coho. These quotas were agreed on by the tribes and the State agencies and are factored into the Council's recommendations and analysis of effects.

The following tables and text reflect the management measures recommended by the Council for 1985. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socioeconomic factors affecting the resource users. The recommendations are consistent with the requirements of the Magnuson Act and other applicable law.

Fishing and related activities covered by this notice are subject to the framework salmon regulations at 50 CFR Part 661. The following management measures are adopted for 1985 under § 661.20.

TABLE 1.—TROLL MANAGEMENT MEASURES FOR 1985 OCEAN SALMON FISHERIES

Area and season	Salmon species	Quota		Minimum size limit (inches)		Special restrictions by area
		Chinook	Coho	Chinook	Coho	
United States—Mexico Border to Point Delgada:						
May 1 through May 31	All except coho	None		26		Barbless hooks; not more than 6 lines per boat.
June 1 through Sept. 30	All	None	(*)	26	22	
Point Delgada to Cape Blanco:* No season.						
Cape Blanco to Cape Falcon:*						
May 1 through June 30	All except coho	None		26		Barbless hooks; during the all-salmon season, no more than one coho more than the number of chinook may be retained, *provided* at least one chinook must be retained if one coho is to be retained.
July 1 through coho quota	All	None	(*)	26	16	
Coho quota through Oct. 31	All except coho	None		26		
Cape Falcon to United States—Canada Border: May 1 through earliest of May 31 or chinook quota.	All except coho	27,000		28		Barbless hooks, except that hooks used with whole bait or plugs may be barbed. Conservation Zone 1 (Columbia River mouth) is closed.*
Leadbetter Point to Cape Alava: July 15 through earliest of July 31 or either chinook or coho quota.	All	16,100	78,500	28	16	Barbless hooks, except that hooks used with whole bait and plugs may be barbed.
Carroll Island to United States—Canada Border: Aug. 3 through earliest of Aug. 31 or coho quota.	All	(5,100)	31,200	28	16	Gear restricted to flashers with bare blued hooks.
Cape Falcon to Leadbetter Point: Aug. 21 through earliest of chinook or coho quota.	All	2,700	32,000	28	16	Barbless hooks, except that hooks used with whole bait and plugs may be barbed; Conservation Zone 1 (Columbia River mouth) is closed.*

* Coho quota south of Cape Falcon is 55,000. This includes a hooking mortality of 10,000 which leaves 45,000 for harvest. The fishery south of Point Delgada will not be closed when the south of Cape Falcon quota is predicted to be reached.

[5] In addition to the troll seasons listed, the Oregon Department of Fish and Wildlife may establish limited additional all-salmon-except-coho seasons inside State waters in the Tillamook Bay area (Manhattan Beach to Pyramid Rock) from mid-September through October and in the Elk River area during November. The Council agreed that this action would not adversely affect the 1985 management regime.

[6] The 5,100 chinook listed here is not a quota. It is a guideline for the potential incidental harvest of chinook during this directed pink fishery and is not transferable to any other chinook quota.

[7] Conservation Zone 1 is defined as: The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (lighthouse buoy), then due east to shore along 46°11'06" N. latitude.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES APPROVED FOR 1985 OCEAN SALMON FISHERIES

Area and season	Salmon species	Quota		Minimum size limit (inches)		Daily bag limit and special restrictions by area
		Chinook	Coho	Chinook	Coho	
United States-Mexico Border to OR-CA Border: Feb. 16 through Nov. 17.	All	None	[*]	20	20	2 fish; barbless hooks; Conservation Zone 2 (mouth of Klamath River) is closed Aug. 1 through Aug. 31.[7]
OR-CA Border to Cape Blanco:[5]						
May 25 through May 31	All	None	[*]	None	None	First 2 fish hooked per day must be retained; no more than 2 fish retained per day; no more than 6 fish may be retained in 7 consecutive days.
July 1 through quota	All	None	[*]	None	None	
Quota through Oct. 31	All except coho	None		None		
Cape Blanco to Cape Falcon:[5] July 1 through coho quota	All	None	[*]	None	None	First 2 fish hooked per day must be retained; no more than 2 fish retained per day, no more than 6 fish may be retained in 7 consecutive days.
Cape Falcon to Leadbetter point: June 30 through earliest of Sept. 19 or quotas, Sunday through Thursday only.	All	12,100	99,000	24	16	2 fish; barbless hooks; Area closures: (1) Red Buoy line on Columbia River mouth[8] north to Klipsan Beach, 0-200 miles (2) North of Klipsan Beach to Leadbetter Point closed inside 3 miles—Note: fishery is closed Fridays and Saturdays.
Leadbetter Point to Queets River: June 30 through earliest of Sept. 19 or quotas, Sunday through Thursday only.	All	23,300	74,000	24	16	2 fish; barbless hooks; closed inside 3 miles—Note: fishery is closed Fridays and Saturdays.
Queets River to United States-Canada Border: June 30 through earliest of Sept. 19 or quotas, Sunday through Thursday only.	All	1,700	28,400	24	16	2 fish, except to no more than one chinook; barbless hooks—Note: fishery is closed Fridays and Saturdays.

[*] Coho quota south of Cape Falcon is 170,000. Coho caught south of the OR-CA border count on the total quota, but California fisheries will not close when the quota is met.

[5] In addition to the recreational seasons listed, the Oregon Department of Fish and Wildlife may establish limited additional all-salmon-except-coho seasons inside state waters in the Tillamook Bay area (Manhattan Beach to Pyramid Rock) from mid-September through October and in the Elk River area during November. The Council agreed that this action would not adversely affect the 1985 management regime.

[7] Conservation Zone 2 is defined as: The ocean area surrounding the Klamath River mouth bounded on the north by 41°36'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth) on the west by 124°23'00" W. longitude (approximately 12 miles from shore), and on the south by 41°26'48" N. latitude approximately 6 nautical miles south of the Klamath River mouth.

[8] Red Buoy Line—The line extends seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Lightship Buoy, then due west along 46°11'6" N. latitude.

Special Note.—For the area from Cape Falcon to the U.S.-Canada border, an inseason evaluation will be conducted at the end of the third and sixth weeks of the fishery to determine if any of the following management tools will be used: (a) Modify the number of days of fishing per week by emergency regulation. (b) Modify area closures or bag limits (for example, 3 mile closure north of Queets River). (c) Species trade from troll to recreation. Any species trade must be acceptable to respective user groups.

TABLE 3.—TREATY INDIAN MANAGEMENT MEASURES

Tribe	Boundaries[*]	Open Seasons	Species	Minimum Lengths[*]		Special restrictions by area
				Chinook	Coho	
Makah	That portion of the Fishery Management Area north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude.	May 1 to earlier of May 31 or chinook quota.[*]	All salmon except coho.	24"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines/boat, or no more than 4 hand-held lines per person.
		June 1 to earlier of Sept. 30 or chinook or coho quota.[*]	All salmon	24"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines/boat, or no more than 4 hand-held lines per person.
Quileute	That portion of the Fishery Management Area between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River).	May 1 to earlier of May 31 or chinook quota.[*]	All salmon except coho.	26"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 6 lines/boat.[*]
		June 1 to earlier of Sept. 15 or chinook or coho quota.[*]	All salmon	26"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 6 lines/boat.[*]
Hoh	That portion of the Fishery Management Area between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River).	May 1 to earlier of May 31 or chinook quota.[*]	All salmon except coho.	26"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[*]
		June 1 to earlier of Sept. 15 or chinook or coho quota.[*]	All salmon.	26"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[*]
Quinault	That portion of the Fishery Management Area between 47°40'05" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis).	May 1 to earlier of May 31 or chinook quota.[*]	All salmon except coho.	26"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[*]
		June 1 to earlier of Sept. 15 or chinook or coho quota.[*]	All salmon.	26"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[*]

[*] All boundaries may be changed to include such other areas as may hereafter be authorized for that tribe's treaty fishery by a federal court.

[*] For subsistence and ceremonial purposes, the minimum total lengths of salmon are: Makah Tribe: None. Quileute, Hoh, and Quinault Tribes: Not more than two chinook salmon between the lengths of 24 and 26 inches per day may be kept.

[*] The overall ocean quotas for the Washington Coastal Tribes are: 10,500 chinook and 75,000 coho.

[*] The area within a 6 miles radius of the mouths of the Queets River (47°31'42" N. latitude), the Hoh River (47°45'12" N. latitude) and the Quillayute River (47°54'18" N. latitude) will be closed to commercial fishing. A closure within 2 miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Tribe and/or the State of Washington and will not adversely affect the Secretary's management regime.

Gear Definitions and Restrictions

In addition to the gear restrictions shown in Tables 1 and 2, the following gear definitions and restrictions will be in effect until modified, superseded, or rescinded.

Recreational Fishing Gear

Recreational fishing gear for the Fishery Management Area (FMA) is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached with not more than four hooks.

However, in that portion of the FMA off Oregon and Washington, the line must be attached to a reel and rod held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, weights directly attached to a line may not exceed four (4) pounds. There is no limit to the number of lines that a person may use while recreationally fishing off California.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA) is defined as one or more lines that drag hooks with bait for lures behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Geographical Landmarks

Geographical landmarks referenced in this notice are at the following locations:

Cape Alava	48°10'00" N. lat.
Carroll Island	48°00'18" N. lat.
Queets River	47°31'42" N. lat.
Leadbetter Point	46°38'10" N. lat.
Klipsan Beach	46°28'12" N. lat.
Cape Falcon	45°46'00" N. lat.
Cape Blanco	42°50'20" N. lat.
OR-CA Border	42°00'00" N. lat.
Point Delgada	40°01'24" N. lat.

The following inseason actions have been recommended by the Council and approved by the Secretary for use during the 1985 season if the situation warrants: (1) Modification of coho quotas and seasons based on inseason reassessment of private hatchery contributions; (2) modifications to commercial coho quotas and seasons based on inseason assessment of coho hooking mortality during the all-species seasons (3) modifications to quotas and seasons based on inseason revisions to abundance estimates; (4) reduction in quotas and seasons due to unanticipated salmon catches in the territorial sea; (5) redistribution of quotas to achieve an overall quota; (6) boundary modifications to promote the attainment of quotas; and (7) modification of the daily recreational bag limit. Additional information concerning the procedures to be followed in taking these inseason actions and the nature of the actions which may be taken are provided in 50 CFR Part 661, Appendix III. B. and C.

The Council adopted recreational regulations providing for a five-day fishing week, Sunday through Thursday, north of Cape Falcon. The shortened week also was considered for the Cape Falcon to Cape Blanco area but was rejected. The Council wants to be able to adjust the number of fishing days in these areas during the season, if necessary, to prolong the recreational season. However, the framework amendment does not provide authority for this inseason regulation change. The Council, by separate vote, recommended that authority be granted by Secretarial emergency regulations to use this inseason provision in 1985, if appropriate.

Classification

The 1985 management measures established under the provisions of the framework amendment and implementing regulations are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the Offices of the Directors (see ADDRESSES) during business hours until the end of the comment period.

These actions are taken under the authority of 50 CFR Part 661, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis (RFA) and Supplemental Environmental Impact Statement (SEIS) prepared for the framework amendment. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.22 of the ocean salmon regulations states that the Secretary will publish a notice establishing management measures for 1985 and will invited public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

Because of the depressed status of some of the salmon stocks and the need to reduce harvest in some areas are to establish later opening dates for some of the fisheries than those in the current regulations, time does not permit a comment period prior to the date the management measures must be in effect. Comments will be accepted until May 15, 1985.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, Team, and Advisor meetings, and in public hearings held in Oregon, Washington, California, and Idaho in late March and early April, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meetings.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: April 26, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85-10549 Filed 4-26-85; 4:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 85
Thursday, May 2, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This notice invites written comments on proposals to terminate the 12-month base-excess plan for paying producers for their milk under the Southern Michigan Federal milk order. The base-excess plan was designed to encourage dairy farmers to maintain stable production levels throughout the year. The action was requested by three dairy farmer cooperative associaitons whose collective membership accounts for about 85 percent of the producers who supply milk to the market. The cooperative contend that the plan is incompatible with efforts towards a balanced supply and demand, and that it no longer accomplishes its intended purpose under current marketing conditions.

DATE: Comments are due on or before May 17, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of AGriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a signficant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of this order on dairy farmers and would not affect milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the termination of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered:

1. In § 1040.32, paragraph (a).
2. In § 1040.61, paragraph (c), (d), and (e).
3. In § 1040.62(b), the words ", the adjusted uniform price, the price for base milk, and the price for excess milk".
4. In § 1040.71(a)(1)(ii) and 1040.73(c), the words "for base milk".
5. In § 1040.74 the words "the base price and excess price or".
6. In § 1040.75(a)(1), the words "base milk and", and the words "or adjusted uniform price".
7. Sections 1040.90 through 1040.95.

All persons who want to file written data, views, or arguments about the proposed termination should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this notice in the **Federal Register**. An abbreviated period for filing is provided so that if the termination is granted, then producers will be so informed as soon as possible and therefore be able to plan their production schedules accordingly.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours. (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination would eliminate the order's 12-month base-excess plan for paying producers for their milk. The base-excess provisions of the Southern Michigan order were suspended for the base-forming and base-paying periods of 1984–86, and are currently inoperative. The base-forming provisions are scheduled to be reinstated August 1, 1985.

Producers form bases during the months of August through December, and are paid a higher price on all base milk during the months of Febraury through January and a lower price on all milk produced in excess of their base production. The base-excess plan has no direct effect on handler costs for milk; it is a method of dividing returns among producers in a way that encourages a leveling of seasonal production.

The termination of the base-excess plan on or before August 1, 1985, was requested by Independent Co-operative Milk Producers Association, Inc. (ICMPA), Michigan Milk Producers Association (MMPA), and National Farmers Organization (NFO); three cooperative associations whose combined membership accounts for about 85 percent of the producers who supply the Southern Michigan milk market. In support of their request, the cooperative associations claim that the base-excess plan encourages increased production through the base-building incentive. Each year producers attempt to build larger fall bases because they are paid a higher price for base milk throughout a 12-month period. In their opinion, a plan that encourages an increase in production when supply and demand are not in balance is not acceptable.

One cooperative, MMPA, contends that the base-excess plan no longer accomplishes its intended purpose under current marketing conditions. In that regard, MMPA claims that the price differential between base milk and excess milk is no longer adequate to gain the desired leveling effect on milk production. Whereas the differential in 1968 was $1.20, which was 23 percent of the uniform price, the differential in 1984 was $0.78, only 5.9 percent of the uniform price. With the depletion of the monetary incentive, it is MMPA's opinion that the base-excess plan can not effectively encourage level milk production.

Also, MMPA believes that due to the structure of the milk production industry in the Southern Michigan marketing area (where fewer, more specialized, highly leveraged dairy enterprises produce larger amounts of milk), the need for consistent cash flow will encourage more stable production levels throughout the year. Therefore, there is no need for base-excess regulation in MMPA's view. In addition, because the marketing area of Federal Order 40 borders markets with higher uniform price levels, MMPA fears that if the base-excess plan is reinstated, then those producers with excess milk production will seek other markets for

their milk, thus creating disorderly marketing conditions.

One further point raised was that termination of the base-excess plan would eliminate any confusion concerning pay prices.

For the foregoing reasons, the petitioning cooperatives propose that the provisions of the base-excess plan be deleted from the order.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on April 26, 1985.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 85–10640 Filed 5–1–85; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1985–4]

Contribution and Expenditure Limitations and Prohibitions: Contributions by Persons and Multicandidate Political Committees

Correction

In FR Doc. 85–9179, beginning on page 15169, in the issue of Wednesday, April 17, 1985, make the following corrections.

1. On page 15170, first column, the twenty-fourth line from the bottom of the page should have read "may be for any other election but must not".

2. On page 15170, second column, in the twenty fifth line from the bottom of the page "receivable" should have read "receivables".

3. On page 15172, third column, twenty-third line, "contribution" should have read "contributor".

4. On page 15174:

§ 110.1 [Corrected]

a. In the second column, second line of § 110.1(b)(2), "elections" should have read "election";

b. Also in the second column, ninth line of § 110.1(b)(2)(i), "11 CFR 110.2" should have read "11 CFR 100.2";

c. In the third column, the last line of § 110.1(b)(2)(i)(B) should have read "from that election."

§ 110.2 [Corrected]

5. On page 15176, third column, fourth line of § 110.2(i)(2), "election" should have read "section".

BILLING CODE 1505–01–M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1502

Availability of Records

AGENCY: African Development Foundation.

ACTION: Proposed rule.

SUMMARY: This action proposes the policies and procedures the African Development Foundation plans to establish permitting the inspection and copying of documents of the Foundation in accordance with the requirements of the Freedom of Information Act. The proposed regulations include procedures for requesting documents and for processing such requests, and establishes the fees which shall be charged by the Foundation for costs associated with responding to requests.

DATES: Comments must be received on or before July 1, 1985.

ADDRESS: Comments maybe mailed to the General Counsel, Suite 200, African Development Foundation, 1724 Massachusetts Avenue, NW., Washington, D.C. 20036, or delivered to the same address between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, Ann Richardson, Director, Administration and Finance, (202) 634–9853.

SUPPLEMENTARY INFORMATION:

Executive Order 12292

The African Development Foundation has determined that this rule is not a major rule for the purpose of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The President of the Foundation certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 1502

Administrative practice and procedures, Freedom of information, Records.

Accordingly, it is proposed to add Part 1502 to 22 CFR Chapter XV to read as follows:

PART 1502—AVAILABILITY OF RECORDS

Sec.

Authority: 5 U.S.C. 552, and 22 U.S.C. 290h-4.

§ 1502.1 Introduction.

(a) It is the policy of the African Development Foundation that information about its operations, procedures, and records be freely available to the public in accordance with the provisions of the Freedom of Information Act.

(b) The Foundation will make the fullest possible disclosure of its information and identifiable records consistent with the provisions of the Act and the regulations in this part.

(c) The Director of Administration and Finance (A&F) shall be responsible for the Foundation's compliance with the processing requirements of the Freedom of Information Act.

§ 1502.2 Definitions.

As used in this part, the following words have the meanings set forth below:

(a) "Act" means the act of June 5, 1967, sometimes referred to as the "Freedom of Information Act" or the Public Information Section of the Administrative Procedure Act, as amended, Pub. L. 90–23, 81 Stat. 54, codified at 5 U.S.C. 552.

(b) "Foundation" means the African Development Foundation.

(c) "President" means the President of the Foundation.

(d) "Record(s)" includes all books, papers, or other documentary materials made or received by the Foundation in connection with the transaction of its business which have been preserved or are appropriate for preservation by the Foundation as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of the data contained therein. Library or other material acquired and preserved solely for reference or exhibition purposes, and stocks of publications and other documents provided by the Foundation to the public in the normal course of doing business are not included within

the definition of the word "records." The latter will continue to be made available to the public without charge.

§ 1502.3 Access to Foundation records.

Any person desiring to have access to Foundation records may call or apply in person between the hours of 10 a.m. and 4 p.m. on weekdays (holidays excluded) at the Foundation offices at 1724 Massachusetts Avenue, NW., Suite 200, Washington, D.C. 20036. Requests for access should be made to the Director of A&F, at the Foundation offices. If request is made for copies of any record, the Office of A&F will assist the person making such request in seeing that such copies are provided according to the rules in this Part.

§ 1502.4 Written requests.

In order to facilitate the processing of written requests, every petitioner should:

(a) Address his or her request to: Director, Administration and Finance Division, African Development Foundation, 1724 Massachusetts Avenue, NW., Suite 200, Washington, D.C. 20036.

Both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request."

(b) Identify the desired record by name, title, author, a brief description, or number, and date, as applicable. The identification should be specific enough so that a record can be identified and found without unreasonably burdening or disrupting the operations of the Foundation. Blanket requests or requests for "the entire file of" or "all matters relating to" a specified subject will not be accepted. If the Foundation determines that a request does not reasonably describe the records sought, the requestor shall be advised what additional information is needed or informed why the request is insufficient.

(c) Include a check or money order to the order of the "African Development Foundation" covering the appropriate search and copying fees, or a request for determination of the fee and a promise to pay any amount over $3.00 in connection with the FOIA request.

§ 1502.5 Records available at the Foundation.

The Administration and Finance Division will make available for public inspection and copying, to the extent not authorized to be withheld, the following works or classes of information:

(a) A copy of the Foundation regulations, including those published in Title 22 of the Code of Federal Regulations or of any other title of the Code.

(b) Statements of policy and interpretations which have been adopted by the Foundation and which are not published in the **Federal Register**.

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Any indexes providing identifying information regarding any record described in paragraphs (b) and (c) of this section.

(e) Brochures and other printed materials describing the Foundation's activities.

§ 1502.6 Records of other Departments and Agencies.

Request for records which have been originated by, or are primarily the concern of, another U.S. Department or Agency will be forwarded to the particular Department or Agency involved, and the petitioner so notified. In response to requests for records or publications published by the Government Printing Office or other Government printing activity, the Foundation will refer the petitioner to the appropriate sales office and refund any fee payments which accompanied the request.

§ 1502.7 Fees.

(a) *When charged.* Fees shall be charged in accordance with the schedules contained in paragraph (b) of this section for services rendered in respsonding to requests for Foundation records under this sub-part unless the Director of A&F determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Fees shall also not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than $3. Ordinarily fees shall not be charged if the records requested are not found, or if located, are withheld as exempt.

(b) *Services charged for and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies $.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing request records, $2.30.

(3) *Non-routine, non-clerical searches.* Where the task of determining which record fall within a request and collecting them requires the time of professional or managerial personnel, and where the time required is substantial, for each one quarter hour spent in excess of the first quarter hour, $5.40. No charge shall be made for the time spent in resolving legal or policy issues affecting access to records of known contents.

(4) *Other charges.* When a response to a request requires services or material other than those described in paragraphs (b)(1) through (b)(3) of this section, the direct cost of such services to the Foundation may be charged, providing the requestor has been given an estimate of such cost before it is incurred.

(c) *Revision of schedule.* The fee schedule will be revised from time to time, without notice, to assure recovery of actual costs of rendering information services to any person. The revised schedule will be available without charge.

§ 1502.8 Exemptions.

The following categories are examples of records which, if maintained by the Foundation, may be exempted from disclosure under 5 U.S.C. 522(b):

(a) Records specifically required by Executive Order to be exempt from disclosure in the interest of the national defense or foreign policy which are property classified pursuant to such Executive Order;

(b) Records related solely to the internal personnel rules and practices of the Foundation;

(c) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), providing that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion, or (2) establishes criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from any person which is privileged or confidential;

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Foundation;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory files (including security investigation files and files concerning the conduct of employees) compiled for law enforcement purposes, except to the extent available by law to a private party.

The Foundation will not honor requests for exempt records or information.

§ 1502.9 Processing of requests.

(a) *Processing.* A person who has made a written request for records which meets the requirements of § 1502.4 shall be informed by the Director of A&F within ten working days of receipt of the Foundation's decision whether to deny or grant access to the records.

(b) *Denials.* If the Director of A&F, with the concurrence of the General Counsel, denies a request for records, the requestor will be informed of the name and title of the official responsible for the denial, the reasons for it, and the right to appeal the decision to the President of the Foundation within 15 working days of receipt of the denial. The President shall determine any appeal within 20 days of receipt and notify the requestor within that time period of the decision. If the decision is to uphold the denial, the requestor will be informed of the reasons for the decision and of the right to a judicial review of the decision in the Federal courts.

(c) *Extension of time.* Where it is reasonably necessary to the proper processing of requests, the time required to respond to an FOIA request or an appeal may be extended for an additional 10 working days upon written notification to the requestor providing the reasons for the extension.

§ 1502.10 Judicial review.

On complaint, the district court of the United States in the district in which the complainant resides, or has his/her principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Foundation from withholding Foundation records, and to order the production of any agency records improperly withheld from the complainant (5 U.S.C. 552(a)(4)(B).

Dated: April 25, 1985.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 85-10698 Filed 5-1-85; 8:45 am]

BILLING CODE 6117-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25, 200, 203, 205, 207, 213, 221, 227, 232, 234, 242 and 244

[Docket No. R-85-1226; FR-1954]

Use of Commitment Correspondents in Connection with FHA Mortgage Insurance

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Title 24 of the CFR to create a new category of approved program participants in the FHA single family mortgage insurance programs, to be known as commitment correspondents. Commitment correspondents would be authorized, no behalf of approved mortgagees, to accept and process FHA loan applications, obtain commitments from HUD, and assign commitments to approved sponsor mortgagees. With respect to the single family Direct Endorsement program, commitment correspondents could carry out all loan processing up to the point of actual loan closing and submission for endorsement to HUD. The rule would also revise the eligibility criteria for FHA loan correspondents by (1) increasing the net worth requirement from $5000 to $25,000, (2) permitting nonsupervised and governmental HUD-approved mortgagees to sponsor loan correspondents, (3) requiring, except under the direct endorsement program (where loans must be underwritten by the mortgagee-sponsor), that all loans be underwritten and closed in its own name, and (4) permitting loan correspondents to maintain branch offices upon meeting an additional $25,000 net worth requirement for each branch office until an adjusted net worth of $100,000 is reached.

DATE: Comments due July 1, 1985.

ADDRESSES: Communications concerning this rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Copies of written views or comments will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Brian Chapelle, Director, Single Family Housing Development Division, Office of Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This proposed rule is designed to take account of recent marketing developments, including increased use of computer technology, in the single family real estate marketplace. These developments show great potential for improving both the efficiency and the timeliness of single family loan originations.

The rule permits a "commitment correspondent" to accept an FHA loan application, process it through receipt of an insurance commitment, and assign the commitment to an FHA-approved mortgagee who would then advance the mortgage proceeds to the homebuyer, close the mortgage loan, and be mortgagee of record. In practice, approved mortgagee-sponsors would furnish information to a commitment correspondence concerning the types of mortgage loans they are willing to make, the commitment correspondent would make the information available to a purchaser, and the purchaser would make a selection from the mortgage loans available. The commitment correspondent would then process an application for FHA commitment and insurance, and would assign the FHA commitment to the mortgagee-sponsor selected by the purchaser.

The process would not necessarily utilize computer technology, but if such technology were utilized, an example of how it would work is as follows: For a standard fee paid to the commitment correspondent by each participating mortgagee, lenders would enter their mortgage offerings into the commitment correspondent's computer system. The fee charged by the commitment correspondent must be standard for all mortgagees and not related to the volume of applications or firm commitments assigned to any particular mortgagee. Using data made available from terminals in participating commitment correspondent's offices, prospective homebuyers would be able to see what each participating mortgagee had to offer in the way of interest rates and terms. Each homebuyer would select the desired mortgage terms and conditions and the correspondent would then obtain a commitment for a specified principal, interest rate, and type of mortgage from the lender, and process the mortgage application for FHA insurance. If a commitment for mortgage insurance were issued by HUD to the commitment correspondent, the commitment subsequently would be assigned to the selected lender. The lender then would close the loan and obtain the FHA insurance as though it had submitted the application to HUD.

With respect to the new single family Direct Endorsement program (see 24 CFR 200.163-164a), this proposed rule would authorize commitment correspondents to carry out all mortgage loan processing, including underwriting, to the point of actual closing and

submission for endorsement to HUD. To participate in the direct endorsement program, a commitment correspondent would have to meet (in addition to otherwise applicable requirements) virtually all the requirements necessary for approval as a direct endorsement mortgagee. Cases processed under direct endorsement will require appropriate certification of the processing performed by the commitment correspondent. Certification will cover two distinct phases (1) all underwriting and related activity leading up to an overall determination of property and mortgagor eligibility and (2) closing of the loan and disbursement of funds (to be performed by mortgagee-sponsor).

The rule also proposes to revise existing regulatory provisions relating to loan correspondents. The main purpose of these revisions is to enable existing loan correspondents to carry out (except for underwriting under the direct endorsement program) the same functions that the rule would authorize commitment correspondents to carry out. The main differences between the two categories will be the loan correspondent's lower net worth requirements and its ability to close mortgage loans in its own name.

The revisions proposed in this rule will adjust current HUD regulatory requirements to structural and technological changes which are taking place in the mortgage lending industry, particularly in methods of mortgage origination. In lieu of performing traditional in-house origination functions, mortgagees are increasingly turning to third parties to generate their mortgage loans and the proposed rule is responsive to this trend.

Description of Rule's Proposed Revisions

24 CFR Part 25—Mortgagee Review Board

24 CFR 25.3 (Definitions) is revised by adding a definition of "mortgagee". A commitment correspondent meeting the requirements of 24 CFR 203.9 is included in this definition. The effect of this amendment would be to make commitment correspondents subject to the jurisdiction of HUD's Mortgagee Review Board established under Part 25.

Part 200—Introduction

24 CFR 200.6 (Application for lender approval) is revised by adding "commitment correspondent" to the categories of lenders for which an application for HUD approval may be made. The revision also substitutes the term "Field Office" for "regional, area or insuring office" to reflect HUD organizational changes. Finally, the title of the section is changed to "Application for approval."

24 CFR 200.147 (Issuance of commitment) is revised to provide that a commitment may be issued to a commitment correspondent for assignment to an approved mortgagee presenting an application for mortgage insurance.

24 CFR 200.149 (Terms and conditions) is revised to specify that where a commitment is issued to a commitment correspondent, the commitment must be assigned to an approved mortgagee before closing.

24 CFR 200.163–200.164 are revised to expressly authorize commitment correspondents to participate in HUD's single family Direct Endorsement program, provided they meet the eligibility requirements set forth in § 200.164. Commitment correspondents would be authorized to carry out processing and underwriting of loans up to the point of loan closing and submission for insurance to HUD.

Part 203—Mutual Mortgage Insurance and Rehabilitation Loans

24 CFR 203.1 and 203.2 (general approval requirements for single family mortgagees) are revised by making commitment correspondents subject to their provisions. However, to the extent that these requirements relate only to the holding, purchasing, servicing or selling of insured mortgages, they would not be applicable.

The proposed rule would also revise 24 CFR 203.5 (Loan correspondents). Loan correspondents would be required, except in the case of mortgages insured under the direct endorsement program (24 CFR 200.163–200.164a), to process and close all mortgage loans in their own name. With respect to mortgages under the direct endorsement program, the underwriting of such loans must be carried out by the approved sponsor mortgagee. The loan correspondent would not have authority to underwrite such loans.

The section would also be revised to (1) increase the adjusted net worth a loan correspondent must maintain from $5000 to $25,000, (2) permit HUD-approved nonsupervised and government institution mortgagees (not just supervised institutions) to sponsor loan correspondents, (3) permit loan correspondents to maintain branch offices for the processing of loan applications and the submission of applications for firm commitment, but only where the loan correspondent meets an additional net worth requirement of $25,000 for each branch until it reaches an adjusted net worth of at least $100,000 and (4) exempt loan correspondents from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor or mortgagee to fund all mortgagees originated by the loan correspondent.

Part 203 also would be amended by adding a new § 203.9 (Commitment correspondents.). The new section defines a commitment correspondent as an institution that processes HUD/FHA loan applications, submits applications to HUD/FHA and obtains firm commitments solely for the purpose of assignment to an approved mortgagee. Where approved by HUD, a commitment correspondent may also carry out full processing and underwriting, up to the point of closing, of a mortgage loan under the single family Direct Endorsement program as authorized in §§ 200.163–200.164a. Section 203.9 also provides that a commitment correspondent must meet the approval requirements for FHA-insured mortgagees contained in § 203.1 and, in general, those contained in § 203.2—the major exception being that it may not close, hold, purchase, service, or sell insured mortgages. In addition, a commitment correspondent must meet the following requirements:

(1) It shall have as its principal business the processing of applications for mortgage financing and shall maintain a net worth or trust estate of not less than $250,000 in assets acceptable to the Commissioner.

(2) It shall not receive, establish, maintain or handle mortgagor escrow accounts.

(3) It shall remain responsible for the processing and underwriting of each loan on which a HUD/FHA firm commitment is issued or which is endorsed for insurance under the Direct Endorsement program.

(4) It shall file with the Commissioner, within 75 days of the close of its fiscal year and at such other times as may be requested, an audit report which shall include:

(i) A Financial statement in a form acceptable to the Commissioner, including a balance sheet and a statement of operations and retained earnings, and an analysis of the commitment correspondent's net worth adjusted to reflect only assets acceptable to the Commissioner;

(ii) A report on any compliance tests prescribed by the Commissioner;

(iii) Such other information as the Commissioner may require.

(5) It may, on application to the Commissioner, maintain branch offices.

for the processing of loan applications and submission of applications for a firm commitment. A commitment correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(6) It may not receive compensation in excess of the allowable HUD/FHA loan origination fee paid by the mortgagor on each firm commitment or processed loan assigned to an approved mortgagee. Fees charged by the commitment correspondent shall be uniform for all mortgagees and shall not vary with the volume of applications or firm commitments assigned to particular mortgagees.

(7) Its approval must be sponsored by one or more FHA-approved mortgagees, which mortgagees will maintain a loan processing agreement with the commitment correspondent. HUD commitments or processed loans may be assigned only to those mortgagees with whom there is such agreement.

(8) It and its sponsor (or sponsors) shall notify the Secretary promptly upon termination of the loan processing agreement.

(9) It agrees that termination of its loan processing agreement with all sponsors shall be cause for withdrawal of the commitment correspondent's approval.

24 CFR 203.10 (Submission of application) is revised to authorize commitment correspondents to submit applications for the insurance of mortgages to be executed.

Parts 205, 207, 213, 221, 227, 232, 234, 242 and 244—Technical Amendments

Finally, the rule makes conforming technical amendments to those sections in Parts 205 (land development), 207 (rental housing), 213 (cooperatives), 221 (low and moderate income housing), 227 (housing in Federally impacted areas), 232 (nursing homes), 234 (condominiums), 242 (hospitals) and 244 (group practice facilities) that reference affected portions of Part 203. The effect of the amendments is to make clear that a loan commitment correspondent's activities are to be limited to FHA single family programs.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(a)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This Rule was listed as item H–60–84 (Sequence Number 30) under Office of Housing in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684), under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are 14.117, 14.120, 14.123 and 14.133.

Under 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Allowing use of commitment correspondents in HUD's mortgage insurance programs should enhance opportunities for both small and large business entities. Many small lenders, by working through a commitment correspondent, should find that they can increase their business volume appreciably without having to increase their production staff. However, the rule does not include excessive recordkeeping requirements or other features likely to be a special burden on small entities.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments regarding the collection of information requirements of the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD. After OMB review and approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this rule.

List of Subjects

24 CFR Part 25

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

24 CFR Part 200

Mortgage insurance.

24 CFR Part 203

Mortgage insurance.

Accordingly, 24 CFR Parts 25, 200, 203, 205, 207, 213, 221, 227, 232, 234, 242 and 244 are proposed to be amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

Authority: Secs. 2 and 211 of the National Housing Act, 12 U.S.C. 1703 and 1715b.

2. Section 25.3 is proposed to be amended by removing the paragraph designations from the alphabetical list of definitions included therein, and by adding the following additional definition in its appropriate place alphabetically:

§ 25.3 Definitions.

* * * * *

"Mortgagee." A lender meeting the general requirements of 24 CFR 203.1 and 203.2, and the specific requirements of 24 CFR 203.3 through 203.8, as appropriate. A commitment correspondent meeting the requirements of 24 CFR 203.9 is also regarded as a mortgagee for purposes of this part.

* * * * *

PART 200—INTRODUCTION

3. The authority citation for 24 CFR Part 200 is revised to read as set forth below and any authority citation following any section in Part 200 is removed.

Authority: Secs. 2 and 211 of the National Housing Act, 12 U.S.C. 1703 and 1715b.

4. Section 200.6 is proposed to be revised to read as follows:

§200.6 Application for approval.

An application for approval as a mortgagee, loan correspondent, commitment correspondent, or Title I lending institution must be submitted on a form prescribed by the Commissioner. These forms may be obtained from any Field Office or from the Headquarters Office in Washington, D.C. Fully executed forms must be submitted to the Field Office having jurisdiction, for transmittal to the Headquarters Office, Washington, D.C.

5. Section 200.147 is proposed to be revised to read as follows:

§200.147 Issuance of commitment.

After determining that the mortgagor and the property offered for security meet all requirements for eligibility, a commitment is prepared and issued to an approved mortgagee, or to a commitment correspondent for assignment to an approved mortgagee, setting forth the terms and conditions under which the mortgage transaction will be insured. The commitment is a binding contract between the Commissioner and an approved mortgage or commitment correspondent presenting an application for mortgage insurance. Except as set forth in §§200.163(b) and 200.164(g), commitments are not issued by HUD under the single family Direct Endorsement program.

6. Paragraph (a) of §200.149 is proposed to be revised to read as follows:

§200.149 Terms and conditions.

(a) The commitment sets forth the exact conditions under which the FHA will insure the mortgage loan. It indicates the maximum eligible term of years, the amount of such loan, the interest rate and the amount of the monthly installment, including principal and interest. In addition, in connection with proposed construction there may be provision for structural requirements and the number and type of inspections necessary. Where a commitment is issued to a commitment correspondent, the commitment must be assigned to an approved mortgagee before closing. In the case of project mortgages, the commitment may indicate a schedule of advances which will be insured upon a finding that such advances are made in accordance with the commitment.

* * * * *

7. Section 200.163 is proposed to be amended by revising the introductory text paragraph (a); by revising paragraphs (b)(1), (b)(3), and (b)(4); by revising the introductory text of paragraph (c) and removing and reserving paragraph (c)(1); by revising paragraph (e); and by adding a new paragraph (g), to read as follows:

§ 200.163 Direct endorsement.

(a) *Definition and applicability.* Single family mortgage insurance applications eligible for processing under this section are underwritten and closed by eligible mortgagees and the documentation required by paragraphs (b) and (c) of this section is submitted to HUD/FHA for mortgage insurance endorsement in accordance with paragraph (d) of this section. Commitment correspondents meeting the requirements of § 200.164 may carry out the underwriting responsibilities under this section for HUD-approved sponsor mortgagees including sponsor mortgagees that are not direct endorsement mortgagees. HUD-FHA does not review applications for mortgage insurance or issue commitments except as provided by paragraph (b) of this section and § 200.164(g) before the mortgage is executed and submitted to be considered for endorsement.

* * * * *

(b) *Underwriting and Submission for Endorsement*—(1) *Underwriting/due diligence.* A mortgagee authorized to submit mortgages under this section, or a commitment correspondent authorized to carry out underwriting responsibilities for HUD-approved mortgagees, shall exercise due diligence when underwriting mortgages processed under this section. Due diligence means that care which a mortgagee would exercise in obtaining and verifying information for a mortgage in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee procedures that evidence such due diligence shall be incorporated as part of the Quality Control Plan required under § 200.164(e).

* * * * * *

(3) *Appraisal.* An approved mortgagee or commitment correspondent shall appraise the property, using an appraiser assigned by HUD from its current fee panel or a staff appraiser approved by HUD. In those cases where the mortgagee or commitment correspondent has a financial interest in, is owned by or is affiliated with a building or selling entity, the mortgagee or commitment corresponent shall use an appraiser and inspector assigned by HUD from its fee panel. In lieu of appraising the property, an approved mortgagee or commitment correspondent may, for those properties that HUD accepts as proposed construction, utilize a HUD conditional commitment or master conditional commitment, or a Veterans Administration certificate of reasonable value or master certificate of reasonable value.

(4) *Mortgagor's income.* The mortgagee or commitment correspondent shall determine whether the mortgagor's income is and will be adequate to meet the periodic payments under the mortgage, and shall review the eligibility of the property and prospective mortgagor under 24 CFR Parts 203, 221, or 234.

* * * * *

(c) *Underwriter Certification.* The underwriter shall execute an Underwriter Certification for and on behalf of the mortgagee or commitment correspondent on a form prescribed by the Secretary. This Underwriter Certification is in addition to certifications presently required of the mortgagee and/or mortgagor on current HUD forms 92800 and 92900, and the mortgagee certification required by paragraph (g) of this section. For each mortgage reviewed, the Underwriter Certification shall include an identification of the mortgage by type, as identified pursuant to § 200.163(a)(3). The Underwriter Certification shall also include a statement that the underwriter has personally reviewed the appraisal report and the credit application, including the analysis performed on the work sheet and that the proposed mortgage complies with the requirements of this subsection. Finally, the Underwriter Certification shall include, in addition to such supplemental certification items published pursuant to paragraph (f) of this section, each of the below listed items which apply to the mortgage loan submitted for endorsement.

(1) [Reserved]

* * * * *

(e) *Post-endorsement review.* Following endorsement, HUD/FHA will review all documents required by paragraphs (b) and (c) of this section. If, following this review, HUD/FHA determines that the mortgagee or commitment correspondent has not satisfied the requirements of the single family Direct Endorsement program, the Department may place the mortgagee or commitment correspondent on probation, withdraw the authority of the mortgagee or the commitment correspondent to participate in the Direct Endorsement program under § 200.164(h), or withdraw the mortgagee's or the commitment correspondent's HUD/FHA approval under the provisions of 24 CFR Part 25.

* * * * *

(g) *Mortgagee certification.* The mortgagee or its authorized representative, shall personally review the mortgage documents and applications for insurance endorsement processed under this section and shall execute a Mortgagee Certification on a form prescribed by the Secretary evidencing this review. The Mortgagee Certification will cover the loan closing transaction and any supplemental certification items published pursuant to paragraph (f) of this section and shall include a statement that the mortgage

satisfies the requirements of 24 CFR 203.17, or 221.5, 221.25, 221.30, 221.32, 221.35, 221.40, and 221.45, or 234.25.

8. Section 200.164 is proposed to be revised to read as follows:

§ 200.164 Approval of direct endorsement mortgagees and commitment correspondents.

(a) Mortgagees and commitment correspondents shall comply with the following requirements when applying for approval:

(1) Submit an application to the HUD Field Office in whose jurisdiction the mortgagee or commitment correspondent seeks to process loans under § 200.163;

(2) Submit (i) documentation showing compliance with the applicable provisions of paragraphs (b), (c) and (d) of this section; (ii) a Quality Control Plan which complies with paragraph (e) of this section; and (iii) such other information as the Secretary may require.

(b) To participate in the Direct Endorsement program set forth in § 200.163, a mortgagee must be an approved mortgagee meeting the requirements of 24 CFR 203.3 or 203.4 or 203.7(a), and this section. A commitment correspondent meeting the requirements of 24 CFR 203.9 and this section may also participate in the direct endorsement program.

(c) The mortgagee or commitment correspondent must establish that it meets the following qualifications:

(1) The mortgagee or commitment correspondent has five years of experience in the origination of single family mortgages. The Department will approve mortgagees or commitment correspondents with less than five years experience in the origination of single family mortgages if a principal officer has had a minimum of five years of managerial experience in the origination of single family mortgages;

(2) The mortgagee, other than a supervised mortgagee or governmental institution, is approved as a Federal National Mortgage Association (FNMA) seller, as an issuer of Government National Mortgage Association (FNMA) seller of Government National Mortgage Association (GNMA) mortgage-backed securities, or has a net worth, in assets acceptable to the Secretary, of not less than $250,000. The commitment correspondent meets the net worth requirements set forth in 24 CFR 203.9.

(d) The mortgagee or commitment correspondent, to be approved for participation in the Direct Endorsement program, must have on its permanent staff an underwriter approved by the Department for participation in this program and authorized by the mortgagee or commitment correspondent to bind the mortgagee or commitment correspondent on matters involving the origination of mortgage loans under this program. The technical staff utilized in the Direct Endorsement program by the mortgagee or commitment correspondent, including appraisers, construction analysts, inspectors, mortgage credit examiners, architects and engineers, must also be approved by the Department. The technical staff my be employees of the mortgagee or commitment correspondent or may be hired on a fee basis from a HUD panel. A mortgagee or commitment correspondent that has a financial interest in, owns, is owned by, or is affiliated with a building/selling entity may originate or process mortgages for this entity under the Direct Endorsement program only if the property appraisals and inspections are done by independent appraisers and inspectors approved, and assigned, by the Department, rather than by appraisers or inspectors on the staff of the mortgagee or commitment correspondent. For proposed construction, where the mortgagee or commitment correspondent does not obtain a VA CRV, VA MCRV, HUD conditional commitment, HUD master conditional commitment, or a consumer protection or warranty plan, or submit the plans and specifications for HUD's prior approval, then the mortgagee or commitment correspondent must utilize an architect, engineer or construction analyst approved by HUD to certify that the plans and specifications meet the applicable standards.

(e) A mortgagee or commitment correspondent shall implement an acceptable Quality Control Plan that is designed to assure compliance with HUD underwriting requirements for the Direct Endorsement program. The plan will be kept current and will be available to HUD upon request.

(f) A mortgagee's or a commitment correspondent's underwriter and technical staff shall satisfactorily complete a training program on HUD underwriting requirements as a condition to approval under this section.

(g) To be eligible to participate in the Direct Endorsement program, a mortgagee or commitment correspondent qualified to participate in the program under this Part must submit initially fifteen mortgates processed in accordance with the requirements of § 200.163. The documents required by § 200.163 will be reviewed by HUD and if acceptable, commitments will be issued before endorsement of the loans. If the underwriting and processing of these fifteen mortgages is satisfactory, then the commitment correspondent may be approved to process subsequent mortgages and the mortgagee to close subsequent mortgages and submit them directly for endorsement in accordance with the process set forth in § 200.163. Unsatisfactory performance by the mortgagee or commitment correspondent at this stage constitutes grounds for denial of participation in the program, or for continued preendorsement review of a mortgagee's or commitment correspondent's documentation and submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (h)(2) of this section.

(h) *Sanctions for noncompliance.* Depending upon the nature and extent of the noncompliance with the requirements of the Direct Endorsement program, as determined by HUD, HUD may take any of the following actions:

(1) *Probation.* HUD may place a mortgagee or commitment correspondent on probation for a specified period of time for the purpose of evaluating the mortgagee's or commitment correspondent's compliance with the requirements of the single family Direct Endorsement program. During the probation period the mortgagee or commitment correspondent may continue to process mortgage loans under § 200.163, subject to conditions required by HUD. HUD may require the mortgagee or commitment correspondent:

(i) To process additional mortgages in accordance with paragraph (g) of this section; (ii) to submit to additional training; (iii) to make changes in its Quality Control Plan; or (iv) to take other actions, including, but not limited to, periodic reporting to HUD and submission to HUD of internal audits.

(2) *Withdrawal of Approval to Participate in Direct Endorsement Program.* (i) HUD may withdraw a mortgagee's or a commitment correspondent's approval to participate in the Direct Endorsement program upon written notice which states the grounds for the action and which provides for the right to an informal hearing before a decision maker in the appropriate HUD Field Office. The hearing shall be expeditiously arranged and the mortgagee or commitment correspondent may be represented by counsel.

(ii) After consideration of the material presented, the decision maker shall advise the mortgagee or commitment correspondent in writing whether the

withdrawal is rescinded, modified or affirmed.

(iii) The mortgagee or commitment correspondent may appeal the decision to the Assistant Secretary for Housing. The decision of the Assistant Secretary shall constitute final agency action.

(3) *Withdrawal of HUD/FHA Approval.* Serious noncompliance with the requirements of the Diriect Endorsement program may also result in withdrawal of a mortgagee's or commitment correspondent's HUD/FHA approval in accordance with the precedures in 24 CFR Part 25.

(i) *Notification of Changes.* The mortgagee or commitment correspondent shall promptly notify each Field Office that has granted approval under this section of any changes that affect qualifications under paragraphs (b), (c) or (d) of this section.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

9. The authority citation for 24 CFR Part 203 is revised to read as set forth below and any authority citation following any section in Part 203 is removed.

10. Section 203.1 is proposed to be revised to read as follows:

Authority: Sec. 203 and 211, National Housing Act, 12 U.S.C. 1709, 1715b.

§ 203.1 Approval of mortgagees and commitment correspondents.

(a) *General.* (1) A mortgagee or commitment correspondent may be approved for participation in the HUD/FHA mortgage insurance programs upon filing a request for approval on a form prescribed by the Commissioner. Approval of the application shall constitute an agreement between the mortgagee or commitment correspondent and the Commissioner which shall govern the mortgagee's or commitment correspondent's continued approval subject to the provisions of this part.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs and to geographic areas designated by the Commissioner. Approval of commitment correspondents shall be restricted to participation in the home mortgage insurance programs.

(3) Separate approval is required under the National Housing Act for participation in the Title I Program and additional approval is required fo partticipation in the Title II Coinsurance Program.

(b) *Prohibited payments.* A mortgagee or commitment correspondent may not pay anything of value, directly, or indirectly, in connection with any insured mortgage transaction or transactions to any person including but no limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder or real estate agent, if such person has received any other compensation from the mortgagor, the seller, the builder, or any other person for services related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner. The mortgagee or commitment correspondent shall not pay a referral fee to any person or organization, but payments by a mortgagee to a commitment correspondent for services performed shall not be considered to be referral fee.

(c) *Withdrawal of Approval.* (1) Approval of a mortgagee or commitment correspondent may be withdrawn by the Mortgagee Review Board as provided in Part 25 of this title.

(2) Withdrawal of a mortgagee's or commitment correspondent's approval shall not affect the insurance on mortgages endorsed for insurance.

11. Section 203.2 is proposed to be revised to read as follows:

§ 203.2 Approval requirements.

(a) A mortgagee or commitment correspondent approved for participation in the HUD/FHA mortgage insurance programs shall establish to the satisfaction of the Commissioner that it meets the following general requirements and the specific requirements of §§ 203.3 through 203.9, as appropriate.

(1) It is a chartered institution, a permanent organization having succession, or a trust.

(2) It employs trained personnel competent to perform their assigned responsibilities, including matters involving the origination of mortgage loans and servicing and collection activities, and maintains, adequate staff and facilities to process applications for, close and service mortgage loans in accordance with this part, to the extent the mortgagee or commitment correspondent engages in such activities.

(3) All employees who will sign applications for mortgage insurance on behalf of the mortgagee or commitment correspondent shall be corporate officers or will otherwise be authorized to bind the mortgagee or commitment correspondent in matters involving the processing and closing of mortgage loans, to the extent the mortgagee or commitment correspondent engages in such activities.

(4) A mortgagee shall not use escrow funds for any purpose other than that for which they were received.

(5) It shall comply with the provisions of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(6) A mortgage shall comply with the servicing responsibilities contained in Subpart C of this part.

(7) A mortgagee or commitment correspondent shall comply with all other applicable regulations contained in this title and with such additional conditions and requirements as the Commissioner may impose.

(8) It shall provide prompt notification, on a form prescribed by the Commissioner, of all corporate changes, including, but not limited to: mergers, terminations, name, location, control of ownership, and character of business.

(9) It shall file a yearly verification of its status and operations on a form prescribed by the Commissioner.

(10) It shall, upon request, submit a copy of its latest audited financial statement, submit such additional information as the Commissioner may request, and submit to an examination of that portion of its records that relates to its insured mortgage activities.

(11) It shall implement a written Quality Control Plan which assures compliance with the regulations and other issuances of the Commissioner regarding loan processing and loan origination and servicing.

(12) A mortgagee or commitment correspondent (other than a morgagee meeting the requirements of § 203.7) shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for commitments or for mortgage insurance, in such amounts and at such time as the Commissioner may require, to assist in defraying the cost of approving and supervising mortgages and commitment correspondents.

(b) A limited partnership will be considered a permanent organization having succession for purposes of this section, provided:

(1) The partnership has not more than one general partner, which shall be a chartered institution and which has, as its principal activity, the management of the affairs of the partnership.

(2) The general partner employs trained personnel competent in all aspects of morgage lending activities including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with this part, to the extent (i) the mortgagee engages in such activities, or (ii) the commitment correspondent is authorized to engage in such activities.

(3) All employees who will sign applications for mortgage insurance on behalf of the partnership are officers of the general partner or are otherwise authorized by the general partner to bind the morgagee or commitment correspondent in matters involving the origination of mortgage loans.

12. Section 203.5 is proposed to be revised to read as follows:

§ 203.5 Loan correspondents.

(a) A loan correspondent is an institution that originates and closes HUD/FHA insured single family mortgage loans for sale to its sponsor or sponsors. Except for the Direct Endorsement program authorized in §§ 200.163 through 200.164a, it must underwrite and close all loans in its own name. It may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Commissioner, nor may it retain insured mortgages in its own portfolio. In connection with the Direct Endorsement program a loan correspondent may not underwrite but shall close in its own name all loans for submission to HUD/FHA for endorsement. Underwriting of Direct Endorsement loans shall be the responsibility of the loan correspondent's sponsor.

(b) A mortgagee may be approved as a loan correspondent if it meets the approval requirements of § 203.4, except that:

(1) Its approval must be requested by one or more sponsors that are HUD/FHA approved mortgagees under §§ 203.3, 203.4, or 203.7.

(2) It shall be exempt from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(3) It shall have and maintain an adjusted net worth or trust estate of not less than $25,000 in assets acceptible to the Commissioner. Previously approved loan correspondents that have a net worth of less than $25,000 must meet this $25,000 net worth requirement on or before [two years from effective date of rule].

(4) It may not, as authorized in § 203.4(c), maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment without the prior approval of the Commissioner. Such approval may be granted where the loan correspondent meets an additional $25,000 net worth requirement for each branch office it maintains until it reaches an adjusted net worth of not less than $100,000. Loan correspondents with an adjusted net worth of $100,000 or more may, with the prior approval of the Commissioner, open and maintain branch offices without meeting any additional net worth requirements.

(5) It and its sponsor or sponsors shall promptly notify the Commissioner upon termination of any loan correspondent agreement, and termination of its agreements with all its sponsors shall be cause for withdrawal of the loan correspondent's approval.

13. Part 203 is proposed to be amended by adding a new § 203.9 to read as follows:

§ 203.9 Commitment correspondents.

(a) A commitment correspondent is an institution that processes HUD/FHA single family loan applications, submits applications to HUD/FHA and obtains commitments solely for the purpose of assignment to an approved mortgagee. A commitment correspondent may not close, hold, purchase, service, or sell insured mortgages. In connection with the Direct Endorsement program authorized in §§ 200.163–200.164a of this chapter, the commitment correspondent may perform all loan processing, including underwriting, up to the point of loan closing and submission for endorsement to HUD/FHA. The HUD/FHA approved mortgagee that maintains a loan processing agreement with the commitment correspondent as required under paragraph (b)(7) of this section shall be responsible for the closing of the direct endorsement loan.

(b) An institution may be approved as a commitment correspondent if it meets the requirements of §§ 203.1 and 203.2 and the following requirements:

(1) It shall have as its principal business the processing of applications for mortgage financing and shall have and maintain a net worth of trust estate of not less than $250,000 in assets acceptable to the Commissioner.

(2) It shall not receive, establish, maintain or handle mortgage escrow accounts.

(3) It shall remain responsible for the underwriting of each loan on which a HUD/FHA firm commitment is issued or which is endorsed for insurance under the Direct Endorsement program.

(4) It shall file with the Commissioner, within 75 days of the close of its fiscal year (or within such extensions of time as may be granted in the sole discretion of the Commissioner), and at such other times as may be requested, an audit report based on an audit performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. The audit report shall include:

(i) A financial statement in a form acceptable to the Commissioner, including a balance sheet and a statement of operations and retained earnings, and an analysis of the commitment correspondent's net worth, adjusted to reflect only assets acceptable to the Commissioner.

(ii) A report on any compliance tests required by the Commissioner.

(iii) Such other information as the Commissioner may require.

(5) It may, on application to the Commissioner, maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment. A commitment correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(6) It may not receive compensation in excess of the allowable HUD/FHA loan origination fee paid by the mortgagor on each insurance application or firm commitment assigned to an approved mortgagee. Fees charged by the commitment correspondent shall be uniform for all mortgagees and shall not vary with the volume of applications or firm commitments assigned to particular mortgagees.

(7) Its approval must be sponsored by one or more FHA-approved mortgagees which maintain loan processing agreements with the commitment correspondent. HUD commitments or processed direct endorsement loan applications may be assigned only to mortgagees with whom the commitment correspondent has an agreement. Such an agreement shall contain such terms and conditions and meet such standards as the Commissioner may require.

(8) It and its sponsor (or sponsors) shall notify the Commissioner promptly upon termination of any loan processing agreement.

(9) It agrees that termination of its loan processing agreements with all sponsors shall be cause for withdrawal of the commitment correspondent's approval.

14. Section 203.10 is proposed to be revised to read as follows:

§ 203.10 Submission of application.

An approved mortgagee or commitment correspondent may submit an application for insurance of a mortgage about to be executed. An approved mortgagee may submit an application for insurance of a mortgage already executed.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT—TITLE X

15. The authority citation for 24 CFR Part 205 is revised to read as set forth below and any authority citation following any section in Part 205 is removed.

16. Section 205.35 is proposed to be revised to read as follows:

§ 205.35 Qualification of mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Authority: Sec. 211, 1010, National Housing Act, 12 U.S.C. 1715b, 1749ii.

PART 207—MULTIFAMILY MORTGAGE INSURANCE

17. The authority citation for 24 CFR Part 207 is revised to read as set forth below and any authority citation following any section in Part 207 is removed:

Authority: Secs. 207, 211, National Housing Act, 12 U.S.C. 1713, 1715b.

18. Section 207.22 is proposed to be revised to read as follows:

§ 207.22 Qualification of mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

19. The authority citation for 24 CFR Part 213 is revised to read as set forth below and any authority citation following any section in Part 213 is removed:

20. Section 213.39 is proposed to be revised to read as follows:

§ 213.39 Qualifications.

The provisions of §§ 203.1 through 203.4 and 203.6 through 203.8 of this chapter shall apply and govern the eligibility, qualifications and requirements of mortgagees under this subpart.

21. Section 213.502 is proposed to be revised to read as follows:

§ 213.502 Qualifications of mortgagees.

The provisions of §§ 203.1 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Authority: Secs. 211, 213, National Housing Act, 12 U.S.C. 1715b, 1715e.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

22. The authority citation for 24 CFR Part 221 is revised to read as set forth below and any authority citation following any section in Part 221 is removed:

23. Section 221.528 is proposed to be revised to read as follows:

§ 221.528 Qualifications of mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of Part 203 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Authority: Secs. 211, 221, National Housing Act, 12 U.S.C. 1715b, 1715l.

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS [SEC. 810]

24. The authority citation for 24 CFR Part 227 is revised to read as set forth below and any authority citation following any section in Part 227 is removed:

Authority: Secs. 211, 807, 810, National Housing Act, 12 U.S.C. 1715b, 1748f, 1748h–z.

25. Section 227.1 is proposed to be amended by revising paragraph (a) to read as follows:

§ 227.1 Cross-reference.

(a) *General.* The provisions of §§ 203.1 through 203.4 and 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

* * * * *

26. Section 227.501 is proposed to be amended by revising paragraph (a) to read as follows:

§ 227.501 Cross-reference

(a) *General.* The provisions of §§ 203.1 through 203.9 of this chapter shall goven the eligibility, qualifications and requirements of mortgagees under this subpart.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

27. The authority citation for 24 CFR Part 232 is revised to read as set forth below and any authority citation following any section in Part 232 is removed:

Authority: Sec. 211, 232, National Housing Act, 12 U.S.C. 1715b, 1715w.

28. Section 232.1 is proposed to be amended by revising paragraph (c) to read as follows:

§ 232.1 Definitions.

* * * * *

(c) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named. The mortagagee shall meet the eligibility, qualifications and requirements of §§ 203.1 through 203.4 and 203.6 through 203.8 of this chapter.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

29. The authority citation for 24 CFR Part 234 is revised to read as set forth below and any authority citation following any section in Part 234 is removed:

Authority: Sec. 211, 234, National Housing Act, 12 U.S.C. 1715b, 1715y.

30. Section 234.10 is proposed to be revised to read as follows:

§ 234.10 Submission of application.

An approved mortgagee or commitment correspondent may submit an application for insurance of a mortgage about to be executed. An approved mortgagee may submit an application for insurance of a mortgage already executed.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

31. The authority citation for 24 CFR Part 242 is revised to read as set forth below and any authority citation following any section in Part 242 is removed:

Authority: Sec. 211, 242, National Housing Act, 12 U.S.C. 1715b, 1715z–7.

32. Section 242.25 is proposed to be revised to read as follows:

§ 242.25 Eligible mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility,

qualifications and requirements of mortgagees under this subpart.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

33. The authority citation for 24 CFR Part 244 is revised to read as set forth below and any authority citation following any section in Part 244 is removed:

Authority: Sec. 211, 1104, National Housing Act, 12 U.S.C. 1715b, 1749aaa–3.

30. Section 244.25 is proposed to be revised to read as follows:

§ 244.25 Qualification for mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Dated: April 24, 1985.

Samuel R. Pierce,

Secretary.

[FR Doc. 85–10734 Filed 5–1–85; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85–03]

Regatta; Pittsburgh Three Rivers Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the area of mile 0.0 to mile 1.0, Allegheny River, mile 0.0 to mile 0.8, (West End Bridge), Ohio River, and mile 0.0 to mile 0.8, (Smithfield Bridge), Monongahela River,. The regulations are needed to provide for the safety of life and property on navigable waters during an approved marine event, which will be held on August 1 thru 4, 1985, at Pittsburgh, Pennsylvania.

DATES: Comments must be received on or before June 17, 1985.

ADDRESSES: Comments should be mailed to: Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri. 63103. The comments and other materials referenced in this notice will be available for inspection and copying at office of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, Missouri. 63103. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday thru Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR B.J. Willis, USCG, Chief, Boating Technical Branch, Second Coast Guard District, St. Louis, MO. Phone (314) 425–5971.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 85–03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are BMCM W.L. Giessman, USCGR, Project Officer, Second Coast Guard District, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Pittsburgh Three Rivers Regatta is sponsored by Pittsburgh Three Rivers Regatta, Inc., and is well known to boaters in the area. This event will consist of Sternwheel boat races, high speed boat races, sailing races, inner tube races, and Anything That Floats race, an Aqua Bike race, sky diving and waterski shows, and a fireworks display. The designated area of this event must be clear of spectator craft and commercial craft movement which could cause wakes and endanger the participants of this event. The assigned Coast Guard Patrol Commander will control the movement of all traffic. Pursuant to the authority contained in Title 33, U.S. Code, section 1233, as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a special local regulation controlling navigation on the waters will be promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed regulations would affect the spectators and commercial vessels only for short periods of time and all vessels will be afforded enough time between such closure periods to transit the area. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35–0202 to read as follows:

§ 100.35–0202 Allegheny River mile 0.0 to 1.0, Ohio River mile 0.0 to mile 0.8 (West End Bridge), Monogahela River mile 0.0 to 0.8 (Smithfield Bridge).

(a) *Regulated area.* Allegheny River mile 0.0 to 1.0, Ohio River mile 0.0 to mile 0.8 (West End Bridge), Monongahela River mile 0.0 to 0.8 (Smithfield Bridge) is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times: August 1 thru 4, 1985, between the hours of 8:00 a.m. and 10:00 p.m. each day. These times represent a guideline for possible intermittent river closures not to exceed FOUR (4) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special local regulations.*

The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so

directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event at any time it is deemed necessary for the protection of life and property.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 16, 1985.

B. F. Hollingsworth,

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

[FR Doc. 85-10678 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 85-05]

Regatta; Ohio River Festival Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the area of mile 220.0 to mile 221.0, Ohio River. The regulations are needed to provide for the safety of life and property on navigable waters during an approved marine event which will be held on August 10 and 11, 1985, at Ravenswood, West Virginia.

DATES: Comments must be received on or before June 17, 1985.

ADDRESSES: Comments should be mailed to: Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, 63103. The comments and other materials referenced in this notice will be available for inspection and copying at office of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, Missouri, 63103. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lcdr B.J. Willis, USCG, Chief, Boating Technical Branch, Second Coast Guard District, St. Louis, MO. Phone (314) 425-5971.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 85-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are BMCM W.L. GIESSMAN, USCGR, Project Officer, Second Coast Guard District, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Ohio River Festival Regatta is sponsored by the Ohio River Festival. This event will consist of hydroplane and outboard runabout speedboat races on a 1.3 mile closed race course. The designated area of this event must be clear of spectator craft and commercial craft movement which could cause wakes and endanger the participants of this event. The assigned Coast Guard Patrol Commander will control the movement of all traffic. Pursuant to the authority contained in Title 33, U.S. Code, section 1233, as implemented by Title 33, part 100, U.S. Code of Federal Regulations, a special local regulation controlling navigation on the waters will be promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed regulations would affect the spectators and commercial vessels only for short periods of time and all vessels will be afforded enough time between such closure periods to transit the area. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, by adding § 100.35-0204 to read as follows:

§ 100.35-0204 Ohio River mile 220.0 to 221.0.

(a) *Regulated area.* Ohio River mile 220.0 to mile 221.0 is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times: August 10 and 11, 1985, between the hours of 10:00 a.m. and 6:00 p.m. each day. These times represent a guideline for possible intermittent river closures not to exceed three (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special local regulations.* The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules

contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the maine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event at any time it is deemed necessary for the protection of life and property.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 16, 1985.

B. F. Hollingsworth,

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

[FR Doc. 85-10677 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 85-06]

Regatta; Ohio Rivers Days Championship (River Days)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the area of mile 355.5 to mile 357.0, Ohio River. The regulations are needed to provide for the safety of life and property on navigable waters during an approved marine event which will be held on August 30, 31, and September 1, 2, 1985, at Portsmouth, Ohio.

DATES: Comments must be received on or before June 17, 1985.

ADDRESSES: Comments should be mailed to: Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri 63103. The comments and other materials referenced in this notice will be available for inspection and copying at office of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, Missouri 63103. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday thru Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lcdr B.J. Willis, USCG, Chief, Boating Technical Branch, Second Coast Guard District, St. Louis, MO. Phone (314) 425-5971.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 85-06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are BMCM W. L. GIESSMAN, USCGER, Project Officer, Second Coast Guard District, Boating Technical Branch, and LT. R. E. KILROY, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Ohio River Championship (River Days) is sponsored by the River Days Committee. This event will consist of tunnel hull outboard races set on a circular race course. The designated area of this event must be clear of spectator craft and commercial craft movement which could cause wakes and endanger the participants of this event. The assigned Coast Guard Partol Commander will control the movement of all traffic. Pursuant to the authority contained in Title 33, U.S. Code, section 1233, as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a special local regulation controlling navigation on the waters will be promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed regulations would affect the spectators and commercial vessels only for short periods of time and all vessels will be afforded enough time beween such closure periods to transit the area. Since the impact of this proposal is expected to be mininal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

PART 100—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35-0205 to read as follows:

§ 100.35-0205 Ohio River mile 355.5 to 357.0.

(a) *Regulated area.* Ohio River mile 355.5 to 357.0 is designated the regatta area, and may be closed to commercial navigation on or mooring during the following dates and (local) times: August 30, 12 noon to 3:00 p.m., August 31, 9:00 a.m. to 6:00 p.m., September 1, 12:00 noon to 6:00 p.m., and September 2, 12:00 noon to 6:00 p.m., 1985. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special local regulations.* The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 [156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in

the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol commander may terminate the marine event at any time it is deemed necessary for the protection of life and property.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 16, 1985.

B.F. Hollingsworth,

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

[FR Doc. 85-10679 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 85-05]

Marine Event; Lake Havasu Water Ski Shows

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish special local regulations for a series of water ski shows under the London Bridge, in the Bridgewater Channel, Lake Havasu City, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATES: Comments must be received on or before 19 May 1985.

ADDRESS: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 am and 3:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Commenters should include their name and address, indentify this notice (CGD11 85-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulations

The Lake Havasu Water Ski Club's "Lake Havasu Wate Ski Shows" will be conducted between 5:45 pm and 7:15 pm on 8, 15, 29 June, 13, 27 July, 10, 24 August and 7 Sepember 1985 under the London Bridge, in the Bridgewater Channel, Lake Havasu City, Arizona. This event will have 3 tournament ski boats, towing up to 35 skiers, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic and is only in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subject in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11-85-05 Lake Havasu Water Ski Show, Lake Havasu City, Arizona.

(a) *Regulated area:* The following area will be closed intermittently to all vessel traffic: that portion of the Bridgewater Channel, Lake Havasu City, Arizona, commencing approximately 200 yards north of the London Bridge, thence southerly along the channel to approximately 200 yards south. Event participants will be transiting under the center span of the bridge.

(b) *Effective dates.* The regulated area will be closed intermittently to all vessel traffic from 5:45 p.m. to 7:15 pm on the following dates:

8, 15 and 29 June 1985
13 and 27 July 1985
10 and 24 August 1985
7 September 1985

(c) *Special local regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants of official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessel shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed

which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: April 22, 1985.

John I. Maloney,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 85-10681 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11-85-06]

Marine Event; Bullhead City Boat Drags

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule will establish special local regulations for a series of high speed drag boat races, at Riviera Marina, Riviera, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATE: Comments must be received on or before 19 May 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 am and 3:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: Ltjg Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office; 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11-85-06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulations

The Sunshine Promotions Inc's, "Bullhead City Boat Drags" will be conducted between 8:30 AM and 5:30 PM on 1, 2 June, 10, 11 August and 7, 8 September 1985 at Riviera Arizona. This event will have approximately 80 high speed drag boats, 18 to 21 feet in length, that could pose a hazard to navigation. Race boats will compete in heats starting from the entrance of Riviera Marina; thence 1200 feet north, 1000 additional feet will be allowed for slow down and turn around. They will then idle southernly along the natural flow of the river back to the starting point. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11-85-06-Bullhead City Boat Drags, Riviera, AZ.

(a) *Regulated area.* The following area will be closed intermittently to all vessel traffic: that portion of the Colorado River starting from the entrance of Riviera Marina, Riviera, Arizona to 2200 feet north.

(b) *Effective dates.* The regulated area will be closed intermittently to all vessel traffic from 8:30 am to 5:30 pm on the following dates:

1 and 2 June 1985
10 and 11 August 1985
7 and 8 September 1985

(c) *Special local regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: April 22, 1985.

John I. Maloney,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District Acting.

[FR Doc. 85-10680 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM020DE; A-3-FRL-2828-9]

Proposed Approval of Revision to the Delaware State Implementation Plan With Respect to Volatile Organic Compound Emissions for Surface Coating of Automobiles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces EPA's proposed approval to extend the final compliances dates for lacquer topcoat and final repair surface coating standards, with respect to automobiles and light-duty trucks for General Motors Corporation in Delaware. This notice is not applicable to Chrysler Corporation because they are using an enamel-based basecoat/clearcoat topcoat and final repair for their surface coating operation. This proposed revision is based on the October 20, 1981 policy statement (46 FR 51386, October 20, 1981), which allows for compliance date extensions to permit affected industries to comply with the final topcoat standards in a more cost-effective manner. EPA is proposing approval of this final compliance date and compliance schedule extension as it meets the necessary requirements of section 110 of the Clean Air Act and current EPA policy.

DATE: Comments must be submitted on or before June 3, 1985.

ADDRESSES: Copies of the proposed extension for automobile and light-duty truck topcoat and final repair surface coating operations and the accompanying suppport documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Street, Philadelphia, PA 19107, Attn: Patricia Gaughan (3AM13)

Air Resources Section, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, Attn: Robert French.

All comments on the proposed revision submitted within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, DELMARVA/DC Section at the above EPA Region III address. Please reference the EPA Docket Number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, (215) 597-9337, at the Region III address above.

SUPPLEMENTARY INFORMATION: On October 15, 1984, the State of Delaware submitted a request to revise their State Implementation Plan to amend Tables I and I(a) in Regulation No. XXIV, Control of Volatile Organic Compound Emissions, section 9, and the corresponding Compliance Schedule. The proposed revision would extend the effective compliance date for the lacquer topcoat and lacquer final repair surface coating standards in Tables I and I(a), from December 31, 1985 and December 31, 1982, respectively, to December 31, 1987. The compliance schedule would correspondingly change for lacquer topcoat and lacquer final repair coating. The proposed changes in the compliance schedule are shown below. (Proposed deletions are in brackets. Proposed additions are underlined.)

COMPLIANCE SCHEDULE

Lacquer coatings	Compliance date	Order materials	Initiate construction	Interim progress report	Complete construction and place in Operation
Topcoat	12/31/[85]87	6/15/[84]86	11/31/[84]86	6/15/[85]87	11/31/[85]87
Final repair	12/31/[82]87	6/15/[81]86	11/31/[81]86	6/15/[82]87	11/31/[82]87

All other dates in Tables I and I(a) and in the compliance schedule for volatile organic compound (VOC) emissions for coating lines remain unchanged. The only company that would be affected by these proposed revisions is General Motors. These revisions are not applicable to Chrysler Corporation because they are currently using an enamel based basecoat/clearcoat for their topcoat and final repair surface coating operation and are therefore expected to meet RACT on December 31, 1985. The petition to the State of Delaware for the proposed revisions was initiated by General Motors (GM).

General Motors anticipates start-up of the newly retooled Wilmington plant with the basecoat/clearcoat (BC/CC) topcoating operation in place in late August 1986. However, GM requests the extension of the final compliance date to December 31, 1987 in order to enable the basecoat/clearcoat topcoat operation to consistently meet the existing New Source Performance Standard (NSPS) of 1.47 kilograms VOC/liter applied coating solids (equivalent to 12.27 lbs VOC/gallon applied coating solids). See 45 FR 85410, December 24, 1980, for the complete NSPS rule. EPA has determined that this economic reason, together with the October 20, 1981 policy statement, provides sufficient evidence to warrant proposed approval for this SIP revision.

Conclusion

EPA's decision to propose approval to extend the final compliance dates for meeting lacquer topcoat and final repair paint standards for automobile and light duty truck surface coating Coperations from December 31, 1985 and December 31, 1982, respectively, to December 31, 1987 is based on the determination that it is consistent with the October 20, 1981 policy statement. This rule is not applicable to Chrysler Corporation.

The public is invited to submit comments, to the EPA-Region III address above, on whether or not the proposed extension should be allowed.

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

Under 5 U.S.C. section 605(b), the Regional Administrator has certified that the compliance date extension will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709, January 27, 1981.

Dated: March 22, 1985.

Stanley Laskowski,

Regional Administrator.

[FR Doc. 85-10655 Filed 5-1-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 30

Claims Collection

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services proposes to revise its regulation at 45 CFR Part 30 for the handling of debts, particularly overdue accounts, owed to the United States. The revision is necessary to implement the Debt Collection Act of 1982 (Pub. L. 97–365), and the Federal guidelines issued by the Department of Justice and the General Accounting Office (49 FR 8889) and the Office of Personnel Management (49 FR 27470) to implement the Act.

The proposed rule will enhance the Department's ability to collect its debts and reduce delinquencies by providing guidance to its officers and employees charged with debt collection and notice to its debtors concerning the effect of the amendments on the collection of debts covered by and excluded from the amendments.

DATE: Comments must be received on or before July 1, 1985.

ADDRESS: Comments may be mailed or delivered to Darrel J. Grinstead, Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel, Department of Health and Human Services, Room 5362 North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Sarah Hertz or Clara Garcia, 202–475–0155.

SUPPLEMENTARY INFORMATION: The existing Departmental claims collection regulation merely adopts the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice at 4 CFR Parts 101–105. Additional guidance and procedures for the claims collection staff are provided in Chapter 4–70 of the Department's General Administration Manual.

The Federal Claims Collection Act of 1966, codified at 31 U.S.C. 3711 (formally 31 U.S.C. 951–953), the employee offset authority, 5 U.S.C. 5514, the Privacy Act, 5 U.S.C. 552a, and related statutes were amended by the Debt Collection Act of 1982 ("the Act" or "the amendments").

The following actions were taken to assist Federal agencies to implement the amendments: (1) The General Accounting Office and the Department of Justice issued final regulations (49 FR 8889, March 9, 1984) to amend the Federal Claims Collection Standards; (2) The Office of Personnel Management also issued final regulations (49 FR 27470, July 3, 1984) to guide agency collection of employee debts by offset from pay under 5 U.S.C. 5514; and (3) The Office of Management and Budget issued guidelines (48 FR 15556, April 11, 1983) to help agencies interpret the changes made to the Privacy Act of 1974.

The proposed rule will implement the amendments for the Department.

Recognizing that the Federal Claims Collection Act is not the exclusive authority for the collection and other disposition of claims owed to the Federal Government, the proposed rule provides standards for collection under the Federal Claims Collection Act, as amended, and the common law and supplements existing standards under other statutes or regulations.

By amending the Federal Claims Collection Act Congress intended to enhance the Federal Government's ability to collect its debts and to require certain procedures to safeguard the due process rights of persons. The expression of this Congressional purpose in the Act's preamble and throughout its legislative history and the absence of a clear expression to the contrary leads us to conclude that pre-existing authority was not superseded by the Act. This conclusion is consistent with the principle of statutory construction expressed in *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952). Furthermore, it is the position adopted in the amended Federal Claims Collection Standards.

The amended Federal Claims Collection Standards clarify pre-existing authority in two basic areas.

Debts arising under the Social Security Act are excluded from the amendments made by the Act, except as provided by sections 4, 7 and 8, pertaining to information on Federal loan applicants and requests for debtors' addresses from the Internal Revenue Service. In addition, sections 10 and 11, pertaining to administrative offset and assessment of interest, penalties and administrative cost charges on debts owed by "persons," specifically exclude State and local governments from the meaning of "persons." Therefore, debts owed by State and local governments (including Indian tribes, bands or nations) are not covered by these two sections.

In B–210086 (July 28, 1983) the Comptroller General advised the Social Security Administration (SSA) that the effect of the exclusion of debts arising under the Social Security Act is that SSA is not bound by the new administrative offset requirements of the Act in collecting these debts, but is free to exercise its authority to use administative offset under other statutes (*e.g.*, sec. 204(a), Title II of the Social Security Act, 42 U.S.C. 404(a)) or the common law principles expressed in *United States* v. *Munsey Trust Company*, 332 U.S. 234, 239 (1947). The same rationale leads us to conclude that the Act's exclusion of these debts from its interest provision does not affect the right to charge interest on the these debts under other statutes or the common law principles expressed in *Young* v. *Godbe*, 82 U.S. (15 Wall) 562, 565 (1873) and *United States* v. *United Drill and Tool Corp.*, 183 F.2d 998, 999 (D.C. Cir. 1950).

Thus, it is clear, as stated in the preamble to the amended Federal Claims Collection Standards, that the Act does not affect the authority of the Department under the Social Security Act or under common law to charge interest, or use administrative offset, debt collection agencies and credit bureaus to collect debts arising under Social Security Act programs. However, the Act does not require the Department to use any of the collection tools specified in the Act to collect debts arising under the Social Security Act. The Social Security Administration in fact plans no changes in its collection methods for debts owed by beneficiaries under Titles II and XVI entitlement programs. Thus, (except where specifically authorized uder statute regulation or written agreements) beneficiaries under these programs will not be charged interest, will not be subject to administrative offset and will not be referred to private collection agencies or credit reporting agencies. However, all other debtors under Social Security Act programs will be subject to these actions.

State and local governments will also be subject to interest charges and administative offset. In B–212222 (August 23, 1983) the Comptroller General clarified that the Act does not prohibit the Federal Government from charging interest on, or offsetting, debts owed by State and local governments. Rather, the restrictions and procedural prerequisites to offsetting and charging interest on debts owed by "persons" under the Act do not apply to collection of debts owed by State and local governments.

Another provision of Section 11 of the Act must be similarly interpreted. Section 11 excludes from its interest.

administrative cost and penalty provisions any claim under a contract executed before, and in effect on October 25, 1982 (the effective date of the Act). This provision does not affect our right to charge interest on these debts under the common law or under the provisions of the contract or a repayment agreement.

These interpretations have been adopted in the amended Federal Claims Collection Standards at 4 CFR Parts 101–105 (see, in particular, §§ 102.3(b), 102.13(i) and 102.19).

The proposed rule, therefore, permits the Operating Divisions to apply the same standards and procedures used for collecting debts covered by the Act when collecting debts arising under the Social Security Act, those arising under contracts in effect on October 25, 1982 and those of State and local governments to the extent that the application of those standards and procedures is feasible and not otherwise precluded by statute or regulation.

E.O. 12291

The proposed rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981. It is unlikely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or 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.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

Information collection requirements contained in this regulation are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Persons wishing to comment on these reporting and recordkeeping requirements should address their comments to the Office of Information and Regulatory Affairs, the Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, Room 3208, Attention: Desk Officer for HHS (Judy McIntosh).

List of Subjects in 45 CFR Part 30

Administrative practice and procedure, Claims, Government employees, Privacy.

November 15, 1984.

Margaret M. Heckler,

Secretary.

For the reasons set forth in the preamble, we propose to revise 45 CFR Part 30 as follows:

PART 30—CLAIMS COLLECTION

Subpart A—General

Sec.

Subpart B—Collection

Subpart C—Compromise of Claims

Subpart D—Termination or Suspension of Collection Action

Subpart E—Referrals to the Department of Justice or GAO

Authority: Subchapter II of Chapter 37 of Title 31, United States Code, 5 U.S.C. 5514 and 5 U.S.C. 552a as amended by Pub. L. 97–365, 96 Stat. 1749.

Subpart A—General

§ 30.1 Purpose and scope.

This regulation prescribes standards and procedures for the officers and employees of the Department, including officers and employees of the various Operating Divisions and regional offices of the Department, charged with collection and disposition of debts owed to the United States. These standards and procedures will be applied where a statute, regulation or contract does not prescribe different standards or procedures. The authority for the regulation lies in the Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716–3718; the Federal Claims Collection Standards, at 4 CFR Parts 101–105; related statutes (5 U.S.C. 5512 and 5514, 5 U.S.C. 552a) and regulations (5 CFR Part 550); and the common law. The covered activities include collecting claims in any amount; compromising claims, or suspending or terminating collection of claims that do not exceed $20,000, exclusive of interest and charges; and referring debts that cannot be disposed of by the Department to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 30.2 Definitions.

In this Part, unless the context otherwise requires—

—"Amounts payable under the Social Security Act" means payments by the Department to beneficiaries, providers, intermediaries, physicians, suppliers, carriers or States under a Social Security Act program, including: Title I (Grants to States for Old-Age Assistance and Medical Assistance for the Aged); Title II (Federal Old-Age Survivors, and Disability Insurance Benefits); Title III (Grants to States for Unemployment Compensation Administration); Title IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services); Title V (Maternal and Child Health and Crippled Children's Services); Title IX (Unemployment Compensation Program); Title X (Grants to States for Aid to the Blind); Title XI, Part B (Professional Standards Review); Title XII (Advances to State Unemployment Funds); Title XIV (Grants to States for Aid to Permanently and Totally Disabled); Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled); Title XVII Grants to States to Fight Mental Retardation); Title XVIII (Medicare); Title XIX (Medicaid); and Title XX (Block

Grants to States for Social Services). All other payments made by the Department in the course of administering the provisions of the Social Security Act are not deemed to be "payable under" the Social Security Act for purposes of this regulation.

—"Claim" or "debt" means an amount or property owed to the Department. Debts include, but are not limited to: Loans, salary overpayments to employees; overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue, or delinquent (see 4 CFR 101.2(b)), if it is not paid by the payment due date specified in the notice of the debt to the debtor (see § 30.13(a)) and it is not the subject of a repayment agreement approved by the Secretary, or if the debtor fails to satisfy his or her obligations under a repayment agreement.

—"Debtor" means an individual, organization, association, partnership, corporation, or a State or local government or subdivision indebted to the Department; or the person or entity with legal responsibility for assuming the debtor's obligation.

—"Debts arising under the Social Security Act" are overpayments to, or contributions owed by, beneficiaries, providers, intermediaries, physicians, suppliers, carriers or States under Titles I, II, III, IV, V, IX, X, XI, (Part B), XII, XIV, XVI, XVII, XVIII, XIX and XX of the Social Security Act; all other debts that result from the administration of the provisions of the Social Security Act are not deemed to "arise under" the Social Security Act for purposes of this regulation.

—"The Department" means the United States Department of Health and Human Services and each of its Operating Divisions and regional offices.

—"Local government" means a political subdivision, instrumentality, or authority of any State; the District of Columbia; the Commonwealth of Puerto Rico; a territory or possession of the United States; or an Indian tribe, band or nation.

—"Operating Division" means each separate component within the Department of Health and Human Services, and includes the Office of the Secretary, the Office of Human Development Services, the Office of Community Services, the Health Care Financing Administration, the Public Health Service and the Social Security Administration.

—"The Secretary" means the Secretary of Health and Human Servcies or the Secretary's designee.

§ 30.3 Interagency claims.

This regulation does not apply to debts owed by other Federal agencies. These debts will be resolved by negotiation or referral to the General Accounting Office.

§ 30.4 Other administrative proceedings.

This regulation does not supersede or require omission or duplication of administrative proceedings required under contract, statute, regulation or other agency procedures. Examples: resolution of audit findings under grants or contracts, Chapter 1–105, Grants Administration Manual (GAM); informal grant appeals, 45 CFR Part 75 (Departmental), 42 CFR 50.401 *et seq.* (Public Health Service); formal appeals to the Departmental Grant Appeals Board, 45 CFR Part 16; and review under a procurement contract Disputes Clause and the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*), 48 CFR Part 33.

§ 30.5 Other remedies.

The remedies and sanctions available to the Department under this regulation when collecting debts are not intended to be exclusive. The Secretary may impose other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Secretary may stop doing business with a grantee, contractor, borrower or lender; covert the method of payment under a grant from an advance to a reimbursement method; or revoke a grantee's letter-of-credit.

§ 30.6 Property claims.

Any person who converts, or negligently loses or destroys personal property belonging, entrusted or loaned to the Department is liable for the return of the property or payment of its fair market value. A person who damages such property is liable for the cost of repairs or its fair market value, whichever is less. Collection of these debts means the recovery of the property, its fair market value, or the cost of repairs. Demand for payment of these claims means a demand for the return of the property or for payment of its fair market value or the cost of repairs.

§ 30.7 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds of property. Examples of such activity are fraud, embezzlement and theft or misuse of Government money or property. See 128 U.S.C. 641, 643. The Secretary will refer cases of suspected criminal activity or misconduct to the Office of Inspector General. That office will investigate such cases, refer them to the Department of Justice for criminal prosecution and/or return them to the Secretary for collection, application of administrative sanctions or other disposition.

(b) Debts involving anti-trust violations, fraud, false claims or misrepresentation—

(1) Shall be referred by the Secretary to the Office of Inspector General for review. The Office of Inspector General shall refer the claim back to the Secretary for collection or other disposition to the extent authorized by the Department of Justice.

(2) Shall not be compromised, terminated, suspended or otherwise disposed of by the Secretary under these regulations. Only the Department of Justice is authorized to compromise, terminate, suspend or otherwise dispose of such debts.

§ 30.8 Claims arising from GAO exceptions.

The Secretary may not compromise but will collect, suspend or terminate collection of debts due on account of illegal, improper or incorrect payments shown in General Accounting Office notices of exception issued to certifying or disbursing officers. Only the General Accounting Office has the authority to compromise such debts.

§ 30.9 Subdivision of claims.

Debts may not be subdivided to avoid the monetary ceilings imposed by 31 U.S.C. 3711(a)(2) and (3) on the Secetary's authority to compromise, suspend or terminate collection of debts. A debtor's liability arising from a particular incident or transaction will be considered a single debt in determining whether the claim exceeds $20,000 for purposes of compromising, suspending or terminating collection efforts.

§ 30.10 Omissions not a defense.

Failure by the Secretary to comply with any provision of this regulation may not serve as a defense to any debtor.

Subpart B—Collection

§ 30.11 Collection rule.

(a) The Secretary will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall, at a minimum; normally include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30-day intervals unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor, his/her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, discuss the debtor's position regarding the existence, amount or repayment of the debt, and inform the debtor of his or her rights (*e.g.*, to apply for waiver of the indebtedness or to have an opportunity for administrative review) and the effects of nonpayment or delayed payment. The Secretary will exhaust every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, driving license records, automobile title and license records in State and local government agencies, the Internal Revenue Service, credit reporting agencies and skip locator services. Referral of a confess-judgment note to the appropriate United States Attorney's Office for entry of judgment will not be delayed because the debtor cannot be located. Collection of the full amount of the debt will be pursued from each debtor jointly and severally liable. If a debtor is undergoing insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim in the appropriate court. The United States may have priority over other creditors under 31 U.S.C. 3713. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) The Secretary will maintain an administrative file for each debt or debtor, documenting the debt(s), all administrative collection action, including communications to and from the debtor, and disposition of the debt(s). Information from a debt file relating to an individual may be disclosed only for purposes consistent with this regulation, the Privacy Act of 1974, 5 U.S.C. 552a, and any other applicable law.

§ 30.12 Notices to debtor.

(a) The first written demand for payment must inform the debtor of—

(1) The amount and nature of the debt;

(2) The date payment is due, which will generally be 30 days from the date the notice was mailed; and

(3) The assessment under § 30.13 of interest from the date the notice was mailed, and administrative costs starting 30 days from that date if payment is not received within the 30 days.

(b) Where applicable, the Secretary must inform the debtor in writing of—

(1) His or her right to dispute the debt or request a waiver of the debt, citing the applicable review or waiver authority the conditions for review or waiver, and the effect of the review or waiver request on collection of the debt, interest, charges and late payment penalties (see § 30.14);

(2) The office, address and telephone number that the debtor should contact to discuss repayment, reconsideration or waiver of the debt;

(3) The proposed sanctions if the debt is overdue, including assessment of late payment penalties under § 30.13 (if the debt is more than 90 days overdue) or referrral of the debt to a credit reporting agency under § 30.7, or to a collection agency under § 30.18. (See also § 30.5).

§ 30.13 Interest, administrative costs and late payment penalties.

(a) *Interest.* (1) Interest will accrue on all debts from the date when notice of the debt and the interest requirement is first mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date of mailing of the notice. Unless a higher rate is necessary to protect the Government's interest, the Secretary will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts for the twelve-month period ending on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the **Federal Register** and the Treasury Financial Manual Bulletins. Debtors who were not paying interest, or were paying interest at a different rate prior to October 25, 1982, may be charged interest at the Treasury rate in effect on the date that notice of the new interest requirement is mailed after October 25, 1982. Bills sent before a debt is due will include notification of the interest requirement, but interest will begin to acrue on the day after the due date.

(2) The Secretary may, at his or her discretion, extend the 30 day interest-free period an additional 30 days if the Secretary determines that such action is in the best interests of the Government, or otherwise warranted by equity and good conscience. A decision not to extend this period is final and not subject to further review.

(3) The rate of interest, as initially assessed, will remain fixed for the duration of the indebtedness; except that if a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(4) Interest will not be charged on interest, administrative costs or late payment penalties required by this section. However, if the debtor defaults on a previous repayment agreement, unpaid accrued interest, charges and late payment penalties under the defaulted agreement may be added to the principal to be paid under a new repayment.

(b) *Administrative costs of collecting overdue debts.* Debtors must bear the Department's administrative costs of handling overdue debts, based on either actual or average costs incurred. These costs will include direct (personnel, supplies, etc.) and indirect costs of collecting inhouse and contracting with collection agencies. These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. See also § 30.14.

(c) *Late payment penalties.* A penalty charge of 6 percent a year will be assessed on a debt, a payment, or any portion thereof that is more than 90 days overdue. Late payment penalty charges will accrue from the date the debt, or portion thereof, became overdue until the overdue amount is paid. These charges will be assessed monthly, or per payment period. See also § 30.14.

(d) *Social Security Act Debts.* (1) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, the Secretary will not charge interest on debts owed by beneficiaries under Titles II and XVI of the Social Security Act.

(2) The Secretary will not charge administrative costs or late payment penalties on debts arising under the Social Security Act, unless authorized by statute, regulation or written agreement.

(3) *Other debts not covered by 31 U.S.C. 3717.* The Secretary will not charge administrative costs or late payment penalties on debts arising

under a contract executed prior to, and in effect on October 25, 1982, or debts owed by State or local governments, unless authorized by statute, regulation or written agreement.

(f) *Allocation of payments.* Partial or installment payments will be applied first to outstanding administrative costs charges and late payment penalties, second to accrued interest and third to outstanding principal.

(g) *Inactive claims.* Interest, but not administrative cost charges and late payment penalties, will continue to accrue when collection of a debt is suspended under § 30.33(a).

(h) *Waivers.* The Secretary may waive collecting all or part of interest, administrative costs or late payment penalties, if—

(1) The debt or the charges resulted from the agency's error, action or inaction, and without fault on the part of the debtor; or

(2) Collection in any manner authorized under this regulation would defeat the overall objectives of a Departmental program.

Waiver consideration under paragraph (h)(1) may be initiated by the debtor's request or by the Secretary's own action. Waiver under paragraph (h)(2) may be initiated only by the Secretary's own action. A decision to waive interest may be made at anytime; however, interest which has already been collected may not be refunded. A decision under this subsection is final and not subject to review.

§ 30.14 Interest and charges pending waiver or review.

(a) *Rule.* A debtor may either pay the debt, or be liable for interest on the uncollected debt, while a waiver determination, a bona fide dispute or a formal or informal review of the debt is pending. The debtor may also be assessed administrative cost charges and late payment penalties on the unpaid debt for this period if the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

(b) *Exception.* Interest, late payment penalties and administrative cost charges will not be assessed pending consideration of waiver or review under a statute which prohibits collection of the debt during this period, unless the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

§ 30.15 Administrative offset of general debts.

(a) *Rule.* The Secretary will collect debts owed to the Department by administrative offset if—

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be, unsuccessful, or the Secretary and the debtor agree to the offset;

(3) Offset is not expressly or implicitly prohibited by statute or regulation;

(4) Offset is cost-effective or has significant deterrent value;

(5) Offset does not substantially impair or defeat program objectives; and

(6) Overall, offset is best suited to further and protect the Government's interest.

The Secretary may consider the financial impact of the proposed offset on the debtor in determining the method and amount of the offset.

(b) *Offset defined.* "Administrative Offset" means satisfying a debt by withholding money payable by the Department to, or held by the Department for a debtor. Amounts available for offset include, for example, benefit payments to a program beneficiary overpaid under the same or a different program, amounts due a defaulting or overpaid contractor or grantee under the same or a different agreement, and judgments held by the debtor against the United States. (Offset against judgments will be effected through the Comptroller General pursuant to 31 U.S.C. 3728.)

(c) *Scope.* (1) This section applies to offset under 31 U.S.C. 3716 of debts owed by organizations and individuals, including former Federal employees and Federal employees whose separation is imminent.

(2) Except as provided in paragraph (c)(3), debts arising under the Social Security Act and debts owed by State or local governments may be collected by offset under an applicable statute or the common law in accordance with this section or any other regulation that complies with 4 CFR 102.3(b); but nothing in this section shall be interpreted to require the offset of such debts. The same standard applies to the collection of any debt by offset from amounts payable under the Social Security Act.

(3) Unless specifically authorized by statute, regulation, or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, administrative offset will not be applied to debts owed by or amounts payable to beneficiaries under Titles II and XVI of the Social Security Act.

(4) Paragraphs (i)–(k) do not apply to debts reduced to judgment, debts already subject to a written repayment or settlement agreement or debts with respect to which the specified procedures have already been afforded.

(5) Section 30.16 covers offset of debts owed by Federal employees from current pay.

(d) *Advance payments.* Under many programs, the Department advances funds to pay for a recipient's anticipated costs. Before offsetting such an advance payment in order to collect a debt, the Secretary may request an assurance that the recipient will incur additional allowable costs whose Federal share is at least equal to the amount of the offset plus the amount of funds actually advanced. If the Secretary believes that the recipient will not incur sufficient costs, it will not offset the advance. The Secretary may request cash payment or convert the method of paying the recipient from an advance to a reimbursement basis and collect the debt by offsetting payments for costs already incurred.

(e) *Interagency offsets.* The Secretary may offset a debt owed to another Federal agency from amounts due or payable by the Department to the debtor; or request another Federal agency to offset a debt owed to the Department. The Secretary will seek to offset an overdue debt from a Federal income tax refund due the debtor where reasonable attempts to obtain payment from the debtor have failed. Interagency offsets will be effected in accordance with the procedures contained in § 30.16 (k) and (l) for offset under 5 U.S.C. 5514; except that "Secretary" is substituted for "Pay Systems Division," and certification should indicate compliance with 4 CFR 102.3 (and with 5 CFR Part 831, Subpart R in the case of offset from the Civil Service Retirement and Disability Fund), rather than 5 U.S.C. 5514.

(f) *Multiple debts.* Amounts available for offset will be applied to multiple debts in accordance with the best interests of the Government as determined on a case-by-case basis. Other factors being equal, recovery will be equally apportioned.

(g) *Statutory bar to offset.* (1) Administrative offset will not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the officer responsible for discovering or collecting the debt. For this purpose, a debt accrues when it is administratively

determined to exist, when it is affirmed by an administative appeals board or a court having jurisidiction, or when a debtor defaults on a repayment agreement, whichever is later. Offset is initiated when the notice of the proposed offset is mailed to the debtor under paragraph (i) of this section or under other agency procedures, when money payable to the debtor is first withheld, or when the Department requests offset from money held by another agency, whichever is first.

(2) The 10 year statutory bar does not apply to offset of a debt arising out of the Social Security Act. However, offset against such debts will generally not be initiated more than 10 years after the debt accurued unless the Secretary did not previously have the necessary information or the means by which to collect the debt by administrative offset.

(h) *Offset against assigned claims.* The Assisgnments of Claims Act of 1940, 31 U.S.C. 3727, 41 U.S.C. 15, strictly limits the conditions under which a contractor or any other person or entity entitled to receive payments from the United States may assign his or her rights to the payments to a third party. The Federal Acquisition Regulations implement at 48 CFR Part 32, Subpart 32.8, the stautory conditions to assignment of a contractor's right to be paid by the United States for performance under a Federal procurement contract. A contractor may assign his or her right to payment by the United States only to a bank, trust company, or other financing institution, as security for a loan to the contractor.

(1) The Secretary normally may not collect a debt owed by a contractor by offset from payments due the contractor if the contractor has properly assigned his or her rights to such payments to a financing institution, the assigned payments are due under a contract with a "no setoff" provision, and—

(i) The contractor's debt to the United States arose independently of the contract; or

(ii) The debt arose under the contract because of renegotiation, fines, penalties other than penalties for noncompliance with the terms of the contract), taxes or social security contributions, or withholding or nonwithholding of taxes or social security contributions.

Notwithstanding the satisfaction of all the conditions of this paragraph, offset may be appropriate under certain circumstances, for example: If the financing institution has made neither a loan nor a firm commitment to make a loan under the assignment; or to the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment.

(2) The Secretary may not offset a debt from payments due any debtor if the debtor has properly assigned his or her right to such payments and the debt arose after the effective date of the assignment.

(3) The Secretary may not attempt to satisfy the assignor's indebtedness by recovering payments already made to the assignee.

(i) *Pre-offset notice.* Before initiating offset, the Secretary will send the debtor written notice of:

(1) The nature and amount of the debt and the Secretary's intention to collect the debt by offset 30 days from the date the notice was mailed if payment, or satisfactory response, has not been received by that date;

(2) The debtor's right, if not previously provided an opportunity, to submit a good faith alternative repayment schedule, inspect and copy agency records pertaining to the debt, request review of the determination of indebtedness under this section or other authority, or apply for waiver under an applicable statute;

(3) The applicable interest, administrative costs and penalty requirements under §§ 30.13 and 30.14; and

(4) Where applicable, the Secretary's intention to delay a lump sum or final payment to the debtor in the amount of the debt plus anticipated interest, administrative cost charges and penalties pending compliance with paragraphs (i) and (k) of this section.

(j) *Alternative repayment.* The Secretary may negotiate a satisfactory repayment agreement before offsetting a debt. The debtor is entitled to submit a good faith written repayment proposal. A proposal for delayed lump sum or installment payments, with interest, may be accepted in lieu of collection by administrative offset if in the best interest of the Government. In making this determination, the Secretary will consider factors such as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confess-judgment note or give collateral, past dealings with the debtor and documentation submitted by the debtor indicating that the offset will cause him or her undue hardship and that the debtor will be financially capable of adhering to the terms of the agreement. The Secretary may require documentation from the debtor before considering an installment arrangement.

(k) *Review of administrative determination.* (1) A debt will not be offset normally while a debtor is exercising his or her right to seek formal or informal review under this section or under another statute, regulation or contract. However, interest will accrue during this period and so may other charges. See § 30.14. The Secretary may initiate offset as soon as practical after the debtor waives his or her opportunity to request review, or as soon as practical after the debt is affirmed or reduced to judgment, unless other repayment arrangements have been made.

(2) The Secretary will designate an official(s) or employee(s) of the Department to review administrative determinations of indebtedness which are not reviewable under other Departmental procedures. Prior to offset, a debtor may request review of the existence or amount of a debt if the dispute is not about a question of fact or law already decided by a court of competent jurisdiction or reviewable under other existing procedures. The reviewing officer must receive a written request postmarked no later than 15 days after the date the offset notice was mailed. The request must briefly state the reasons for the dispute, identify supporting witnesses with knowledge and include or identify supporting documents.

(3) The reviewing officer may grant an extension or excuse a delay if the debtor shows good cause for late filing of a request.

(4) A debtor who fails to file on time, and either fails to get an extension or fails to meet the extended deadline, waives his or her right to review and may have the debt offset.

(5) The reviewing officer will advise the debtor and the Secretary in writing of the date the request was received and, if necessary, will request supporting documentation from the debtor and a copy of the debt file from the Secretary.

(6) The reviewing officer will limit review of the case to the issue raised by the debtor. The review may include personal contacts and informal conferences if documentary review is insufficient. A request by a debtor for an informal conference will be considered only if the review (or waiver) determination cannot be made without resolving an issue of credibility or veracity. The hearing officer will keep a summary record of informal conferences. The reviewing officer will issue, normally no later than 60 days after the request for review was filed, a written final decision based on the evidence of record and the applicable law.

(l) *Protection of the Government's interest.* Notwithstanding the provisions

of paragraphs (i) through (k) of this section, the Secretary may take immediate action to delay a lump sum or final payment to the debtor whenever such action is necessary to protect the Government's ability to recover the debt by offset. The amount withheld may not exeed the amount of the debt plus any accrued or anticipated interest, administrative cost charges and penalties. The Secretary shall promptly send the debtor the notice specified in paragraph (i) of this section. The Secretary may not take final action to effect offset of the debt from the withheld amount until the procedures required by paragraphs (i) through (k) have been exhausted. Te appropriate amount will be paid to the debtor as soon as practical after the debt, or a portion of the debt, is found not to be owed.

§ 30.16 Employee salary offset

(a) *Definitions.* For the purposes of this section:

(1) "Hearing" means either an evidentiary or an oral hearing. An evidentiary hearing means a review of the documentary evidence by a designated hearing officer. An oral hearing means an informal conference before a designated hearing officer.

(2) The "hearing officer" is an individual, not under the supervision of the Secretary, appointed by the Department Claims Officer or the Secretary to review and issue a final decision on an employee's dispute of a debt. The hearing officer may be an administrative law judge, an independent contractor of the Department or an employee of another Federal agency. An agency must comply with 4 CFR 102.1 and 5 CFR 550.1107 and provide a hearing officer when requested by another Federal agency.

(b) *Rule.* The Secretary may recover debts from current employees by asking the Pay Systems Division to deduct from the employee's pay pursuant to 5 U.S.C. 5514 and related statutes. "Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay. Deductions may not exceed 15 percent of the employee's disposable pay for any pay period, unless the employee agrees in writing to a larger deduction. The entire amount may be collected in one lump sum if the amount does not exceed 15 percent of disposable pay for the given pay period. Otherwise, an amount not to exceed 15 percent will be deducted from disposable pay each pay period until the entire debt and accrued interest, administrative cost charges and penalties are collected. Multiple debts will be offset in accordance with § 30.15(f). "Disposable pay" means the amount that remains from an employee's Federal pay after withholding of all deductions listed in 5 CFR 581.105(b) and any other deductions required by law (including, but not limited to, Federal State, and local income taxes; Social Security taxes, including Medicare taxes; garnishment for child support and alimony; and Federal retirement programs) as well as voluntary deductions for child support. Interest, administrative costs and penalties will be charged in accordance with § 30.13 and 30.14. If an employee retires, resigns, or is discharged, or if his or her employment or active duty otherwise ends, an amount necessary to satisfy the debt may be offset immediately from payments of any nature due the individual.

(c) *Exceptions.* (1) An employee does nto have a right to a hearing on a factual or legal dispute already decided on the merits by an administrative appeals board or a court of competent jurisdictions. When an employee disputes a lump sum or 15 percent salary deduction to collect a debt that has been affirmed by an administrative appeals board or a court that has not determined the method or schedule of repayment, the employee will be notified of his or her right to request a hearing limited to that issue in accordance with paragraph (f) of this section before offset is initiated.

(2) Debts arising under a Social Security Act program may be offset from current pay only with the employee's written consent. Consent is not necessary to offset these debts from final payments due to former employees or officers.

(3) This section does not apply to collections of overpayments caused by routine delays not exceeding four pay periods in processing deductions from pay when an employee elects or changes coverage under a Federal benefits program such as health or life insurance, which requires periodic deductions from pay. Employee's consent to deductions from pay whenever they elect or change coverage. Affected employees will receive a notice informing them of these retroactive adjustments to pay and the office to contact if the employee disputes the amount of the adjustment.

(4) Except as provided in paragraphs (b)(1) and (h), this section does not apply to offset from payments due an employee who has separated or is in the process of separating. Upon learning that an indebted employee has separated or initiated separation action, the Pay Systems Division will withhold final salary and lump sum payments in accordance with § 30.15 and, if final payments are insufficient to satisfy the debt, will request offset from the Civil Service Retirement and Disability Fund in accordance with 5 CFR Part 831, Subpart R and 4 CFR 102.4.

(5) This section does not apply where collection of a debt by salary offset is provided by or prohibited by a statute other than 5 U.S.C. 5514 (e.g. travel advances under 5 U.S.C. 5705, training expenses under 5 U.S.C. 4108).

(6) This section does not apply to recovery of a debt by a voluntary offset from pay.

(d) *Pre-offset requirements.* Before initiating offset from current pay, the Pay Systems Division will send the employee written notice of the following—

(1) The nature and amount of the debt;

(2) The agency intention to collect the debt by offsetting the lump sum or 15 percent of the employee's pay each pay period (stating the amount, frequency, proposed beginning date and duration of the deductions) unless the employee pays the debt or responds within 30 days from the date the notice was mailed to the employee;

(3) The interest, administrative cost charges and penalties that will or may be assessed under §§ 30.13 and 30.14 if the debt is not paid, or the employee has not consented to a lump sum offset from pay, within 30 days from the date the notice was mailed to the employee;

(4) The employee's right, if a previous opportunity was not provided, to request within 15 days from the date of mailing of the notice—

(i) Copies of agency records pertaining to the debt;

(ii) An alternative repayment schedule; or

(iii) A hearing concerning the proposed offset schedule or, except as provided in paragraph (b) of this section, the existence or amount of the debt;

(5) The employee's right, if any, to request waiver of the debt, interest and/or charges, citing the applicable statutory authority, request procedures and waiver conditions and the effect of the waiver request on collection of the debt, interest and charges by offset;

(6) The office, address and telephone number to whom the employee should address any inquiries or requests;

(7) The requirement that the hearing officer issue a decision at the earliest practical date, but no later then 60 days after the request for the hearing or review was filed unless the employee requested and was granted an extension;

(8) That any knowingly false or frivolous statements, representations or evidence may subject the employee to disciplinary action under 5 CFR Part 752 or any other applicable authority; or criminal or civil penalties under 18 U.S.C. 286, 287, 1001 and 1002 or 31 U.S.C. 3729–3731;

(9) Any other rights and remedies available to the employee under the statutes or regulations governing the program under which the debt is being collected; and

(10) That, unless otherwise provided by statute or contract, amounts collected and later waived or found not owed will be promptly refunded.

(e) *Alternative repayment proposal.* (1) An employee who objects to the proposed offset schedule, but does not wish a hearing or further review of the proposed collection must submit a written alternative offset or cash payment schedule and a statement with supporting documents, indicating in what way the proposed schedule would produce an extreme financial hardship for the employee, given the family's size, income, assets, liabilities, living expenses, and exceptional circumstances. The employee must submit his or her proposal to the Deputy Assistant Secretary for Personnel, Attention: Director, Office of Personnel Policy and Communications, within 15 days from the date that the notice of the proposed offset was mailed to the employee.

(2) The employee will receive written notice of the final administrative determination concerning the proposed offset schedule, including, if the employee's proposal is rejected, notice that offset will begin 20–30 days after the date of mailing of this notice and that the employee may, within 15 days from the mailing date of the notice submit a request for a hearing or waiver, if available, to the indicated person or office.

(f) *Hearings.*—(1) *Request.* An employee may request a hearing to dispute the administrative determination of the existence or amount of the debt or the proposed offset schedule before the initiation of collection by offset. A written request must be submitted to the Department Claims Officer, Assistant General Counsel, Business and Administrative Law Division, U.S. Department of Health and Human Services, Washington, D.C. 20201, postmarked no later than 15 days from the date the notice was mailed to the debtor. The request must be signed by the employee, briefly state the employee's reasons for disputing the collection of the debt, and identify supporting facts, witnesses, and documents. The Department Claims Officer will acknowledge receipt of the request. The Department Claims Officer may appoint or instruct the appropriate Operating Division or regional office to appoint a hearing officer. The Department Claims Officer may grant an extension or excuse a delay if the employee shows good cause for late filing of a request for a hearing. Ordinarily, a reasonable extension will be granted if the employee shows that the delay was caused by circumstances beyond his or her control or because he or she did not receive notice, and was not otherwise aware of the time limit. An employee who fails to meet the filing deadline or to request an extension waives his or her right to a hearing. The Department Claims Officer will so notify the employee in writing and will instruct the Pay Systems Division to proceed with payroll deductions.

(2) *Type of hearing.* The hearing will normally be an evidentiary hearing, unless the hearing officer determines that a decision cannot be made without resolving an issue of credibility or veracity, in which case the hearing officer will provide for an oral hearing.

(3) *Date and place of oral hearing.* The oral hearing will normally be held no later than 30 days from the date of receipt of the hearing request. The hearing officer will give the debtor and the Secretary at least 10 days prior notice of the hearing date, time, place, procedures and issues. The hearing officer, for good cause, may grant the parties each one request to change the hearing date and reschedule the hearing for the earliest practical date. To the extent feasible the hearing will be held at a location convenient to the employee.

(4) *Oral hearing procedures.* The hearing officer will:

(i) Makes a summary record of the hearing;

(ii) Decide the order of hearing the evidence;

(iii) Allow the employee and the agency to introduce relevant evidence not previously submitted and call and cross examine witnesses;

(iv) Allow the employee and the agency to be represented by counsel; and

(v) Limit review of the case to the particulars of the agency determination challenged by the debtor.

(g) *Decision of hearing officer.* The hearing officer will issue a written decision no later than 60 days after the request for a hearing [or a paper review] or the request for an extension was filed. The decision will, at a minimum, state the relevant facts, include the hearing officer's analysis, findings and conclusions based on the issues and, if unfavorable to the employee, inform the employee of any other available rights or remedies.

(h) *Offset pending review.* An employee's pay will not be involuntarily withheld to satisfy the debt pending a review or a hearing (but see charges assessed at § 30.14), unless the individual's employment has terminated or is about to terminate. Unless a statute or contract provides otherwise, any amounts collected and later waived or found not owed will be promptly refunded without interest to the employee.

(i) *Deductions.* Unless it has accepted an alternative repayment arrangement, the Pay Systems Division may begin to collect the employee's debt by salary deductions 30 days after the date the notice of the proposed action was mailed to the employee if no review or hearing is pending, or as soon as practical after a hearing officer's decision affirming the debt.

(j) *Interagency Offsets.*—(1) *Employees of other departments or agencies.* In attempting to collect a debt from an employee of another Federal agency by deduction from the debtors' pay, the Secretary will follow the procedures set forth in this section. When those procedures are exhausted, a written request of offset will be submitted to the employing agency using the claim form specified by the Office of Personnel Management (OPM). The request will—

(i) Certify that the debt is valid;

(ii) Certify the amount and basis of the debt;

(iii) Certify the date the Government's right to collect the debt first accrued;

(iv) Certify that this section, which implements 5 U.S.C 5514, has been approved by OPM;

(v) Either—

(A) Certify that the procedures required by this section have been complied with;

(B) Include the employee's written consent to the offset or acknowledgement of receipt of the required procedures; or

(C) If the debt is reduced to judgment, include a copy of the court judgment; and

(vi) Indicate whether collection is to be made in a lump sum or by installments and the number, amount and beginning date of the installments.

(2) *Debts owed by employees to other Federal agencies.* (i) The Pay Systems Division may deduct from an employee's pay a debt owed to another Federal agency in accordance with paragraph (b) of this section. The creditor agency

must submit the properly certified claim form described in paragraph (j)(1) of this section. An incomplete form will be returned to the creditor for further action under 5 U.S.C. 5514 and 5 CFR Part 550. No deductions will be made until a properly completed claim form is received.

(ii) Before initiating deductions, the Pay Systems Division must send the employee a letter:

(A) Transmitting a copy of the creditor agency's request;

(B) Notifying the employee of the proposed action;

(C) Instructing the employee to contact the creditor agency regarding payment or any dispute of the debt, the certification or the proposed collection; and

(D) Informing the employee of the date that deduction will begin (which should be at the next officially established pay interval) and that deductions will continue until the debt is paid unless the creditor agency directs otherwise.

(iii) The creditor agency must resolve any disputes concerning the debt or the offset and promptly inform the Department of any circumstances affecting the collection by offset. The Department may not review the merits of the creditor agency's decisions.

(iv) The Pay Systems Division may temporarily withhold lump sum or final leave payments to an employee who is in the process of separating or to a former employee for no more than 30 days beyond normal processing time periods pending the creditor agency's certification and proof of compliance with 5 U.S.C. 5514(a)(2).

(v) If the employee subject to salary offset is in the process of separating, and is entitled to payment from the Civil Service Retirement and Disability Fund, the Pay Systems Division will send OPM a copy of the creditor agency's original offset request. If the employee transfers to another Federal agency, the Pay Systems Division will certify in writing the total amount collected on the debt and send one copy of the certification to the employee and another to the creditor agency, with notice of the transfer. A copy of the certification, along with the creditor agency's original offset request will be inserted in the employee's official personnel folder.

(vi) When a new Department employee transfers from another Federal agency and the employee's official personnel folder contains a creditor agency's offset request to the former employing agency and the former employing agency's certification of the amount of the debt already collected, the Pay Systems Division will resume collection by offset. If either item is missing, the creditor agency must comply with paragraph (j)(2)(i).

(3) *Limitation.* The Secretary may not initiate salary offset to collect a debt owed to another agency, or request offset from the pay of an employee of another agency to collect a debt owed to this Department, more than ten years after the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the responsible claims collection officer. Accrual is defined in § 30.15(g)(1).

(k) *Non-waiver of employee rights by payment.* Unless a statute or contract provides otherwise, an employee does not waive any rights under 5 U.S.C. 5514 or any other law or contract by paying all or part of a debt by offset or cash payment.

§ 30.17 Use of credit reporting agencies.

(a) *Overdue debts.* (1) The Secretary will report overdue debts over $100 owed by individuals and all debts over $100 owed by business concerns and private non-profit organizations to consumer or commercial credit reporting agencies. Except as provided in paragraph (a)(3), debts which arise under the Social Security Act may be reported under this section.

(2) Debts owed by individuals, except debts arising under the Social Security Act, will be reported to consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Secretary must first give the individual, but not the corporate debtor at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency (including the specific information that will be disclosed); that the debtor may dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address and social security number, and the nature, amount, status and history of the debt.

(3) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, overdue debts of beneficiaries under Titles II and XVI of the Social Security Act will not be reported to credit reporting agencies. All other overdue debts of individuals which arise under the Social Security Act may be reported to credit reporting agencies subject to the conditions stated in paragraph (a)(2), except that such disclosure would be as a routine use under 5 U.S.C. 552a(b)(3), rather 552a(b)(12).

(b) *Credit reports and locator services.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants and potential contractors and grantees; to obtain credit reports when collecting or disposing of debts to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, Social Security number and the purpose for which the information will be used.

(c) Disclosures pertaining to individuals may be made to credit reporting agencies only from the primary systems of records containing information about the debt or the loan, contract or grant application.

(d) Addresses obtained from the Internal Revenue Service may be disclosed to credit reporting agencies only to obtain credit reports (see § 30.21).

§ 30.18 Contracting for collection services.

(a) *Rule.* Except as provided in paragraph (b)(2), the Secretary may contract for collection services to recover outstanding debts. Except as provided in paragraph (b) of this section, the contractor's fee may be paid from the amounts collected, from funds specifically available for that purpose, or from a revolving fund. The amount of the fee must be consistent with prevailing commercial practice. The Secretary may contract for collection services only if reasonable in-house collection efforts and remedies were, or are likely to be, unsuccessful; and the total amount of anticipated recoveries exceeds the total cost of the contract and incidental expenses. The Secretary must retain the authority to resolve disputes, compromise debts, terminate collection action (or recommend such action to the Department of Justice) and refer debts to the Department of Justice for litigation. Contracts for collection services must conform to the standards set forth in the Federal and Departmental Acquisitions Regulations at 48 CFR Chapters 1 and 3. The Secretary may disclose to the contractor the information about debtors necessary to accomplish the purpose of the contract. The contractor must provide any data from its files relating to the account to the Secretary upon request or upon return of the account. The contractor will be subject to the Privacy

Act of 1974, as amended, as specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations regarding debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor will be strictly accountable for all amounts collected.

(b) *Social Security Act Debts.* (1) A contractor's fee for collecting debts arising under the Social Security Act may be paid from any funds available for that purpose, but not from the amounts collected unless those amounts belong to a revolving fund.

(2) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, debts owed by beneficiaries under Titles II and XVI of the Social Security Act will not be referred to private collection agencies for collection.

§ 30.19 Liquidation of collateral.

If the Secretary holds a security instrument with a power of sale or has physical possession of collateral, the Secretary will liquidate the security or collateral when cost-effective and apply the proceeds to an overdue debt. The Secretary will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds; and will comply with any other requirements under law or contract.

§ 30.20 Installment payments.

The Secretary may enter into a written agreement with a debtor for payment of a debt in regular installments if the debtor is financially unable to pay in one lump sum. The debtor must submit sufficient information to determine his or her ability to pay. See §§ 30.15(j) and 30.16(e). The size and frequency of the payments will reasonably relate to the size of the debt and the debtor's present and future ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less, and include a security or confess judgment provision. The full balance, including accrued interest, charges and penalties, will be immediately due and payable if the debtor defaults on any installment made pursuant to a repayment agreement. When a debtor owes several debts and does not designate how an installment payment should be applied as among the various debts, the payment will be applied according to the best interests of the Government.

§ 30.21 Taxpayer information.

(a) The Secretary may enter into reimbursable agreements with the Internal Revenue Service in accordance with IRS Revenue Procedure 83-29, 26 CFR 601.702, to obtain the current mailing addresses of debtors and to find out whether applicants under included Federal loan programs have overdue tax accounts.

(b) "Included Federal loan program" means any program under which the Department makes, guarantees or insures loans and which appears in the current list of included Federal loan programs published by the Director of the Office of Management and Budget in the **Federal Register**. An applicant for a loan under an included Federal loan program administered by the Department must furnish his or her taxpayer identification number, which, for an individual, means the Social Security number.

(c) Tax delinquency information may not be redisclosed or used for any other purpose. Addresses obtained from the Internal Revenue Service may be used by the Department, its officers, employees, agents or contractors and other Federal agencies to collect or dispose of debts, but may be disclosed to consumer reporting agencies only to obtain credit reports, unless otherwise independently verified.

§ 30.22 Army hold-up list.

The Secretary may use the Army hold-up list to report indebted contractors to the Department of the Army for inclusion in the list and to check whether a prospective contractor is indebted to another agency. The reported information will be limited to the contractor's name, address and taxpayer identification number if available, and the amount of the debt. The Secretary will promptly report any partial or full satisfaction or waiver of a reported debt and will screen the hold-up list periodically and request removal of any debt of less than $1,000 that has been on the list for over twelve months.

Subpart C—Compromise of Claims

§ 30.23 Compromise rule.

The Secretary may attempt to dispose of debts, including accrued interest, charges and penalties, by compromise settlement whenever its ability to collect the full amount is uncertain because of the debtor's financial status or the litigation risks or because enforced collection would not be cost-effective. When the outstanding principal amount of the debt exceeds $20,000 and the debtor has exhausted all Departmental administrative remedies, the debt may be compromised only with the approval of the Department of Justice.

§ 30.24 Exceptions.

The Secretary may not compromise debts—

(a) Which arise out of exceptions made by the General Accounting Office in the accounts of accountable officers (only the General Accounting Office has authority to compromise such debts); or

(b) Where there is an indication of fraud, the presentation of a false claim or misrepresentation by the debtor or any other party having an interest in the claim, or where the claim is based on conduct in violation of antitrust laws (Only the Department of Justice has authority to compromise or terminate collection of these claims.)

§ 30.25 Inability to collect the full amount.

(a) The Secretary may compromise a debt if the full amount cannot be collected because the debtor—

(1) Is unable to pay the full amount within a reasonable time; or

(2) Refuses to pay the full amount and the Government is unable to enforce full collection within a reasonable time.

(b) *Ability to pay.* In determining a debtor's ability to pay, the Secretary may consider the age and health of the individual debtor; present and future income and assets; and the possibility of an improper transfer or concealment of assets by the debtor.

(c) *Amount of compromise.* The amount of the compromise will reasonably relate to the amount recoverable by enforced action, considering such factors as State or Federal exemptions available to the debtor, and the price that collateral will bring at a forced sale.

(d) *Installments.* Compromises will be paid in one lump sum whenever possible. Payment by installments may be accepted on a case-by-case basis bearing in mind the conditions specified in § 30.20.

(e) *Credit information.* If reasonably up-to-date credit information to evaluate a compromise proposal is not available the Secretary may obtain credit reports from credit reporting agencies or a statement from the debtor executed under penalty or perjury showing the debtor's assets and liabilities, income and expenses.

§ 30.26 Litigative probabilities.

The Secretary may compromise a debt if the Government's ability to prove its case in court for the full amount claimed is doubtful either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in

compromise in such cases should fairly reflect the probability of prevailing on the issues and the prospects for full or partial recovery of a judgment, paying due regard to the availability of evidence and witnesses, and related pragmatic considerations.

§ 30.27 Cost of collecting claim.

The Secretary may compromise a debt if the cost or deterrence value of collection do not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into account the time which it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small debts, but not normally in the settlement of large debts.

§ 30.28 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised if not prohibited by law and consistent with the agency's enforcement policy.

§ 30.29 Joint and several liability.

When two or more debtors are jointly and severally liable, a compromise with one debtor will not release the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount which will be required from other debtors jointly and severally liable on the debt.

§ 30.30 Further review of compromise offers.

A debtor's firm written offer of compromise for a substantial amount may be referred to the General Accounting Office or to the Department of Justice when the acceptability of the offer is in doubt. (See § 30.37).

§ 30.31 Restriction.

The Secretary may not accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a debt.

Subpart D—Termination or Suspension of Collection Action

§ 30.32 Termination rule.

(a) The Secretary may terminate collection activity and write off a debt, including accrued interest, charges and penalties if the outstanding principal does not exceed $20,000 and:

(1) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's ability to pay (see § 30.25(b)) and the exemptions available to the debtor under State and Federal law;

(2) The debtor canot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote to justify retention of the claim;

(3) The cost of further collection action is likely to exceed the recoverable amount;

(4) The basis for the claim has proved to be unsupportable; or

(5) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable.

(b) As required by section 61(a)(2) of the Internal Revenue Code, income arising from the discharge in whole or in part of a debt is to be included in the debtor's gross income for the year in which the debt is discharged. The Secretary will report to the Internal Revenue Service, using Form 1099G, any amount over $600 which becomes uncollectible because the applicable statute of limitations expires or because the Government agrees with the debtor to forgive or compromise a debt. An amount which is in dispute, which is discharged under Title 11 of the Bankruptcy Act or which arises out of an overpayment which was already taxed, will not be reported. See IRS Instructions for Form 1096 and Revenue Procedures 83–48 for further instructions.

§ 30.33 Exceptions.

(a) The Secretary may suspend, rather than terminate collection of a debt that arises out of its activities if the outstanding principal does not exceed $20,000 and the Government cannot collect or enforce collection of any significant sum from the debtor (*e.g.*, the debtor cannot be located or is financially unable to pay), but the prospects of further collection are promising enough to justify periodic review of the debt, and there is no statute of limitations problem. Interest will accrue under § 30.13(a).

(b) Where a significant enforcement policy is involved, the Secretary will, instead of terminating or suspending collection, refer debts to the Department of Justice for litigation.

Subpart E—Referrals to the Department of Justice or GAO

§ 30.34 Litigation.

(a) Debts over $600 that cannot be collected or othewise disposed of by the Secretary or its agents will be referred to the appropriate United States Attorney (if the amount does not exceed $100,000) or the Civil Division of the Department of Justice (if the amount exceeds $100,000) for litigation. Each referral will include all pertinent information, including:

(1) The most current address of the debtor or the name and address of the agent for a corporation upon whom service may be made;

(2) Reasonably current credit data in the form of a credit report or a financial statement showing reasonable prospects of enforcing collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government; and

(3) A summary of prior collection efforts. Credit data may be omitted if a surety bond, insurance, or the sale of collateral will satisfy the claim in full; or the debtor is in bankruptcy or receivership, or is a unit of State or local government.

(b) Debts of $600 or less, exclusive of interest and charges, may be referred for litigation if a significant enforcement policy is involved or the debtor is clearly able to pay and the Government can effectively enforce payment.

§ 30.35 Claims over $20,000.

The Secretary may compromise or suspend or terminate collection of debts where the outstanding principal exceeds $20,000 only with the approval of, or referral to, the appropriate United States Attorney (if the debt does not exceed $100,000) or the Department of Justice (if the debt exceeds $100,000).

§ 30.36 GAO exceptions.

The Secretary will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 30.37 Other referrals.

Debts over $25, where the merit, the amount or the propriety of a compromise, suspension or termination cannot be resolved by the Secretary will be referred to GAO or to the Department of Justice for advice or final disposition.

[FR Doc. 85–10571 Filed 5–1–85; 8:45 am]
BILLING CODE 4150–04–M

Social Security Administration

45 CFR Part 201

Office of Family Assistance; Grants to States for Public Assistance Programs

AGENCY: Office of Family Assistance, Social Security Administration, Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services proposes to revise its regulation governing grants to States for public assistance programs under the Social Security Act so that it may conform to the proposed amendments to the Department's Claims Collection Regulation, 45 CFR Part 30, published in this same issue of the **Federal Register.** Section 201.66 governs the States' repayment by installments of debts to the Department arising from audit disallowances under Titles I, IV–A, X, XIV, XVI (AABD) or XIX of the Social Security Act. Paragraph (b)(8) of § 201.66 provides that the Department will not charge the States interest on repayments made under this section unless mandated by court order. The Department proposes to remove this provision.

DATE: Comments must be received on or before July 1, 1985.

ADDRESS: Comments may be mailed to Darrel J. Grinstead, Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Sarah Hertz or Clara Garcia, 202–475–0155.

SUPPLEMENTARY INFORMATION: By providing that States will not be charged interest on repayments to the Federal Government under 45 CFR 201.66, paragraph (b)(8) of this section conflicts with the Department's policy regarding interest charges on outstanding debts. This policy is set forth in the proposed amendments to 45 CFR Part 30.

Section 201.66(b)(8) bestows upon the affected debtors a benefit that will not be available to other debtors of this Department. Under the Department's proposed Claims Collection Regulation at 45 CFR Part 30, all debtors will be required to pay interest on debts that are not paid promptly unless a statute provides otherwise, or certain other criteria specified in 45 CFR Part 30.15 are present. A decision not to charge interest on debts that are repaid under 45 CFR 201.66 should be based on the same criteria. A blanket exemption is not justified. Paragraph (b)(8) was not issued pursuant to a statute prohibiting the charging of interest on the covered debts.

Therefore, in the interest of fairness and consistency, we propose to remove Paragraph (b)(8) of 45 CFR 201.66.

E.O. 12291

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 201

Administrative practice and procedure, Claims, Public assistance.

November 15, 1984.

Margaret M. Heckler,

Secretary.

PART 201—[AMENDED]

For the reasons set forth in the preamble, we propose to amend 45 CFR Part 201 as follows:

§ 201.66 [Amended]

In § 201.66, paragraph (b)(8) is removed.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302)

[FR Doc. 85–10572 Filed 5–1–85; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[CC Docket No. 85–117; FCC 85–195]

Elimination of Annual Report of Holding Companies (FCC Form H)

AGENCY: Federal Communications Commissions.

ACTION: Proposed rule.

SUMMARY: The Commission is considering elimination of the Form H, which is the annual report filed by holding companies that do not file copies of the Securities and Exchange Commission Form 10–K. This recordkeeping and reporting requirement is proposed for elimination because it has been tentatively decided that it is no longer needed for the Commission's regulatory purposes. The elimination of this requirement would reduce common carrier recordkeeping and reporting burdens.

DATES: Comments are due on or before June 21, 1985. Reply Comments are due on or before July 12, 1985.

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

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Industry Analysis Division, Common Carrier Bureau, (202) 632–0745.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 1 and 43

Reporting and recordkeeping requirements.

Proposed Rulemaking

In the matter of Elimination of Annual Report of Holding Companies (FCC Form H); CC Docket No. 85–117.

Adopted April 18, 1985.

Released April 25, 1985.

By the Commission.

Introduction

1. Sections 1.785 and 43.21 of the Commission's Rules, 47 CFR 1.785, 43.21, require holding companies of communications common carriers to submit annual reports. In this Notice of Proposed Rulemaking (Notice) the Commission proposes to eliminate from these sections a reporting requirement that is unnecessary and burdensome. Specifically, we propose to eliminate the holding company annual FCC Form H.[1]

2. Companies that are not common carriers and that directly or indirectly control communication common carriers having annual revenues in excess of $2,500,000, are required to file with this Commission two copies of the Form 10–K, which is prescribed by the Securities and Exchange Commission (SEC). However, if no such report is filed with the SEC, such company must file an FCC From H. The Form H is a forty-five page report that contains detailed information on the stock and stockholders; officers and directors; funded debt; property, franchises, and equipment; employees and their salaries; and financial operations of the reporting companies.

Discussion

3. Our primary concern is having sufficient information to fulfill our statutory obligations with respect to the carriers that we regulate. It is only because of our responsibilities regarding these carriers that we require information pertaining to their parent companies. A regulated company's annual report, in conjunction with the regulated company's ultimate parent Form 10–K, provides enough information to satisfy most of our needs. Even if the utlimate parent does not file a Form 10–K with this Commission, we can still require detailed data if the need arises.

4. The Form H reports have only been used on an infrequent and limited basis.

[1] Three companies filed Form H for 1983. They were American Cable and Radio Corporation, FI Holdings, Inc. and U.S. Telephone and Telegraph Corporation. Four other carriers requested and received waivers of the Form H filing requirement. They were Pacific Telcom, Inc., Willamette Development Corporation, Pacom, Inc., and MCI International, Inc.

Waivers of the filing requirement have been granted in the past because we agreed that the report was duplicative of other information of file with this Commission and extremely burdensome to complete. Much of the information is no longer necessary for regulatory purposes and is produced by the holding companies only to meet our reporting requirement. Therefore, we believe this annual multi-level reporting requirement calls for substantially more information than we need to fulfill our regulatory responsibilities.

5. Furthermore, Form H has never had a substantial revision since its inception in the 1930's. If we continue to require this report, it would need a complete updating and revision.

6. Eliminating the Form H does not preclude the Commission from directing holding companies to file detailed information should the need arise. We think that the Commission's continued needs for data can be adequately served in a more efficient manner. When necessary, special data requests can be tailored to specific needs. Since there is no recurring use of this data, special studies will eliminate the need for all companies to submit annually. This will not only reduce the costs to holding companies, it will also reduce the Commission's costs associated with redesigning, printing, mailing, reviewing and analyzing the reports.

Conclusion

7. The Commission believes that the elimination of this recordkeeping and reporting requirement would be in support of the Paperwork Reduction Act of 1980.[2] Under this Act an agency is required to review its Rules and Regulations and determine whether they are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. The Commission, as mentioned above, believes that the recordkeeping and reporting requirement discussed in this Notice is no longer needed for its regulatory purposes. Therefore, an elimination of this requirement would be in compliance with the Peperwork Reduction Act of 1980.

8. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the annual report of holding companies (FCC Form H) will not have a significant economic impact and will ease the recordkeeping and reporting requirements of large and small carriers. The rationale for the proposed elimination is outlined in the above discussions.

9. For purposes of the 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 pubic notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written summary of that presentation on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by Docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

10. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

Ordering Clauses

11. Accordingly, it is ordered, That pursuant to the provisions of section 4(i) and 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 220 and 403 there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

12. It is further ordered, that all interested persons may file comments on the specific proposals discussed in the Notice on or before June 21, 1985. Reply comments shall be filed on or before July 12, 1985. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket reference room: 1919 M Street, NW., Washington, D.C.

13. It is further ordered, that pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i) That the Secretary shall cause a copy of this Notice to be served on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-10596 Filed 5-1-85; 8:45 am]

BILLING CODE 6712-01-M

[2] 44 U.S.C. 3501 *et seq.*

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47 CFR Parts 1 and 43

[CC Docket No. 85-118; FCC 85-194]

Elimination of Monthly Consolidated System Report 901

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is considering elimination of the Consolidated System Report 901, which is the monthly report filed by companies controlling a system of two or more telephone communications common carrier subsidiaries, all of which are subject to the Commission's Rules. This recordkeeping and reporting requirement is proposed for elimination because it has been tentatively decided that it is no longer needed for the Commission's regulatory purposes. The elimination of this requirement would reduce common carrier recordkeeping and reporting burdens.

DATES: Comments are due on or before June 21, 1985. Reply Comments are due on or before July 12, 1985.

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

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Industry Analysis Division, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 1 and 43

Reporting and recordkeeping requirements.

Proposed Rulemaking

In the matter of Elimination of Monthly Consolidated System Report 901; CC Docket No. 85-118.

Adopted April 18, 1985.
Released April 25, 1985.

By the Commission.

Introduction

1. Sections 1.786 and 43.31 of the Commission's Rules, 47 CFR 1.786, 43.31, require holding companies of communications common carriers to submit monthly reports. In this Notice of Proposed Rulemaking (Notice) the Commission proposes to eliminate from these sections a reporting requirement that is no longer necessary. Specifically, we propose to eliminate the telephone company monthly consolidated system Report 901.[1]

2. Companies controlling a system of two or more telephone communications common carrier subsidiaries are required to file FCC Report 901 on a consolidated system basis if all of the subsidiaries are subject to the Commission's Rules. Report 901 is submitted monthly on computer punch cards and contains summary information on operating revenues, expenses, taxes, other operating and income items, messages, and selected balance sheet items.

Discussion

3. Section 43.31 requires holding companies controlling two or more telephone companies, both or all of which are subject to our Rules, to file FCC Report 901 on consolidated system basis. Prior to divestiture, the Commission received only one consolidated Report 901—from American Telephone and Telegraph Company (AT&T). It served as a valuable summary of the Bell System since AT&T eliminated intercompany duplications between itself and its principal subsidiaries.

4. The consolidated system 901 reports have not been of significant value to the Commission since the break-up of the Bell System. At that time, we stopped receiving a consolidated Bell System 901 and began receiving reports from six of the seven regional holding companies. For the most part, the consolidated system 901 reports that are currently filed are nothing more than a summation of the 901 reports filed by the holding companies' respective telephone companies. Eliminating this filing requirement would not cost this Commission any information loss since we could generate it ourselves if and when it becomes necessary. It would also save the Commission the costs associated with receiving the data, installing it on the Commission's computer, printing, reviewing, and mailing the computer generated reports back to the carriers.

Conclusion

5. The Commission believes that the elimination of this recordkeeping and reporting requirement would be in support of the Paperwork Reduction Act of 1980.[2] Under this Act an agency is required to review its Rules and Regulations and determine whether they are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. The Commission, as mentioned above, believes that the recordkeeping and reporting requirement discussed in this Notice is no longer needed for its regulatory purposes. Therefore, an elimination of this requirement would be in compliance with the Paperwork Reduction Act of 1980.

6. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the monthly consolidated system Report 901 will not have a significant economic impact and will ease the recordkeeping and reporting requirements of all subject carriers. The rationale for the proposed elimination is outlined in the above discussions.

7. For purposes of the non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written summary of that presentation on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by Docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

8. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

Ordering Clauses

9. Accordingly, it is ordered, that pursuant to the provisions of section 4(i) and 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 220, and 403 there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

10. It is further ordered, that all interested persons may file comments on the specific proposals discussed in the Notice on or before June 21, 1985. Reply comments shall be filed on or before July 12, 1985. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket reference room; 1919 M Street, NW., Washington, D.C.

11. It is further ordered, that pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i) that the Secretary shall cause a copy of this Notice to be served on each state commission.

[1] Six regional Bell Holding Companies file monthly consolidated system Report 901s. Other telephone companies that file FCC Report 901 on a monthly basis do not file a consolidated report. In some cases, like Southwestern Bell, the requirement does not apply because they control only one common carrier and in other cases, like GTE, not all of their subsidiaries are subject to FCC Rules.

[2] 44 U.S.C. 3501 *et seq.*

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 85-10595 Filed 5-1-85; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Notice No. 5-67]

Source Selection

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) Chapter 5, that will establish procedures and provide guidelines for source selection in competitively negotiated acquisitions. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

DATES: Comments are due in writing not later than June 3, 1985.

ADDRESS: Requests for a copy of the proposal and your comments should be addressed to Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Sts., NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Office of GSA Acquisition Policy and Regulations, (202) 523-4916.

SUPPLEMENTARY INFORMATION:

Impact

The proposed rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed regulation provides procedures and guidelines for use by GSA contracting officers in the evaluation of proposals. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subject in 48 CFR Ch. 5

Government procedure.

(40 U.S.C. 486(c))

Dated: April 10, 1985.
Ida M. Ustad,
Acting Director, Office of GSA Acquisition, Policy and Regulations.
[FR Doc. 85-10717 Filed 5-1-85; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Ch. V

[NHISA Docket No. T84-01; Notice No. 3]

Theft Data; Motor Vehicle Theft Prevention Standard

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

ACTION: Request for comments.

SUMMARY: This notice publishes, for review and comment, data on passenger motor vehicle thefts that the agency has obtained from the National Crime Information Center (NCIC) and the National Automobile Theft Bureau (NATB). One of these sources of data will be used for the purpose of determining the theft rates for existing passenger motor vehicle lines manufactured in 1983 and 1984 and for determining the median theft rate for all of those lines. Lines with a theft rate in those two years that exceed the median rate would be subject to selection for coverage under the theft prevention standard. The agency contemplates using the NCIC data to make these determinations.

DATE: Comments are due on or before June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Director, Office of Market Incentives, Room 5313, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

(a) Background

This notice publishes theft data to aid in implementing Title VI of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). That title was added to the Cost Savings Act by the Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547) (Theft Enforcement Act). Title VI requires the National Highway Traffic Safety Administration (NHTSA), by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard for the identification of major parts of new vehicles and of major replacement parts by inscribing or affixing numbers or symbols to such parts. Section 602 of the Cost Savings Act requires that manufacturers mark parts on "high theft lines" only.

The theft data would be used by the agency in identifying one category of high theft lines subject to the standard. That category includes those existing lines, i.e., lines introduced before January 1, 1983, that had a theft rate in the 1983 and 1984 calendar years exceeding the median theft rate for all new passenger motor vehicle thefts in such 2 year period. Section 603(a)(1)(A). To determine the median theft rate and the theft rate for each existing passenger motor vehicle line, section 603(b)(3) requires the NHTSA to "obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment." (Other categories of high theft lines will be selected under criteria and procedures to be established in separate rulemaking proceedings.)

The agency also plans to use these data in its 3- and 5-year reports to Congress, required by section 614, on the effectiveness of the standard in preventing motor vehicle theft.

(b) Sources of Theft Data

The theft data published in this notice were obtained from the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI) and from the National Automobile Theft Bureau (NATB). These data are published in tables 1 and 2, respectively. These sources were selected by the agency because they are, as the House Report relating to Title VI notes, the two national, comprehensive sources of theft data. H. Rep. No. 1087, 98th Cong., 2d Sess. at 14 (1984) (hereinafter cited as H. Rep.). This conclusion was further supported by comments made at the December 1984 Public Meeting held by the agency on Title VI.

There are several differences between the NCIC and NATB systems that bear upon the agency's selection of the source to be used for implementing the standard. The NCIC system is a government system which receives vehicle theft information from nearly 23,000 police agencies throughout the United States. Reporting to the NCIC is at the discretion of these state and local enforcement agencies. The NATB system, conversely, is operated by a private agency supported by approximately 600 property-casualty insurance companies. Most of its data are obtained from the individual insurance companies, although two states presently report thefts to the NATB. NATB data reflect stolen,

insured vehicles that are not recovered within the first 48 hours from the time of the vehicle theft report.

NHTSA has tentatively chosen to use the NCIC data to determine the median theft rate and the theft rates of individual passenger car lines, for reasons, set forth below. The agency solicits comments on this decision.

In selecting the NCIC data, the agency took into consideration the expressed Congressional preference for use of government data for the purposes of Title VI, H. Rep. at 15. The agency also based its selection on two advantages which the NCIC system has over the NATB system. The NCIC system includes self-insured and uninsured vehicles and does not have the 48 hour recording delay of the NAIB.

The agency notes that in the House Report relating to Title VI, Congress as well as some private parties had questions concerning the utility, at least initially, of the NCIC data. Public comments, particularly the discussion at the public meeting and with NCIC officials, have led the agency to tentatively conclude that it can successfully implement and monitor the theft prevention standard using NCIC data.

(c) Selection of Vehicle Lines

In preparing the figures in this notice for the theft rates for the various lines, NHTSA tentatively concluded that it should classify as a single "line," for the purposes of the theft prevention standard, all differently styled vehicles bearing the same nameplate. Several factors support this decision. First, section 601(2) of the Cost Savings Act defines "line" as "a *name* which a manufacturer applies to a group of motor vehicle models of the same make . . ." (emphasis added). Second, section 603(b)(1) directs the agency to use figures reported to the Environmental Protection Agency (EPA) to determine production volumes. These data are not broken down beyond the nameplate level. Third, the examples of car lines provided in the House Report identify lines by nameplate. H. Rep. at 10. The agency solicits comments on this tentative decision regarding classification.

The agency identified most of the vehicle lines by using the model type designations compiled by EPA in its final Fuel Economy Guide listings under Title V of the Cost Savings Act. Because small volume manufacturers sometimes introduce vehicle lines late in the calendar year and therefore are not included by EPA in its final Fuel Economy Guide listings, NHTSA added models produced by manufacturers and certified by EPA for sale after publication of the final Guide to the list of lines taken by this agency from the Guide.

Because the definition of "existing lines" in section 601(3) includes only lines introduced into commerce before January 1, 1983, the agency examined sales data and requested manufacturers to provide introduction dates to determine which lines first manufactured in model year 1983 were actually introduced prior to January 1, 1983. The agency requests comments on the accuracy of these determinations.

Reading together sections 601(3) and 603(b)(5), regarding the definition of "new motor vehicle thefts," the agency has determined that Congress intended the agency to calculate theft rates only for those existing lines for which there are two full years of theft data. The list in this notice is comprised of vehicles manufactured in both model years 1983 and 1984, with one exception. It also includes the Chevrolet Corvette even though that vehicle was not produced as a model 1983 vehicle. Notwithstanding the interruption in the sequence of model year designations, the agency believes that inclusion of this line is appropriate since production of the Corvette continued throughout that period.

(d) Calculation of Theft Rates

Section 603(b)(1) of the Cost Savings Act sets forth the equation for calculation of vehicle theft rates. The theft rate for each existing vehicle line is determined by a fraction, whose numerator is the number of thefts of model years 1983 and 1984 vehicles of that line during calendar years 1983 and 1984, and whose denominator is the sum of the production volumes for that line in model years 1983 and 1984.

NHTSA applied this formula to each existing line to tentatively determine each line's theft rate. The agency then ranked the lines by such theft rates to calculate the median theft rate, which section 603(b)(2) defines as the theft rate midway between the highest and lowest theft rates. NHTSA understands Congress' intent to be that the median theft rate be the one that divides the existing lines into two equal groups. Since there are 130 existing lines, 65 lines would fall above the median rate and 65 below that rate. Lines with theft rates exceeding the median rate are "high theft lines" under section 603(a)(1)(A). The agency will select these lines for coverage under the theft prevention standard unless the section 603(a)(3) limitation applies. That section provides that the total number of existing lines and of new lines introduced on or after January 1, 1983 and before the effective date of the standard may not exceed 14.

NATB provided theft data by make and model for 1983 and 1984 model and calendar years. To categorize the NCIC theft data by make and model, NHTSA used the Highway Loss Data Institute's VINDICATOR computer program. This step was necessary because, although the NCIC maintains a listing of stolen vehicle VINs, it does not at this time comprehensively classify these VINs by make and model. Further, NHTSA determined the number of thefts for small volume manufacturers that are not included in the VINDICATOR program by obtaining VIN listings from these manufacturers and comparing them through a computer program with the NCIC list of stolen vehicle VINs.

As mandated by section 603(b)(1), the agency used vehicle production numbers that manufacturers submit to EPA for fuel economy purposes under Title V of the Cost Savings Act. In some instances, final, certified EPA production numbers are not yet available. In such cases, the agency obtained production figures through individual manufacturers, where possible, and through production estimates from mid-model year manufacturers' fuel economy reports. The agency believes the latter figures are accurate because the reports are filed very near to the end of the normal model year. The agency requests comments on the accuracy of these figures. The tables express the theft rates in the form of thefts-per-thousand vehicles for better clarity.

(e) Theft Rankings

The agency has tentatively ranked all existing vehicle lines in descending order by theft rate. Using NCIC data, the agency derived theft rates for all existing lines. Because NATB categorizes "lines" differently than NCIC and EPA and because NATB does not have information for many small volume manufacturers, NHTSA could not calculate theft rates for some lines using NATB data. The accompanying tables indicate this inability to calculate a theft rate by the designation "N/A" in the theft rate column for the particular line.

The agency solicits comments on the accuracy of the data and the methodology it used in determining the ranking of existing passenger motor vehicle lines.

Authority: Sec. 101, Pub. L. 98-547, 98 Stat. 2754 (15 U.S.C. 2021); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on April 29, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

TABLE I.—F.B.I.

	Manufacturer	Make model (line)	Thefts (FBI)		Production (manufacturers)		Combined thefts/ product (1983 and 1984) (1000)
			1983	1984	1983	1984	
1	General Motors	Buick Riviera	726	966	48908	56094	16.1146
2	Toyota	Celica Supra	404	431	26147	29990	14.8743
3	General Motors	Cadillac Eldorado	952	986	66601	76656	13.5281
4	General Motors	Chevrolet Corvette	(*)	656	(*)	49510	13.2498
5	General Motors	Pontiac Firebird	706	1573	66939	117033	12.3878
6	General Motors	Chevrolet Camaro	1453	3068	143614	244192	11.6579
7	Mazda	RX-7	605	576	60743	41306	11.5729
8	Porsche	911	62	51	5070	5316	10.6800
9	General Motors	Oldsmobile Toronado	380	514	38499	46462	10.5225
10	General Motors	Pontiac Grand Prix	785	914	85693	77313	10.4229
11	General Motors	Buick Electra	618	662	79021	50413	9.8892
12	General Motors	Chevrolet Monte Carlo	742	1433	91336	131016	9.7818
13	General Motors	Buick Regal	1829	2411	220363	216864	9.6975
14	Ford Motor Co	Lincoln-Mercury Town Car	585	777	51662	89901	9.6212
15	General Motors	Cadillac Deville/Brougham (RWD)	1510	1533	170338	154833	9.3582
16	General Motors	Oldsmobile Cutlass Supreme/Cruiser (RWD)	2240	3697	294245	344330	9.2973
17	General Motors	Cadillac Seville	295	328	29753	39080	9.0509
18	Ford Motor Co	Lincoln-Mercury Mark	116	404	30104	32460	8.3115
19	General Motors	Oldsmobile 98	779	655	113290	70351	7.8087
20	Mitsubishi	Starion	40	48	6287	5557	7.4237
21	Nissan	280ZX/300ZX	539	421	55832	75374	7.3167
22	Toyota	Celica ST/GT/GTS	621	697	119131	91156	6.2676
23	Ford Motor Co	Ford Mustang	582	870	109377	129586	6.0763
24	General Motors	Cadillac Limousine	5	7	940	1047	6.0390
25	Mercedes-Benz	380SL	50	55	8763	8751	5.9952
26	Ford Motor Co	Lincoln-Mercury Capri	105	123	21832	16825	5.89608
27	Toyota	Corolla/Corolla Sport	1059	758	138494	178058	5.7400
28	Toyota	Cressida	177	233	39015	36425	5.4347
29	Audi	Quattro	3	0	522	36	5.3763
30	BMW	3-Series	197	285	25505	66506	5.2385
31	BMW	6-Series	17	13	2635	3119	5.2138
32	Mazda	GLC	153	372	50151	53509	5.0646
33	BMW	5-Series	63	100	16233	16667	4.9544
34	BMW	7-Series	31	45	5541	9968	4.9004
35	General Motors	Oldsmobile Delta 88—Custom Cruiser—	880	1467	209456	278033	4.8145
36	Jaguar	XJ	42	51	6452	12865	4.8144
37	Jaguar	XJ-S	9	11	1344	2812	4.8123
38	Volkswagen	Rabbit	214	607	77523	96381	4.7210
39	Porsche	928	10	13	2052	2850	4.6824
40	Ford Motor Co	Ford Thunderbird	287	936	113834	162124	4.4318
41	Ferrari	Mondial 8	0	1	113	113	4.4248
42	General Motors	Cadillac Cimarron	63	94	19070	21767	4.3349
43	General Motors	Chevrolet Impala/Caprice	817	1236	213224	262084	4.3193
44	General Motors	Buick LeSabre	536	767	139164	163928	4.2990
45	Mercedes-Benz	380SEC/500SEC	7	8	1910	1625	4.2433
46	Chrysler Corp	Chrysler Fifth Avenue/Newport	374	303	83525	79652	4.1489
47	General Motors	Pontiac 6000	167	617	68456	122196	4.1122
48	Saab	900	89	141	23273	33011	4.0864
49	Toyota	Starlet	18	18	7634	1213	4.0692
50	Mazda	626	138	361	47406	75267	4.0671
51	Maserati	Quattroporte	0	1	52	200	3.9683
52	Mitsubishi	Cordia	38	63	12250	13239	3.9625
53	Mitsubishi	Tredia	40	71	14378	14000	3.9115
54	Ford Motor Co	Lincoln-Mercury Cougar	172	584	69979	124576	3.8858
55	General Motors	Pontiac Bonneville	257	339	80852	72791	3.8842
56	Chrysler Corp	Dodge Aries	377	512	113182	121101	3.7946
57	Nissan	810/Maxima	181	330	83284	76293	3.6611
58	Chrysler Corp	Dodge Diplomat	95	24	11402	22174	3.5442
59	Ford Motor Co	Lincoln-Mercury Continental	68	96	16485	29826	3.5413
60	Volkswagen	Scirocco	9	76	6263	18261	3.4660
61	Chrysler Corp	Chrysler Lebaron/Town & Country	202	368	70364	10137	3.3190
62	Audi	5000	113	135	16502	59361	3.2691
63	Alfa Romeo	GTV6	3	3	836	1022	3.2293
64	AMC/Renault	Alliance/Encore	214	798	126742	186887	3.2267
65	Mercedes-Benz	380SEL/500SEL	21	7	5213	3618	3.1706
66	Bertone	X-1/9	0	5	1064	521	3.1546
67	Chrysler Corp	Chrysler Executive Sedan/Limousine	1	2	167	789	3.1381
68	Porsche	944	37	50	12309	15536	3.1242
69	Chrysler Corp	Plymouth Reliant	359	575	145916	153101	3.1236
70	General Motors	Chevrolet Chevette	428	678	150775	212311	3.0481
71	Ford Motor Co	Ford LTD	386	632	144676	192606	3.0182
72	Mercedes-Benz	300SD/380SE	60	59	19173	20703	2.9840
73	General Motors	Buick Century	289	655	116116	205298	2.9189
74	Chrysler Corp	Chrysler E-Class/New Yorker	196	261	73168	92822	2.8737
75	Chrysler Corp	Dodge Charger	94	178	41500	54279	2.8398
76	Ford Motor Co	Ford EXP	49	69	19243	22640	2.8174
77	Chrysler Corp	Dodge 600/400	148	193	59511	61776	2.7950
78	General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	395	772	157544	260831	2.7884
79	Chrysler Corp	Dodge Omni	61	246	42620	68071	2.7735
80	Alfa Romeo	Spider Veloce 2000	3	8	1307	2691	2.7514

TABLE I.—F.B.I.—Continued

	Manufacturer	Make model (line)	Thefts (FBI)		Production (manufacturers)		Combined thefts/product (1983 and 1984) (1000)
			1983	1984	1983	1984	
81	Chrysler Corp	Plymouth Turismo	70	145	32118	49747	2.6263
82	Volkswagen	Jetta	8	104	9757	34308	2.5417
83	Toyota	Tercel	327	345	152820	117114	2.4895
84	Chrysler Corp	Plymouth Horizon	60	248	46476	78581	2.4629
85	Chrysler Corp	Plymouth Gran Fury	29	25	7458	14524	2.4566
86	Chrysler Corp	Dodge Colt/Colt Vista	84	94	31536	40963	2.4552
87	Nissan	Pulsar	116	128	64509	36546	2.4343
88	Nissan	Sentra	480	568	230240	202624	2.4211
89	General Motors	Pontiac 2000/Sunbird	134	383	66126	148172	2.4125
90	Isuzu	I-Mark	20	11	8072	4840	2.4009
91	Nissan	200 SX	98	122	27573	68331	2.2940
92	Ford Motor Co	Lincoln-Mercury Lynx	160	157	74981	64520	2.2724
93	Ford Motor Co	Ford Escort	527	915	289008	348010	2.2637
94	Ferrari	308	1	1	513	378	2.2447
95	Volkswagen	Quantum	16	39	9542	15637	2.1844
96	General Motors	Pontiac T1000/1000	40	92	24952	35684	2.1769
97	General Motors	Chevrolet Celebrity	213	751	139829	308616	2.1497
98	Chrysler Corp	Plymouth Colt/Colt Vista	43	93	27466	36322	2.1321
99	Audi	4000/Coupe	19	54	8350	26616	2.0877
100	Mercedes-Benz	240D/300D/300CD/300TD	66	53	36012	21552	2.0673
101	Subaru	Subaru	148	247	92030	101200	2.0442
102	Avanti	Avanti II	0	1	233	270	1.9881
103	Honda	Prelude	46	139	38388	57614	1.9270
104	Ford Motor Co	Lincoln-Mercury Marquis	149	154	59699	97577	1.9265
105	General Motors	Buick Skyhawk	103	258	59551	13056	1.8455
106	General Motors	Buick Skylark	142	214	95995	99857	1.8177
107	Ford Motor Co	Ford LTD Crown Victoria	166	257	92877	143969	1.7860
108	Volvo	760 GLE	14	26	8992	13427	1.7842
109	General Motors	Chevrolet Cavalier	234	874	202548	433989	1.7407
110	General Motors	Oldsmobile Omega	78	73	47277	42316	1.6854
111	General Motors	Chevrolet Citation	136	163	86409	93161	1.6651
112	General Motors	Oldsmobile Firenza	51	130	36943	73054	1.6455
113	Nissan	Stanza	86	84	62159	44860	1.5885
114	Honda	Accord	310	441	221192	260717	1.5584
115	Peugeot	504/505	24	22	11580	18846	1.5119
116	General Motors	Pontiac Phoenix	31	23	21869	15499	1.4451
117	Honda	Civic	205	227	142164	164639	1.4061
118	AMC/Renault	Fuego	30	8	18581	8510	1.4027
119	Volvo	DL/GL	101	134	74571	93239	1.4004
120	Ford Motor Co	Lincoln-Mercury Grand Marquis	109	213	90933	139473	1.3975
121	Pininfarina	Spider 2000	1	2	1073	1093	1.3850
122	AMC/Renault	18i/Sportwagon	9	0	6133	2833	1.0038
123	Rolls-Royce/Bentley	Corniche	0	0	191	220	0.0000
124	Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	0	245	850	0.0000
125	Rolls-Royce/Bentley	Camargue	0	0	11	10	0.0000
126	Peugeot	604	0	0	217	417	0.0000
127	Bitter GMBH	Bitter	0	0	28	64	0.0000
128	Aurora	GRX Aurora	0	0	41	38	0.0000
129	Aston Martin	Saloon/Vantage/Volante	0	0	9	20	0.0000
130	Zimmer	Classic/Elegante/Cabriolet	0	0	(2)	(2)	0.0000

[1] Corvette was manufactured and offered for sale during calendar year 1983 as either a model year 1982 or model year 1984 vehicle. See Notice.
[2] Zimmer production numbers are not available at time of publication.

TABLE II.—N.A.T.B.

	Manufacturer	Make model (line)	Thefts (NATB)		Production (manufacturers)		Combined thefts/product (1983 and 1984) (1000)
			1983	1984	1983	1984	
1	Audi	Quattro	2	12	522	33	25.0896
2	General Motors	Buick Riviera	457	460	48908	56094	8.7332
3	General Motors	Chevrolet Corvette (1984 only)	(1)	413	(1)	49510	8.3417
4	General Motors	Cadillac Eldorado	639	523	66601	76656	8.1113
5	Porsche	911	43	33	5070	5316	7.3175
6	Mazda	RX-7	395	302	60743	41306	6.8301
7	General Motors	Pontiac Firebird	368	705	66939	117033	5.8324
8	General Motors	Cadillac Seville	214	187	29753	39080	5.8257
9	General Motors	Cadillac Deville/Broughan (RWD)	896	912	170338	154833	5.5602
10	General Motors	Oldsmobile Toronado	248	216	38499	46462	5.4613
11	Toyota	Celica ST/GT/GTS	556	560	119131	91156	5.3070
12	General Motors	Buick Electra	397	282	79021	50413	5.2459
13	General Motors	Chevrolet Camaro	823	1211	143614	244192	5.2449
14	General Motors	Pontiac Grand Prix	434	399	85693	77313	5.1102
15	General Motors	Chevrolet Monte Carlo	393	664	91336	131016	4.7537
16	General Motors	Oldsmobile Cutlass Supreme/Cruiser (RWD)	1248	1729	294245	344330	4.6619
17	Mitsubishi	Starion	31	21	6297	5557	4.3867
18	General Motors	Oldsmobile 98	476	303	113290	70351	4.2420
19	Nissan	280ZX/300ZX	331	215	55832	75374	4.1614
20	General Motors	Buick Regal	753	1035	220363	216864	4.0894
21	Toyota	Cressida	144	162	39015	36426	4.0561

TABLE II.—N.A.T.B.—Continued

	Manufacturer	Make model (line)	Thefts (NATB)		Production (manufacturers)		Combined thefts/product (1983 and 1984) (1000)
			1983	1984	1983	1984	
22	BMW	3-Series	166	184	25505	56506	3.8039
23	BMW	7-Series	27	27	5541	9968	3.4618
24	Alfa Romeo	Spider Veloce 2000	6	7	1307	2691	3.2516
25	Saab	900	86	94	23273	33011	3.1981
26	General Motors	Cadillac Cimarron	54	46	19070	21767	2.4488
27	BMW	6-Series	6	6	2635	3119	2.4331
28	General Motors	Oldsmobile Delta 88—Custom Cruiser—	496	596	209456	278033	2.2401
29	BMW	5-Series	43	30	15233	16667	2.2188
30	Nissan	510/Maxima	139	165	63284	76293	2.1760
31	Volkswagen	Rabbit	131	247	77523	96381	2.1736
32	General Motors	Buick Lesabre	290	344	139164	163928	2.0918
33	Ford Motor Co	Ford Mustang	243	251	109377	129586	2.0673
34	Chrysler Corp	Chrysler E-Class/New Yorker	270	72	73168	92822	2.0604
35	Audi	5000	78	78	16502	59361	2.0300
36	General Motors	Chevrolet Impala/Caprice	456	506	213224	262084	2.0240
37	Porsche	944	29	27	12309	15538	2.0110
38	Ford Motor Co	Lincoln-Mercury Mark	60	61	30104	32460	1.9340
39	Volkswagen	Scirocco	6	41	6263	18261	1.9165
40	Ford Motor Co	Lincoln-Mercury Capri	44	30	21832	16825	1.9143
41	Mitsubishi	Cordia	27	21	12250	13239	1.8832
42	Toyota	Starlet	11	5	7634	1213	1.8085
43	Ford Motor Co	Lincoln-Mercury Continental	36	42	16485	29826	1.6843
44	Toyota	Corolla/Corolla Sport	302	230	136494	176059	1.6606
45	Jaguar	XJ	31	0	6452	12865	1.6048
46	General Motors	Pontiac Bonneville	121	105	80652	72791	1.4729
47	Jaguar	XJ-S	6	0	1344	2812	1.4437
48	Mazda	626	46	131	47406	75267	1.4426
49	General Motors	Pontiac 6000	66	204	68456	122196	1.4162
50	Ford Motor Co	Lincoln-Mercury Town Car	79	101	51662	89901	1.2715
51	Ford Motor Co	Ford Exp	23	30	19243	22540	1.2654
52	Peugeot	504/505	21	16	11580	18846	1.2161
53	Volkswagen	Jetta	7	45	9757	34308	1.1801
54	Subaru	Subaru	86	137	92030	101200	1.1541
55	Chrysler Corp	Dodge Charger	46	63	41500	54279	1.1380
56	Ford Motor Co	Lincoln-Mercury Cougar	55	157	69979	124576	1.0897
57	Chrysler Corp	Plymounth Horizon	28	105	46476	78581	1.0635
58	Nissan	Pulsar	55	51	64509	38546	1.0489
59	Chrysler Corp	Dodge Diplomat	27	8	11402	22174	1.0424
60	Chrysler Corp	Dodge 600/400	55	70	59511	61776	1.0308
61	Chrysler Corp	Dodge Colt/Colt Vista	31	41	31536	40963	0.9931
62	General Motors	Chevrolet Chevette	148	210	150775	212311	0.9860
63	Ford Motor Co	Ford Thunderbird	105	163	113834	162124	0.9712
64	Volkswagen	Quantum	7	17	9542	15637	0.9532
65	Nissan	200 SX	51	39	27573	68331	0.9384
66	Chrysler Corp	Chrysler Lebaron/Town & Country	80	80	70364	101377	0.9316
67	Mazda	GLC	45	51	50151	53509	0.9261
68	General Motors	Pontiac T1000/1000	23	33	24952	35684	0.9235
69	AMC/Renault	Fuego	19	8	18581	8510	0.9228
70	Chrysler Corp	Plymouth Colt/Colt Vista	12	46	27466	36322	0.9093
71	General Motors	Buick Century	99	194	118116	205298	0.9060
72	Ford Motor Co	Lincoln-Mercury Lynx	74	45	74981	64520	0.8530
73	Honda	Accord	211	195	221192	260717	0.8425
74	Ford Motor Co	Ford Escort	190	341	289008	348010	0.8336
75	Audi	4000/Coupe	12	17	8350	26616	0.8294
76	Chrysler Corp	Dodge Aries	90	101	113182	121101	0.8153
77	Porsche	928	4	0	2062	2850	0.8143
78	Nissan	Sentra	162	186	230240	202624	0.8039
79	AMC/Renault	Alliance/Encore	78	165	126742	186887	0.7748
80	General Motors	Pontiac 2000/Sunbird	40	123	66126	148172	0.7606
81	Nissan	Stanza	42	39	62159	44860	0.7569
82	Chrysler Corp	Chrysler Fifth Avenue/Newport	0	123	63525	79652	0.7538
83	Honda	Prelude	16	53	38388	57614	0.7187
84	Toyota	Tercel	120	72	152820	117114	0.7113
85	General Motors	Oldsmobile Firenza	20	58	36943	73054	0.7091
86	Chrysler Corp	Dodge Omni	25	52	42620	68071	0.6956
87	Volvo	760 GLE	0	15	8992	13427	0.6691
88	General Motors	Pontiac Phoenix	12	12	21859	15499	0.6423
89	Chrysler Corp	Plymouth Reliant	88	102	145916	153101	0.6354
90	Ford Motor Co	Lincoln-Mercury Grand Marquis	49	92	90933	139473	0.6120
91	General Motors	Chevrolet Celebrity	75	198	139829	306616	0.6068
92	General Motors	Buick Skyhawk	50	69	59551	136056	0.6064
93	General Motors	Buick Skylark	44	74	95995	99857	0.6025
94	Ford Motor Co	Ford LTD	108	90	144676	192608	0.5870
95	Ford Motor Co	Lincoln-Mercury Marquis	39	52	59699	97577	0.5786
96	AMC/Renault	18i/Sportwagon	5	0	6133	2833	0.5577
97	General Motors	Chevrolet Cavalier	109	243	202548	433989	0.5530
98	Ford Motor Co	Ford LTD Crown Victoria	56	74	92877	143969	0.5489
99	General Motors	Oldsmobile Omega	24	25	47277	42316	0.5469
100	Honda	Civic	91	70	142184	164639	0.5248
101	General Motors	Chevrolet Citation	46	47	86409	93161	0.5179
102	Chrysler Corp	Plymouth Turismo	38	0	32118	49747	0.4642
103	Mitsubishi	Tredia	NA	12	14378	14000	0.4229
104	Volvo	DL/GL	0	41	74571	93239	0.2443
105	Chrysler Corp	Plymouth Gran Fury	0	2	7458	14524	0.0810
106	Toyota	Celica Supra	NA	NA	26147	29990	0.0000
107	Rolls-Royce/Bentley	Camargue	0	0	11	10	

TABLE II.—N.A.T.B.—Continued

	Manufacturer	Make model (line)	Thefts (NATB) 1983	Thefts (NATB) 1984	Production (manufacturers) 1983	Production (manufacturers) 1984	Combined thefts/product (1983 and 1984) (1000)
108	Rolls-Royce/Bentley	Corniche	0	0	191	220	0.0000
109	Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	0	245	850	0.0000
110	Pininfarina	Spider 2000	NA	0	1073	1093	0.0000
111	Peugeot	604	0	0	217	417	0.0000
112	Mercedes-Benz	240D/300D/300CD/300TD	NA	NA	36012	21552	0.0000
113	Mercedes-Benz	300SD/380SE	NA	NA	19173	20703	0.0000
114	Mercedes-Benz	380SL	NA	NA	8763	8751	0.0000
115	Mercedes-Benz	380SEL/500SEL	NA	NA	5213	3618	0.0000
116	Mercedes-Benz	380SEC/500SEC	NA	NA	1910	1625	0.0000
117	Maserati	Quattroporte	NA	NA	52	200	0.0000
118	Isuzu	I-Mark	0	0	8072	4840	0.0000
119	General Motors	Cadillac Limousine	NA	NA	940	1047	0.0000
120	General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	NA	NA	157544	260831	0.0000
121	Ferrari	308	0	0	513	378	0.0000
122	Ferrari	Mondial 8	0	0	113	113	0.0000
123	Chrysler Corp	Executive Sedan/Limousine	NA	NA	167	789	0.0000
124	Bitter GMBH	Bitter	NA	NA	28	64	0.0000
125	Bertone	X-1/9	NA	NA	1064	521	0.0000
126	Avanti	Avanti II	NA	NA	233	270	0.0000
127	Aurora	GRX Aurora	NA	NA	41	38	0.0000
128	Aston Martin	Saloon/Vantage/Volante	NA	NA	9	20	0.0000
129	Alfa Romeo	GTV6	0	0	836	1022	0.0000
130	Zimmer	Classic/Elegante/Cabriolet	0	0	(2)	(2)	0.0000

[1] Corvette was manufactured and offered for sale during calendar year 1983 as either a model year 1982 or model year 1984 vehicle. See Notice.
[2] Zimmer production numbers are not available at time publication.

[FR Doc. 85-10654 Filed 5-1-85; 4:27 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50447-5047]

Regulations Governing the Taking and Importing of Marine Mammals

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

ACTION: Proposed rule and request for comment.

SUMMARY: NOAA proposes a rule to amend the marine mammal regulations pertaining to U.S. vessels using purse seine gear to fish for tuna associated with porpoise in the eastern tropical Pacific Ocean (ETP) with a certificate of inclusion under the General Permit of the American Tunaboat Association. Under this proposal, several regulations concerning required fishing gear and fishing practices will be modified or deleted in recognition that they are excessively restrictive or have become unnecessary. The changes will complement the rules (see 49 FR 46908) implementing the 1984 Marine Mammal Protection Act (MMPA) amendments, which extended the General Permit and porpoise mortality quotas and established mortality quotas for eastern spinner and coastal spotted dolphin. The proposed amendments will provide flexibility for vessel operators to use porpoise saving gear and techniques most effectively while continuing to purse seine for tuna in association with porpoise.

DATES: Comments on the proposed rule must be postmarked on or before July 1, 1985. Request for a formal, on the record, public hearing on the matter (See Supplementary Information) must be sent by certified mail and postmarked on or before June 3, 1985.

ADDRESS: Comments and request for a hearing should be addressed to Mr. Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235; or Mr. E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731. A Draft Environmental Impact Statement is also available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Hollingshead (Marine Resource Management Specialist, NMFS, Washington, D.C.), 202-634-7471; or Mr. Svein Fougner (Chief, Fisheries Management and Analysis Branch, Southwest Region, NMFS, Terminal Island, CA) 213-548-2518.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1984, the NMFS published a notice of intent to prepare an Environmental Impact Statement (EIS) and hold scoping meetings to develop a regulatory regime for the porpoise-associated tuna fishery beginning in 1986 (49 FR 1778). Scoping materials were distributed and scoping meetings were held in February in San Diego, California, and Washington, D.C. The NMFS indicated that the EIS and regulatory process would include a review of the status of porpoise stocks; an evaluation of the effectiveness of current regulations; and an assessment of the economic conditions in the U.S tuna industry to determine the economic and technological feasibility of different regulatory measures. The new regulations would succeed the regulations which were effective January 1, 1981, and scheduled to expire December 31, 1985.

In 1984, the Congress passed and the President signed into law (Pub. L. 98-364) an act reauthorizing and amending the MMPA. The amendments—

1. Extend indefinitely, beginning January 1, 1985, the ATA General Permit and porpoise quotas and establish quotas for eastern spinner and coastal spotted dolphin;

2. Establish that the Secretary of Commerce (Secretary) require that the government of any nation wishing to export to the United States yellowfin tuna taken with purse seines in the ETP, or products from such tuna, must provide documentary evidence that the government of the harvesting nation has a regulatory program governing the incidental taking of marine mammals, that this program is comparable to the program of the United States and that the average rate of incidental taking by

the vessels of the harvesting nation is comparable to the average of taking of marine mammals by vessels of the United States; and

3. Require the Secretary to conduct a scientific research program to monitor for at least five years indices of abundance and trends in marine mammal population studies and to take corrective action as necessary if it is found that the take under these amendments is having a significant adverse effect on a population stock.

The amendments authorize the Secretary to amend the regulations concerning fishing gear and practices and allow administration consistent with achieving the goals of the MMPA.

The effect of these MMPA amendments is to narrow the scope of the rulemaking as originally announced January 13, 1984. Only the fishing gear and procedural regulations are being considered in this rulemaking. The proposed rule is issued to establish a flexible framework for vessels to carry out the safety measures for porpoise under the overall marine mammal regulatory program. Limits on total mortality and population stock mortality will be the ultimate control. Mortality rates per set and per ton of yellowfin tuna will be primary measures of the results of the program. The NMFS will continue to place observers on a sample of U.S. vessels' trips to observe fishing practices and monitor mortality. A cooperative observer program will be carried out by the Inter-American Tropical Tuna Commission (IATTC). The Expert Skippers Panel is expected to continue its current program activities. The Panel meets with operators of vessels which have had sets with unusually high mortality levels to determine the possible causes of, and responses to, conditions causing such problems. The results are disseminated to other skippers so such problems can be avoided in the future. The NMFS will continue to cooperate with the IATTC and Porpoise Rescue Foundation (PRF) to determine the effectiveness of alternative lighting systems in reducing mortality from sundown sets and assess the need for subsequent amendments to gear or procedural regulations after two years of additional experience.

The proposed rule eliminates many of the procedural requirements in the current regulations. The NMFS will prepare and distribute to the industry and interested members of the public a set of guidelines to substitute for the deleted procedural requirements. The guidelines will describe the types of procedures for porpoise rescue which have been most effective in responding to different problems such as adverse wind and sea conditions. The guidelines will provide practical and useful information on porpoise rescue and will allow a vessel operator to use the combination of gear and techniques best suited to that vessel to maximize porpoise release. Most if not all U.S. purse seine vessels already have and use the gear and procedures which will be required by these proposed regulations, and the requirement to use the backdown procedure will be retained.

Proposed Action

The proposed action is to amend the current gear and procedural regulations to provide greater flexibility in the application of porpoise saving gear and techniques by operators and crews on U.S. vessels purse seining for tuna in association with porpoise in the ETP.

Most gear requirements would be retained under the proposed action. Those gear and procedural requirements that have been found to be unworkable, unnecessary, or too inflexible would be amended or deleted. The amendments would allow vessel operators to make on-the-spot adjustments in fishing practices to protect porpoise, with emphasis on the results rather than procedural requirements. The level of porpoise mortality is limited by the quotas established by the 1984 amendments to the MMPA (see 49 FR 46908). The regulatory amendments are not expected to affect significantly the level of mortality from purse seining in the ETP. The specific amendments proposed are as follows (see Table 1 for a summary of the regulatory changes):

a. The two speedboat limit for uncertificated vessels is maintained, but a provision is introduced to limit its application to trips involving the General Permit area. A waiver system is established to allow vessel operators or owners to obtain a waiver from the prohibition in order to transit the area with more than two speedboats.

b. The requirement for tuna vessel operators to complete a daily marine mammal log would be dropped because these data are not being used. Observer and research data will be sufficient for NMFS purposes.

c. Technical modifications to the requirements for porpoise safety panels are proposed so that small mesh webbing will cover the same proportion of the perimeter of the backdown channel regardless of the depth of the net.

d. Vessel operators would have the option to use either a "supper apron" or a fine mesh net to minimize porpoise mortality because both systems have been demonstrated to be effective. The skill of the skipper and crew in using porpoise safety gear and procedures is the critical element in preventing mortality.

e. Requirements for placing bunchlines at specific locations would be deleted because the specification sometimes causes problems rather than preventing them.

f. Requirements for each vessel to have a rubber raft and at least two facemasks and snorkels would be modified to allow non-rubber rafts and viewboxes because these would be equally effective for the purpose of locating and rescuing porpoise in a seine.

g. A prohibition of sundown sets would be deleted and that section of the regulations reserved pending the results of an ongoing experiment designed to test the effectiveness of a new lighting system in reducing mortality from sundown sets. A sundown set prohibition under current conditions would be economically impracticable and would impose very high costs on the U.S. tuna fleet. Preliminary data collected by NMFS and IATTC observers indicate that alternate lighting systems being tested by the IATTC and the PRF are effective in reducing rates of mortality in sundown sets. The NMFS will assess their effectiveness after two more years of testing and will consider the need for new gear or procedural regulations at that time, based on the results of ongoing experiments and on performance by industry in reducing mortality rates in sundown sets.

h. Several procedural requirements specifying how and where to use speedboats, hand rescue techniques, rubber rafts, and facemasks and snorkels would be deleted. A set of guidelines would be issued to vessel operators and owners describing gear and techniques which have been most successful in different ocean and weather conditions. The ultimate performance measure will be porpoise mortality for the fleet.

i. A prohibition on bringing live porpoise on board the vessel during retrieval of the bow ortza would be added to the prohibition on brailing live animals to prevent incidental mortality or injury from this practice. The ortza is a section of the net assembly, and on sets in which a small amount of tuna is caught, the ortza is sometimes brought onto the vessel with fish in it.

j. Requirements pertaining to certificates of inclusion, notification of departure, inspections and trial sets, and use of lights would be maintained but with technical amendments to provide some flexibility to address special circumstances in their application.

TABLE 1.—SUMMARY OF REGULATORY CHANGES

Item	Current	Proposed
Speedboat limitation	Uncertificated vessels may not carry more than two speedboats.	Retain; provide for waiver transit through ETP.
Logbooks	Operator must maintain daily marine mammal log.	Delete.
Fine mesh net	Super apron installation required; gear waiver may be obtained.	Allow super apron or the fine mesh net system.
Bunchline locations	Currently specified in regulations	Delete.
Rubber raft, facemask and snorkel	Specific gear requirements	Allow alternate gear, that is, non-rubber rafts and viewboxes; convert use requirement to guideline.
Sundown set prohibition	Presently permitted by suspension of regulation.	Delete language; reserve section.
Use of speedboats	Requires where and when speedboats must be deployed and manned.	Convert to guideline.
Hand rescue techniques	Specifies at least two crew must be on platform in net to aid in porpoise release.	Do.
Backdown	Presently required	Retain.
Lights	Specifies that spotlight and floodlights must be used when dark.	Delete specifications; require sufficient light to allow full observation of porpoise release procedures and mortality.
Brailing	Prohibited to brail live porpoise on deck	Broaden prohibition to prevent bringing live porpoise on deck when orca is retrieved.
Modifications	Certain deadlines for surrendering certificates of inclusion, etc.	Delete.
Inspections	Required under variety of circumstances	Limit to be required only after any net modification.
Safety panels	Specifies minimum length and location for installation.	Clarify to use formula to require proportional coverage of net.

Required Statements

Section 103(d) of the MMPA requires that, concurrent with proposed regulations for taking, there be published (a) a statement of the existing levels of the species and population stocks at of the marine mammals concerned; (b) a statement of the expected impact of the proposed regulations on the optimum sustainable population (OSP) of such species or population stocks; (c) a statement describing the evidence before the agency on which the proposed regulations are based; and (d) any studies may by or for the agency and any recommendations made by or for the agency or the Marine Mammal Commission which relate to the establishment of such regulations. The required statements follow.

(a) Estimated Existing Population Levels

The NMFS rulemaking in 1980 included an estimate of existing population levels and replacement yields in 1979 and a projection of the status of those populations in 1985 relative to pre-exploitation stock size (i.e., estimated carrying capacity). The projection incorporation and assumption that actual mortality would equal the U.S. mortality quota levels set for 1981–85 plus an equal amount by non-U.S. vessels in the 1981–85 period.

In July 1984, a Federal appeals court held in *ATA* v. *Baldrige* (738 F.2d 1013) that the NMFS had erred in its determination of the status of populations. The NMFS has reviewed the estimates of status under the directive of the court for three principal target populations: Coastal spotted, northern offshore spotted, eastern spinner. Only these populations were reviewed; all other populations were concluded to be within their respective OSP ranges. Based on the numbers that NMFS was directed to use by the court in *ATA* v. *Baldrige*, all populations on Table 2 are within the OSP range in 1985. Table 2 presents the 1979 estimates for all populations and the adjusted estimates for these three stocks. Table 2 also presents projected 1990 status of populations incorporating actual 1979–84 mortality by species and assuming that annual U.S. 1985–90 mortality will be 20,500 animals in the same species proportions as 1979–84 mortality, with an equal level and distribution of mortality attributable to non-U.S. fishing on porpoise.

TABLE 2.—ESTIMATED CURRENT AND FUTURE POPULATION LEVELS

Species/stock management unit	Estimated 1979 population	1979 status[1]	Adjusted 1979 population[2]	Adjusted 1979 status[1]	Projected 1990 status[3]
Spotted dolphin:					
Northern offshore	3,150,000	.63	6,115,000	.85	.92
Southern offshore	638,700	.95			.93
Coastal	193,200	.42	414,600	.76	.89
Spinner dolphin:					
Eastern	416,700	.27	918,800	.55	.71
Northern whitebelly	486,600	.78			.83
Southern whitebelly	264,900	.90			.90
Common dolphin:					
Northern tropical	216,900	.97			.94
Central tropical	848,400	.89			.94
Southern tropical	477,100	1.00			.99
Striped dolphin:					
Northern tropical	50,600	1.00			.98
Central tropical	213,300	.99			1.00
Southern tropical	483,000	1.00			1.00

[1] Proportion of pre-exploited stock size.

[2] Projected from adjusted population for northern offshore coastal spotted, and eastern spinner dolphin and from estimated 1979 population for all other populations; includes assessment for equal levels of U.S. and non-U.S. porpoise mortality; incorporates actual 1980–84 mortality; assumes 1985–89 mortality will occur in same proportion as 1979–84 mortality by species.

[3] Adjusted in accordance with court directive only for northern offshore spotted, coastal spotted, and eastern spinner due to question about status of population; other populations were and continue to be healthy and no adjustment was necessary.

(b) Estimated Impact on OSP

OSP of the species and stocks involved is defined as a population which falls in a range from the population level which is the largest supportable within the ecosystem, to the population that results in maximum net productivity (see 41 FR 55536, December 21, 1976). Maximum net productivity is the greatest net annual increment in the population due to reproduction and growth less losses due to natural mortality. Maximum net productivity is interpreted as being the lower limit of the range of OSP. The lower bound of OSP has been determined to be in the range of 50 percent to 70 percent of initial unexploited populations. If a population is below the mid-point of this range, i.e., 60 percent, it is considered to be depleted by NOAA.

As indicated in Table 2, the NMFS projects that every population will be within its OSP range in 1990 even if the estimated total annual mortality of each population occurs each year in the 1985–90 period. The NMFS expects that actual mortality in that period will be less than the estimated levels and that the projected status is a conservative estimate of the 1990 status (see Section V.B., Draft Environmental Impact Statement).

(c) and (d) Evidence and Studies

Available information upon which the previous rulemaking was based was described and listed in some detail in the proposed rules published February 15, 1980 (45 FR 10552). While there have been no new reports on the status of populations, there is a substantial body of information concerning the fishery, including the large amount of data collected by observers placed by NMFS and the Inter-American Tropical Tuna Commission and data and analyses compiled by the Porpoise Rescue Foundation. The following reports and documents in addition to the sources cited in 1980 contain the evidence on which the current proposal is based:

Bratten, D., 1983. Reducing Dolphin Mortality Incidental to Purse Seining for Tuna in the Eastern Tropical Pacific Ocean. A review of the Tuna-Dolphin Fishing Gear Program of the IATTC. International Whaling Commission, Cambridge, England.

Coe, J.M., 1976. The Effectiveness of the Porpoise Apron in Improving the Backdown Procedure. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76–38).

———, D.B. Holts, and R.W. Butler, 1984. Guidelines for the Reducing Porpoise Mortality in Tuna Purse Seining. National Marine Fisheries Service, NOAA Technical Report NMFS 13.

——— and G. Sousa, 1972. Removing Porpoise from a Tuna Purse Seine. *Marine Fisheries Review*, Nov.-Dec. 1972. pp. 15–19.

——— and P.J. Vergne, 1977. Modified Tuna Purse Seine Net Achieve Record Low Porpoise Kill Rate. *Marine Fisheries Review*, 39:6 (1–4).

———, 1977. Modified Tuna Purse Seine Net Achieves Record Low Porpoise Kill Rate. *Marine Fisheries Review*, Paper 1251.

———, M/V *Elizabeth C.J.* Cruise Report (Gear Research), Oct. 1976.

Department of Commerce, 1984. Fisheries of the United States, 1983. Current Fishery Statistics No. 8320, Washington, D.C.

Everett, J.T. *et al.*, 1976. The Use of Speedboats in Reducing Incidental Porpoise Mortality in Tuna Purse Seining. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76–35).

———, J.M. Coe, and J.E. Powers, 1975. Porpoise/Tuna Interaction—Technology Based Problems and Solutions. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76–33).

Fabrick & Faverty, 1974. Analysis of Porpoise Kill Data, Contract Report. Science Application Inc., San Diego, CA.

Food and Agriculture Organization of the United States, 1984. Yearbook of Fishery Statistics, 1982. United Nations, Rome, Italy.

Hill, G.D., Jr., 1978. Saving the Porpoise. NOAA Magazine.

Inter-American Tropical Tuna Commission, 1983. Annual Report of the Inter-American Tropical Tuna Commission. La Jolla, CA.

———, 1984a. Tuna-Dolphin Investigation, Background Paper No. 6. October 1984. La Jolla, CA.

———, 1984b. Annual Report of the Inter-American Tropical Tuna Commission. La Jolla, CA.

———, 1984c. Quarterly Report, Fourth Quarter, 1984. La Jolla, CA.

Koplin, S.J., and S.M. Merrick, Jr., 1983. 1983 U.S. Tuna Trade Summary. Southwest Region, Terminal Island, CA (SWR AR No. 84–1).

Lo, N.C., J.E. Powers, B.E. Whalen, 1980. Estimating and Monitoring Incidental Marine Mammal Mortality in the Eastern Tropical Pacific Purse Seine Fishery. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–80-unpublished).

McNeely, R.L. and D.B. Holts, 1974. Cruise Report, *South Pacific*. Oct. 1974.

NMFS, 1972. Report of the NOAA Tuna/Porpoise Review Committee. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–74–40).

NMFS, 1980. Final Environmental Impact Statement for Incidental Taking of Marine Mammals in the Tuna Fishery in the Eastern Tropical Pacific Ocean. NMFS, NOAA, Department of Commerce, November.

Powers, J.E., N.C. Lo, and B.E. Whalen, 1979. A Statistical Analysis on Effectiveness of Porpoise Rescue Procedures in Reducing Incidental Mortality. National Marine Fisheries Service, Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76).

Twohig, D., 1974. Cruise Report, *J.M. Martinac*, Oct. 1974.

United States Tuna Foundation, *et al.*, 1984. "Petition for Relief from Imports of Tuna, Prepared or Preserved in Any Manner, in Airtight Containers (Canned Tuna) under Section 201 of the Trade Act of 1974."

Hearing

In accordance with section 103(d), these regulations must be made on the record after opportunity for an agency hearing. If a request for a hearing is made in a timely manner (see **DATES**) a hearing will be held later this year in California. A separate **Federal Register** notice will be published regarding time, date, and location of the hearing, and notification by persons interested in participating in this hearing.

Classification

The NMFS has determined that this action is a major Federal action under the National Environmental Policy Act of 1969 due to the overall public interest associated with the tuna fishery interaction with porpoise. A draft Environmental Impact Statement (DEIS) has been prepared and distributed for public review and comment.

This rule is an administrative action being developed on the record under the Administrative Procedure Act (5 U.S.C. 556 and 557) and, as such, is exempt from Executive Order 12291.

The proposed rule would eliminate a collection of information requirement that was previously authorized under the Paperwork Reduction Act. Any comments on this measure should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed action will not have a significant effect on a substantial number of small entities.

The Assistant Administrator has determined that the proposed action does not directly affect the coastal zone of a State with an approved coastal zone management act program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedures, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: April 19, 1985.

Anthony J. Calio,

Deputy Administrator, NOAA.

PART 216—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority.—16 U.S.C. 1361 *et seq.*, unless otherwise stated.

2. In § 216.24, paragraph (d)(2)(ii)(C) is removed and paragraph (d)(2)(ii)(D) is redesignated as (d)(2)(ii)(C); paragraph (d)(2)(iii)(C) is removed and paragraph (d)(2)(iii)(D) is redesignated as (d)(2)(iii)(C); paragraph (d)(2)(iv)(C), (D), (H), and (L) are removed and paragraphs (d)(2)(iv)(E), (F), (G), (I), (J), (K), and (M) are redesignated as (d)(2)(iv)(C), (D), (E), (F), (G), (H), and (I), respectively; paragraphs (d)(2)(vii)(A), (C), (E), and (F) are removed and paragraphs (d)(2)(iii) (B), (D), (G), and (H), are redesignated as (d)(2)(vii)(A), (B), (C), and (D) respectively; paragraphs (a)(2), (d)(2)(ii)(A), (d)(2)(iv) introductory text, (d)(2)(iv)(A) and (B), newly redesignated paragraph (d)(2)(iv)(H), (d)(2)(v)(C), and newly redesignated paragraphs (d)(2)(vii)(C) and (D) are revised; and new paragraphs (a)(3) and (d)(2)(vii)(E) are added to read as follows:

§ 216.24 Taking and related acts incidential to commercial fishing operations.

(a) * * *

(2) A vessel on a commercial fishing trip involving the utilization of purse seines to capture yellowfin tuna which is not operating under a catetgory two general permit and certificates of inclusion, and which during any part of its fishing trip is in the Pacific Ocean area described in the General Permit for gear category two operations, must not carry more than two speedboats.

(3) Upon written request in advance of entering the General Permit area, the limitation in paragraph (a)(2) of this section may be waived by the Regional Director of the Southwest Region for the purpose of allowing transit through the General Permit area. The waiver will provide in writing the terms and conditions under which the vessel must operate in order to transit the area with more than two speedboats.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) Marine mammals incidentally taken must be immediately returned to the environment where captured without further injury. The operators of purse seine vessels must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Marine mammals must not be brailed or hoisted onto the deck during ortza retrieval.

* * * * *

(iv) A vessel having a vessel certificate issued under paragraph (a)(1) of this section may not engage in fishing operations for which a general permit is required unless it is equipped with a porpoise safety panel in its purse seine, and has and uses the other required gear, equipment, and procedures.

(A) *Class I and II Vessels:* For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the propoise safety panel must be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips must be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of the corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distances from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20 fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(B) *Class III Vessels:* For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porposie safety panel must be a minimum of 180 fathoms in length (as measured before installation). It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outbound end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and, if present, the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20 fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

* * * * *

(H) *Facemask and snorkel, or viewbox:* At least two facemasks and snorkels, or viewboxes, must be carried on all certificated vessels.

* * * * *

(v) * * *

(C) Upon failure to pass an inspection or reinspection, a vessel having a vessel certificate of inclusion issued under paragraph (c)(1) of this section may not engage in fishing operations for which a general permit is required until the deficiencies in gear or equipment are corrected as required by an authorized National Marine Fisheries Service inspector.

* * * * *

(vii) * * *

(C) *Prohibited setting at sundown:* [Reserved]

(D) If the backdown maneuver or other release procedures continue past one-half hour after sunset, lights must be used to allow full observation of completion of the set. The light(s) used must provide sufficient light to observe that procedures for porpoise release are carried out and to monitor incidental mortality.

(E) *Porpoise Safety Panel:* During backdown, the porpoise safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. Any super apron must be positioned at the apex of the backdown channel.

* * * * *

§ 216.24 [Amended]

3. In addition to the amendments set forth above, remove the phrase "five (5) days" from the paragraph (c)(1); remove the phrase "at least [sic] ten (10) days" from paragraph (d)(2)(iii)(A)(3), and remove the word "rubber" from newly redesignated paragraph (d)(2)(iv)(G).

[FR Doc. 85-10651 Filed 5-1-85; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 630

Atlantic Swordfish Fishery

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

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils (Councils) have submitted the Fishery Management Plan for the Atlantic Swordfish Fishery for Secretarial review and are requesting comments from the public. Copies of the plan may be obtained from the addresses below.

DATE: Comments on the plan should be submitted on or before July 12, 1985.

ADDRESSES: All comments should be sent to Jack T. Brawner, Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Clearly mark, "Comments on Atlantic Swordfish Plan", on the envelope.

Copies of the plan are available upon request from the:

South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407–4699;

New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906;

Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901;

Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 W. Kennedy Boulevard, Tampa, Florida 33609; and

Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton (Regional Plan Coordinator), 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended, (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan, must immediately publish a notice that the plan is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan.

This plan proposes measures for managing foreign fisheries that have an incidental catch of swordfish and domestic commercial and recreational fisheries for swordfish in the Atlantic, Gulf of Mexico, and Caribbean. On March 4, 1983, the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for this plan (48 FR 9365).

Regulations proposed by the Councils and based on this plan are scheduled to be published within 30 days.

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

Dated: April 29, 1985.

Richard B. Roe,

Director, Office of Protected Species, National Marine Fisheries Service.

[FR Doc. 85–10666 Filed 4–29–85; 3:03 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 85
Thursday, May 2, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Peppermint Mountain Resort, Draft Environmental Impact Statement, Supplement; Sequoia National Forest Tulare County, CA

Availability of Supplement to Peppermint Mountain Resort Draft Environmental Impact Statement

The Department of Agriculture, U.S. Forest Service, Sequoia National Forest, announces publication of a Supplement to the Peppermint Mountain Resort Draft Environmental Impact Statement. This Supplement focuses specifically on the resort's potential indirect effect on the survivability of the California condor (*Gymnogyps californianus*). The analysis concludes that the project is neutral with respect to the condor.

Starting on this date there will be 45 a day public review period for this Supplement. All interested parties are encouraged to read it and submit written comments to: James A. Crates, Forest Supervisor, 900 West Grand Avenue, Porterville, CA 93257.

These comments will be addressed in the Final Environmental Impact Statement.

For further information contact Julie Allen, Project Coordinator, at the above address or by telephone at 209–784–1500.

James A. Crates,
Forest Supervisor.
[FR Doc. 85–10705 Filed 5–1–85; 8:45 am]
BILLING CODE 3410–11–M

Intermountain Region; Caribou National Forest Grazing Advisory Board Committee; Meeting

The Caribou National Forest Grazing Advisory Board Committee will at *10:00 a.m., June 5, 1985,* at the *Grandine Guard Station, on the Curlew National Grasslands west of Malad.*

The purpose of this meeting is to secure recommendations for use of the range betterment funds, grazing allotment plans, application of vegetative treatments, construction of range improvements, noxious weed treatment and Grazing Agreement management.

The meeting is open to the public. Persons desiring to make the field trip should furnish their own transportation and lunch. During the last stop of the day, there will be a short meeting to finalize recommendations and to receive oral statements and answer any questions from the public. Written statements may be filed at any time for the Board's consideration.

The meeting will terminate at the Grandine Guard Station about 4:00 p.m.

Summary minutes of the tour, meeting, and board recommendations will be maintained in the Forest Supervisor's office in Pocatello and will be available for public inspection within 30 days following the meeting.

Dated: April 25, 1985.

Frank G. Beitia,
Acting Forest Supervisor.
[FR Doc. 85–10704 Filed 5–1–85; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Houtz and Outlet Sub-Watersheds, Rock Creek Watershed, ID; Finding of No Significant Impact.

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Houtz and Outlet Sub-watersheds, Rock Creek Watershed, Power County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for land treatment to reduce sediment damage, to improve water quality, to protect the quality of the land resource and to maintain or increase agricultural production. The planned works of improvement include conservation practices such as conservation tillage systems, no-till systems, permanent vegetation, and terraces.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: March 23, 1985.

James N. Habiger,
Acting State Conservationist.
[FR Doc. 85–10689 Filed 5–1–85; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Triple Five Corporation LTD.

On March 8, 1985, notice was published in the **Federal Register** (50 FR 9482) that an application had been filed

by the Triple Five Corporation LTD., Suite 900, Capital Place, 9707 110th Street, Edmonton, Alberta, Canada T5K2L9, for a permit to take marine mammals for the purpose of public display.

Notice is hereby given that on April 24, 1985 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 Permit for the above taking, 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.;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: April 24, 1985.

Richard B. Roe,

Director of Protected Species and Habitat Conservation.

[FR Doc. 85–10618 Filed 5–1–85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Scientific and Statistical Committee and Groundfish Management Team will meet jointly at the Portland Motor Hotel, 1414 SW. Sixth Avenue, Portland, OR, May 14–15, 1985, to discuss procedures and coordination of groundfish issues including: Integration of economic and social aspect into management measures, status, and practicalities of limited entry; long- and short-term research needs; management implications of subsuming numerical optimum yield species into the non-economic species complex, and other matters of mutual concern. For further information, contact Mr. Joseph Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR; telephone: (503) 221–6352.

Dated: April 26, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation.

[FR Doc. 85–10653 Filed 5–1–85; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustaceans Plan Development Team (PDT) will convene a public meeting, April 26, 1985, at the Council's office, 1164 Bishop Street, Room 1405, Honolulu, HI, to discuss the draft Deepsea Shrimp Fishery Management Plan (EMP). The Council's Bottomfish Plan PDT will meet May 1, 1985, at the same location to discuss the draft Bottomfish EMP.

The Council also has changed the agenda for its public meeting (50 FR 16333, April 25, 1985) in Saipan and Guam to include a closed session to discuss personnel and other appropriate matters. The closed session will be held May, 1985 at the Hyatt Regency Saipan, CNMI.

For further information on the above meetings, contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368 or FTS (808) 546–8923.

Dated: April 26, 1985.

Richard B. Roe,

Director of Protected Species and Habitat Conservation.

[FR Doc. 85–10652 Filed 5–1–85; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Interim Protection for Mask Works of Swedish Nationals Domiciliaries and Sovereign Authorities

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of initiation of proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under section 914 of 17 U.S.C. to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10–14. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517–44519 and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On April 25, 1985, the Federation of Swedish Industries submitted a request for the issuance of an interim order complying with the aforementioned guidelines. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding with respect to Sweden for consideration of the issuance of an interim order.

In the interests of time and because of the rapidly approaching July 1, 1985, registration cut-off date for chips first commercially exploited on or after July 1, 1983, a date is being set both for the submission of comments in accordance with paragraph F(a), and a hearing date with respect to paragraph F(b) of the guidelines.

DATES: Comments must be submitted on or before May 22, 1985, and a public hearing will be held May 29, 1985, at 9:30 a.m.; requests to present oral testimony should be received on or before May 22, 1985.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Attention Assistant Commissioner for External Affairs, Box 4, Washington, D.C. 20231.

The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11–C–10, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public insepction in Room 11C28 Crystal Plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defiend in 17 U.S.C. 901(a)(2) as:

"a series of related images, however, fixed or encoded

(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10 year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office.

or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under this Chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> a foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A), or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On April 25, 1985, the Federation of Swedish Industries submitted a petition for the issuance of an interim order under 17 U.S.C. 914. The petition, including information supplied under the seal of the Swedish Ministry of Justice, is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice.

In his remarks in the **Congressional Record** of October 10, 1984, at page E4434 Representative Kastenmeier suggests that "[i]n making determinations of good faith efforts and progress * * *, the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue. * * * With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

In view of these admonitions, comments are invited on this petition and the supplemental information. Particularly, views are solicited as to the relation of the progress in Sweden toward establishing a system of protection for mask works and Chapter 9 of 17 U.S.C.; and to the existence or non-existence of any misappropriation of mask works in Sweden.

Dated: April 26, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

April 12, 1985.

Industriforbundet

The United States Commissioner of Patents and Trademarks,

Box 4, Washington, D.C., U.S.A.

Petition to the Secretary of Commerce to issue an Order extending the privilege of making interim registrations for mask works

The Semiconductor Chip Protection Act of 1984 (Chapter 9 of Title 17 of the United States Code) provides for protection for mask works. Basically such protection is available only for owners of such works who are nationals or domiciliaries of the United States. Protection to foreign rightowners is denied unless the mask works are first commercially exploited in the United States. Protection to foreign rightowners is denied unless the mask works are first commercially exploited in the United States. Section 914(a) of the Act provides, however, that the Secretary of Commerce may extend, by issuing an Order, the privilege of protection under the Act also to nationals of foreign countries under certain conditions. The Assistant Secretary of Commerce and Commissioner of Patents and Trademarks has been delegated the responsibility to receive petitions for such Orders and to issue and terminate them.

The conditions which have to be met by the foreign nation in order to obtain the privilege of interim protection under the Act are: (1) That the foreign nation is making progress toward a regime of mask work protection generally similar to that under the Act, (2) that its nationals and persons controlled by them are not engaging and have not in the recent past been engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works, and, (3) that issuing the Order would promote the purposes of the Act and of achieving international comity toward mask work protection.

In these circumstances and following consultations with the competent authorities in Sweden the Federation of Swedish Industries would like to submit, by means of this letter, to the United States Assistant Secretary of Commerce and Commissioner of Patents and Trademarks a request for an Order extending the privilege of interim protection under the Semiconductor Chip Protection Act also to nationals, domiciliaries and sovereign authorities of Sweden. The Federation of Swedish Industries represents the interests of the Swedish industry as a whole. Some 3,000 enterprises are affiliated to the Federation, among them the major manufacturers of chip products in Sweden.

As the basis for the request the Federation submits that in Sweden high priority is given to the question of establishing an appropriate protection of mask works and that substantive progress is made in this respect. Furthermore the Federation submits that to its knowledge no chip piracy or similar

misappropriation of semiconductor chip products has taken place in Sweden and that the issuing of such an Order would promote the purposes of the Act and of achieving international comity toward mask work protection.

In support of the above submissions the Federation would like to refer to the enclosed statement, with an annex, by the ministry of Justice of Sweden, which is within the Swedish Government responsible for intellectual property law and its international aspects.

Federation of Swedish Industries.

Sven Wallgren,

Chairman of the Board.

Lars Nabseth,

Director General.

[DNR 990-85]

Stockholm, March 27, 1985.

The Under-Secretary of State

Ministry of Justice,
Division for International Affairs, S-103 33 Stockholm, Sweden, Telephone: 763 10 00.

Re: Protection of Integrated Circuits in Sweden

1. Within the Swedish Government, the Ministry of Justice is responsible for intellectual property law both at the national level and as regards its international aspects. On behalf of the Government the Ministry submits the following statement on the protection of integrated circuits in this country.

2. As is stated more in detail below the Ministry has recently initiated a work aiming at clarifying the questions concerning protection of integrated circuits under present intellectual property law in Sweden and at formulating possible amendments to that legislation in order to establish an efficient protection for Swedish as well as foreign such material.

3. At the outset it should be mentioned that the copyright law in the five Nordic countries is almost uniform. This body of law is now under revision. Proposals for amendments to the law are drafted and put forward by Committees for Revision of the Copyright Law which are set up in each one of the Nordic countries. The proposals from the Committees are the subject of government deliberations at an inter-Nordic level. Following such deliberations and the usual hearing process the respective Government puts forward bills to the parliaments on amendments to the laws. The overall aim of the revision work is to preserve and strengthen the unity which exists in the field of copyright law in the Nordic countries.

4. The Revision Committees are giving high priority to the copyright problems relating to the use of computers, including the protection of computer software and of integrated circuits. These issues are at present under discussion within the Committees. As far as the Swedish Committee is concerned proposals for amendments to the copyright law in these respects are expected before the end of 1985. The deliberations within the Swedish Committee are based on preliminary proposals from a special Working Party. A statement by the Chairman of that Working Party is annexed.

5. The proposals from the Revision Committee will be submitted for observations in the usual hearing process. The Ministry intends then to formulate, taking into account the results of the hearing process and in cooperation with the other Nordic countries, final proposals on the issue to be submitted by the Government to the Parliament. As far as can be envisaged now these proposals could be expected in the second half of 1986.

6. To the knowledge of the Ministry of Justice no nationals, domiciliaries or sovereign authorities of this country, or persons controlled by them, are or have been engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works.

Harald Falth,

Under-Secretary of State of the Ministry of Justice.

[Annex]

Stockholm, March 27, 1985.

Ministry of Justice,
Division for International Affairs, S-103 33 Stockholm, Sweden Telephone: 763 10 00

Protection of Integrated Circuits

Report of a Working Party to the Committee for Revision of the Copyright Law.

1. At the end of 1984 the Swedish Committee for Revision of the Copyright Law initiated deliberations on the copyright problems in relation to the use of computers. The Committee appointed a small Working Party under the chairmanship of Henry Olsson, Director, Ministry of Justice. In February 1985 the Working Party submitted a final report on its work to the Committee.

2. The report of the Working Party deals with three major issues, viz. (a) copyright problems in relation to the storage and processing of works, and the creation of works, by means of computers, (b) protection of computer programs, and, (c) the protection of integrated circuits.

3. As far as integrated circuits are concerned the conclusion of the Working Party is that the definition of protected works in the Copyright Act—in particular the definition of "descriptive literary works"—might cover also what is called "mask works" in the United States Semiconductor Chip Protection Act of 1984. Furthermore the protection under the Copyright Act against unauthorized reproduction of such works might, according to the Working Party, will be interpreted as covering also the various steps of fixing a mask work in a semiconductor chip product.

4. In order to avoid any uncertainty the Working Party suggests, however, that the Copyright Act be amended in order to clarify the issue and to ascertain that all relevant aspects aiming at the establishment of an efficient and appropriate protection for integrated circuits are taken into account.

5. Certain of the proposed amendments deal with restrictions on the availability of private copying and with the right to control the distribution to the public of copies of works. The most important parts of the proposed amendments deal, however, with two issues. The first one aims at clarifying in the text of the Act that works constituting the patterns for the circuitries in semiconductor chip products are to be included in the concept of literary works in the Act. This would imply that e.g. the reproduction right under the law would be applicable also to such works. The special nature of such works and the special proceedings which are or may be used for the manufacturing of chip products on the basis of the works might, however, imply that one can not be altogether certain that the reproduction right and the copyright protection system in general would in all situations afford the necessary protection. Such an uncertainty can, in the opinion of the Working Party, not be accepted. The chip industry, has a need for a reliable system for the protection of its products. For this reason the Working Party proposes, in addition to the protection which may apply to this kind of works under the general provisions of copyright law, speical additional provisions on the protection of integrated circuits. The new provisions are proposed to be included in a section of the Copyright Act which contains provisions i.e. on protection for certain categories of producers.

6. The proposed additional provisions on protection for the patterns for the circuitry of a semiconductor chip product would grant to the person who creates the circuitry pattern an exclusive right to authorize or prohibit the use of it, (a) for the purpose of making copies of it or reproducing it by any means on a material support, and, (b) by making it available to the public, in its original form or in an adapted form, through sale, leasing, lending or otherwise. The right is proposed to subsist for 10 years from the end of the year during which the pattern was created. The exceptions to these rights would basically be that copying exclusively for analysis of or teaching concerning the particular circuitry pattern would be allowed with the express provision that such copies must not be used for other purposes. Furthermore it is proposed that if the circuitry pattern is included in a product which has been put on the market with the consent of the right-owner these copies of the pattern may be further distributed to the public.

Under particular provisions in the present Copyright Act the Government has the power to extend the application of additional provisions like the ones now mentioned also to foreign countries on the basis of reciprocity.

The additional provisions now mentioned would not prevent the application of the general provisions in the copyright law if the circuitry pattern or part of it is considered as covered by copyright.

7. The proposals are now under study in the Revision Committee itself and have also been discussed in a preliminary way at an inter-Nordic level in a meeting between the Chairmen of the Revision Committees. It would seem that there is, in broad terms, at the Nordic level, so far, an agreement on the basic contents of the proposals. The final proposals from the Revision Committee on

these issues could be expected before the end of 1985.

Henry Olsson,

Director, Ministry of Justice, Chairman of the Working Party.

[FR Doc. 85-10686 Filed 5-1-85; 8:45 am]

BILLING CODE 3510-16-M

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange; Proposed Amendments Relating to the White Wheat Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Minneapolis Grain Exchange has submitted a proposal to amend the delivery procedures for its white wheat futures contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before June 3, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., 20581. Reference should be made to the MGE white wheat futures contract rule amendments.

SUPPLEMENTARY INFORMATION: The Minneapolis Grain Exchange ("MGE") is proposing to amend the delivery procedures for the white wheat futures contract. The principal amendments being proposed by the MGE include: (1) The deletion of Seattle and Tacoma, Washington as par delivery points for rail delivery of white wheat; (2) the imposition of a new requirement that rail deliveries of white wheat must consist of a minimum of 10,000 bushels specified for delivery at a single location; (3) a reduction in the shipping period for rail deliveries against outstanding shipping certificates to 10 days from 20 days; and (4) a change in the maximum permissible deviation in the quantity of white wheat loaded out against shipping certificates to 2% of the quantity specified on the shipping certificates cancelled on any one day up to a maximum deviation of 2,000 bushels; currently, a maximum deviation of 100 bushels is permitted under the contract. For deviations of 100 bushels or less, the contract's current requirement—that such deviations be settled based on the settlement price of the nearest trading futures delivery month on the day the variance occurs—would be revised to provide for settlement based on the price at which payment is made for the shipping certificate(s). For deviations in excess of 100 bushels and up to 2,000 bushels, settlement would be based on the cash market price for white wheat on the day the buyer and seller have accurately determined the variance.

The MGE indicated that the amendments are being proposed to clarify certain contract rules primarily related to the rail/barge delivery process. The Exchange indicates that the white wheat contract's delivery rules tend to reflect vessel delivery procedures, whereas all deliveries on the contract during the December 1984 delivery month were made using the rail/barge option. The Exchange indicates that the proposed amendments are intended to alleviate possible complications arising from the imposition of vessel rules upon delivery by rail or barge and to bring the contract's rules into closer conformance with cash market practices for rail and barge movement of white wheat.

The Exchange is proposing that the amendments to the white wheat futures contract be applicable to existing contracts beginning with the next delivery month which expires at least 30 days subsequent to Commission approval of the proposals, as well as to all new contracts listed by the Exchange.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington D.C. 20581, (202) 254-7303.

In accordance with section 5a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposed rule amendments submitted by the MGE concerning its white wheat futures contract are of major economic significance. Accordingly, the MGE's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the MGE in support of its proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)) except to the extent that they are subject to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by June 3, 1985.

Issued in Washington, D.C., on April 29, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-10687 Filed 5-1-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Progress Payment Rates

AGENCY: Department of Defense (DoD).

ACTION: Notice of change in progress payment rates.

Cross Reference: See the "Rules and Regulations" Section of this **Federal Register** for a related document (FR Doc. 10631) by DoD on Progress Payment Rates.

SUMMARY: The Deputy Secretary of Defense has directed that, effective May 1, 1985, the following revisions be made to DoD's contract financing policies:

1. The customary progress payment rate for other than small business concerns be lowered from 90% to 80%;

2. The customary rate for small business concerns be lowered from 95% to 90%;

3. The targeted rate for contractor's investment under flexibile progress payments be increased from 5% to 15% (upper and lower bands would also be modified accordingly); and

4. Billing periods remain on a monthly basis.

On April 22, 1985, the DAR Council approved deviations to the Federal Acquisition Regulation and revisions to the DoD FAR Supplement to implement the above direction. These policy changes are expected to be incorporated into all contracts awarded on or after May 1, 1985. This makes it necessary for contracting officers to modify outstanding solicitation provisions to the maximum extent practicable.

However, it is recognized that there are special contracting situations which require additional guidance.

1. DoD is modifying the Federal Acquisition Regulation for DoD contracts only, as follows:

32.501–1(a)—Change "90 percent" and "95 percent" to "80 percent" and "90 percent", respectively.

52.232–16

(a)(1)(i)—Change "90 percent" to "80 percent"

(a)(5)—Change "90 percent" to "80 percent"

(b)—Change "90 percent" to "80 percent"

Alternate I: Change "95 percent" to "90 percent" in the preamble and (a)(1)(i) of Alternate I.

2. The Progress Payments clause shall be inserted in full text and identified as a deviation in accordance with FAR 52.102–2 and 252.103, respectively.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 85–10632 Filed 5–1–85; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Cancellation; Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army District, Seattle, Department of Defense.

ACTION: Notice.

SUMMARY: The Seattle District, U.S. Army Corps of Engineers hereby cancels its Notice of Intent to prepare a DEIS as published in 47 FR 241, 15 December 1982. The DEIS was to be prepared for dredging with intertidal disposal (19 acres); construction of a commercial marina, levee, and bulkhead; and placement of riprap in Fidalgo Bay, Padilla Bay at Anacortes, Washington.

The Notice is cancelled because major adverse environmental effects were identified; the project was found not be be in compliance with the Clean Water Act section 404(b)(1) guidelines promulgated by the Environmental Protection Agency; and the project did not conform with local or state laws, regulations, or codes. Seattle District determined that there was sufficient evidence in the record to support denial of the project as proposed. The cancellation of the Federal Project nullifies any need for environmental review associated with that project.

ADDRESS: Questions can be forwarded to Dr. Fred Weinmann; Environmental Resources Section; U.S. Army Engineer District, Seattle; Post Office Box C–3755; Seattle, Washington 98124–2255. Telephone (206) 764–3625 or FTS 399–3625.

Dated April 23, 1985.

Roger R. Yankoupe;

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85–10710 Filed 5–1–85; 8:45 am]

BILLING CODE 3710–GB–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 3, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 29, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Bilingual Education and Minority Language Affairs

Type of Review Requested: Extension

Title: Application for Grants under Transition Program for Refugee Children

Agency Form Number: ED 443–2

Frequency: Annually

Affected Public: State or local governments

Reporting Burden: Responses: 54; Burden Hours: 8,424

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Refugee Act of 1980, as amended, authorizes the award of grants to applicants that meet the purposes and requirements of the Act and the application requirements established in regulations. The proposed data collection informs the applicant of the information required under the law and regulations.

[FR Doc. 85–10687 Filed 5–1–85; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Issuance of Proposed Remedial Order to Canal Refining Co. and Opportunity for Objection

AGENCY: Economic Regulatory Administration, Department of Energy.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Canal Refining Company (Canal). This Proposed Remedial Order charges Canal with improperly reporting the tier classification of certain of its crude oil receipts to the DOE Entitlements Program and selling crude oil at prices in excess of those permitted under DOE regulations, all in circumvention and contravention of the Entitlements

Program and price regulations. These charges arose out of purchase and sale transactions between Canal and a reseller in which Canal transferred to the reseller certifications of volumes of predominantly price-controlled crude oil obtained from Canal's historical suppliers in exchange for certifications of equal volumes of crude oil certified stripper and purchased by Canal at discounted prices. The DOE seeks a refund of the entitlements violation amount of $12,546,305.70, before interest. Alternatively, DOE seeks a refund of the pricing overcharges totalling $11,316,442, before interest. Although the audit covered the period July 1980—January 1981, the entitlements violation amount is calculated for the period July–December 1980, since no entitlements list was published for January 1981.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Carl A. Corrallo, Chief Counsel for Administrative Litigation, ERA, U.S. Department of Energy, 1000 Independence Avenue SW., [RG–15], Washington, D.C. 20585, (202) 252–4167.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room, 6F–055, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C., on the 19th day of April, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–10662 Filed 5–1–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Remedial Order to Big Muddy Oil Processors, Inc., and Opportunity for Objection

AGENCY: Economic Regulatory Administration, Department of Energy.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Big Muddy Oil Processors, Inc. (Big Muddy). This Proposed Remedial Order charges Big Muddy with selling crude oil at prices in excess of those permitted under the DOE regulations, to purchasers other than ultimate consumers during the period May 1979 through December 1980. The total violation amount is $1,454,876.35, plus interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Avrom Landesman, Director, Office of Enforcement Programs, ERA, U.S. Department of Energy, 1000 Independence Avenue SW. (RG–16), Washington, D.C. 20585, (202) 252–8900.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C., on the 21st day of March, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–10661 Filed 5–1–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 85–05–NG]

Czar Resources Inc.; Order Granting Authorization To Import Canadian Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 24, 1985, the ERA Administrator issued an opinion and order granting Czar Resources Inc. (Czar Inc.) authority to import Canadian natural gas for resale to Mobil Oil Corporation (Mobil). The approval authorizes Czar Inc. to import up to 4.6 Bcf of natural gas from Czar Resources Ltd. of Calgary, Alberta, Canada, over a two-year period beginning on the date of first delivery at an international border price of $2.94 (U.S.) per MMBtu. Mobil plans to use the gas, for which it will pay a delivered price of $3.70 (U.S.) per MMBtu, in its Ferndale, Washington, petroleum refinery.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252–9482

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667

Issued in Washington, D.C., on April 26, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

In the matter of Czar Resources Inc.; ERA Docket No. 85–05–NG, DOE/ERA Opinion and Order No. 77; order granting authorization to import natural gas from Canada; DOE/ERA opinion and Order No. 77 April 24, 1985.

I. Background

On February 25, 1985, Czar Resources Inc. (Czar Inc.) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, to import on an interruptible, best-efforts basis, up to 6,300 Mcf per day of Canadian natural gas from Czar Resources Ltd. (Czar Ltd.) Czar Inc. is a wholly-owned U.S. subsidiary of Czar Ltd., a Canadian-based natural gas producer. Under this import proposal, Czar Inc. will purchase a maximum volume of 4.6 Bcf over a period of two years, beginning on the date of first delivery, for resale to Mobile Oil Corporation (Mobil). The imported gas is intended to displace No. 6 fuel oil used at Mobil's Ferndale, Washington, petroleum refinery. Following the initial two-year term, the arrangement is to continue on a month-to-month basis until terminated by any party or until a maximum of 4.6 Bcf of gas has been delivered, whichever occurs first.

The gas would be purchased under an agreement entered into February 15, 1985, by the three companies. The agreement specifies that the gas would enter the U.S. at a point near Sumas, Washington, by means of existing pipeline facilities owned and operated by Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the facilities of

Cascade Natural Gas Corporation which would complete ultimate delivery to the Ferndale refinery. At this time, no final transportation agreements have been reached by the parties.

The sales contract provides that, during the first six months, the price Czar Inc. would pay Czar Ltd. for the gas is $2.94 (U.S.) per MMBtu. The delivered cost to Mobil during that period would be $3.70 (U.S.) per MMBtu. Thereafter, price redeterminations may be made semiannually, subject to mutual agreement, to reflect prevailing market conditions. Any party may terminate the arrangement if agreement on an acceptable import or delivered price cannot be reached. Although the sales contract imposes no minimum purchase obligation or take-or-pay requirement, Mobil has agreed that all of the natural gas needed for fuel oil displacement at its refinery would be supplied by Czar Ltd., provided the volumes requested can be delivered and the price is competitive. Under the contract, Mobil is entitled to determine, at its sole discretion, the amount of gas required daily for its refinery on the basis of operating, economic, or any other consideration.

In support of its application, Czar Inc. asserts that the imported gas would provide Mobil with a cost-effective means of improving refinery economics because it represents a significant saving over Mobil's present cost for No. 6 fuel oil of approximately $3.88 (U.S.) per MMBtu. Czar Inc. further states that no additional pipeline construction is needed to implement the proposed import.

According to the applicant, the import is in the public interest because it would (1) provide an environmental advantage compared to burning fuel oil; (2) reduce or eliminate Mobil's requirement for fuel oil, thus freeing that oil for use by other domestic purchasers; (3) reduce reliance on imported crude oil; (4) serve an incremental market that the existing transmission and distribution systems have not been able to serve under similiar competitive conditions; and (5) increase revenues for the transporting pipelines which will benefit their residential and industrial customers.

II. Interventions and Comments

The ERA issued a notice of the application on March 18, 1985.[1] The notice invited protests or motions to intervene, which were to be filed by April 17, 1985. A motion to intervene was received from Northwest. In its filing, Northwest stated neither support for nor opposition to the proposed import nor did Northwest request the right to be heard further. This order grants intervention to Northwest.

III. Decision

Czar Inc.'s application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[2] The Administrator is guided by the Department of Energy's policy relating to the regulation of natural gas imports.[3] Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test. The need for the import and the security of the import supply are other considerations.

The Czar Inc. arrangement is wholly consistent with this public interest test. The volumes will be imported on a short-term, interruptible basis. No minimum purchase provision or take-or-pay obligation is included in the contract. There are to be semiannual price reviews and adjustments as necessary to respond to market changes over the term of the arrangement. These components of the arrangement, taken together, provide sufficient flexibility to ensure that the gas will only be imported when it is fully competitive.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, it is presumed Mobil will purchase the gas only to the extent it needs such volumes for its refinery operations. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Czar Inc. is not inconsistent with the public interest and thus should be granted.[4]

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Czar Resources Inc. (Czar Inc.) is authorized to import up to 6,300 Mcf of Canadian natural gas per day during the 24-month period beginning on the date of first delivery, and to continue thereafter on a month-to-month basis until terminated by either party or until a maximum of 4.6 Bcf has been imported, whichever occurs first, in accordance with the provisions established in the contract submitted as part of the application in this docket.

B. Czar Inc. shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Czar Inc. shall file with the ERA the terms of any renegotiated price that may become effective after the initial 6-month period within two weeks of its effective date.

D. The motion to intervene by Northwest Pipeline Corporation is hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its motin to intervene and not herein specifically denied, and that the admission of this intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C. April 24, 1985

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-10719 Filed 5-1-85; 8:45 am]

BILLING CODE 6450-01-M

[1] 50 FR 10835, March 18, 1985.

[2] 15 U.S.C. 717b.

[3] 49 FR 6684, February 22, 1984.

[4] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Federal Energy Regulatory Commission

Finality of Oil Pipeline Valuation Reports; Acorn Pipe Line Co. et al.

April 30, 1985.

The Federal Energy Regulatory Commission, by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

The Board has issued the tentative valuation report(s) for the following common carriers by oil pipeline:

Docket No. PV-	Carrier	Year(s)
1364-000	Acorn Pipe Line Company	1982, 1983.
1473-000	Algonquin Pipe Line Company	1981, 1982.
1414-000	Allegheny Pipeline Company	1982, 1983.
1439-000	Amdel Pipeline, Inc	1982.
1440-000	American Petrofina Pipe Line Company	1981, 1982.
1302-000	Amoco Pipeline Company	1982.
1329-000	ARCO Pipe Line Company	1982.
1291-000	Ashland Pipe Line Company	1982.
1381-000	Badger Pipe Line Company	1982, 1983.
1430-000	Belle Fourche Pipeline Company	1982, 1983.
1425-000	Black Lake Pipe Line Company	1982, 1983.
1322-000	Buckeye Pipe Line Company	1982, 1983.
1382-000	Butte Pipe Line Company	1982, 1983.
1465-000	C & T Pipeline, Inc	1980 (Initial), 1981.
1404-000	Calnev Pipe Line Company	1982, 1983.
1416-000	Chevron Pipe Line Company	1982.
1427-000	Chicap Pipe Line Company	1982, 1983.
1481-000	Chisholm Pipeline Company	1982 (Initial).
1312-000	Cities Service Pipe Line Company	1982.
1472-000	Clarco Pipe Line Company	1979 (Initial).
1464-000	Cochin Pipeline System—U.S.	1980, 1981.
1433-000	Collins Pipeline Company	1982, 1983.
1422-000	Colonial Pipeline Company	1981, 1982.
1316-000	Continental Pipe Line Company	1982.
1426-000	Cook Inlet Pipe Line Company	1982, 1983.
1365-000	Crown-Rancho Pipe Line Corporation	1982, 1983.
1349-000	Diamond Shamrock Refining and Marketing Company	1982, 1983.
1411-000	Dixie Pipeline Company	1982.
1447-000	Dome Pipeline Corporation, Eastern Delivery System	1980, 1981.
1385-000	Emerald Pipe Line Company	1982, 1983.
1469-000	Enterprise Pipeline Company	1980 (Initial).
1470-000	Enterprise Products Company of Mississippi	1981 (Initial).
1441-000	Explorer Pipeline Company	1982, 1983.
1394-000	Exxon Pipeline Company	1981, 1982.
1341-000	Farmland Industries, Inc	1982, 1983.
1389-000	Four Corners Pipe Line Company	1982, 1983.
1478-000	G & T Pipeline Company	1982 (Initial).
1402-000	Getty Pipeline, Inc	1982.
1436-000	Gulf Central Pipeline Company	1982.
1333-000	Gulf Pipeline Company	1982.
1409-000	Hess Pipeline Company	1982, 1983.
1431-000	Hydrocarbon Transportation, Inc	1982.
1406-000	Jayhawk Pipeline Corporation	1982, 1983.
1413-000	Jet Lines, Inc	1982, 1983.
1375-000	Kaneb Pipe Line Company	1982, 1983.
1299-000	Kaw Pipe Line Company	1982, 1983.
1429-000	Kerr-McGee Pipeline Corporation	1982, 1983.
1435-000	Kiantone Pipeline Corporation	1982, 1983.
1419-000	Lake Charles Pipe Line Company	1982, 1983.
1354-000	Lakehead Pipe Line Company	1982, 1983.
1403-000	Laurel Pipe Line Company	1982.
1392-000	Marathon Pipe Line Company	1982.
1395-000	Mid-America Pipe Line Company	1982.
1353-000	Mid-Valley Pipeline Company	1982, 1983.
1448-000	Mobil Eugene Island Pipeline Company	1982.
1311-000	Mobil Pipe Line Company	1982.
1332-000	National Transit Company	1982, 1983.
1455-000	Ohio Oil Gathering Corporation II	1982.
1292-000	Ohio River Pipe Line Company	1982.
1471-000	Oiltanking of Texas Pipeline Company	1980 (Initial).
1417-000	Olympic Pipe Line Company	1982, 1983.
1453-000	Osage Pipe Line Company	1981, 1982.
1456-000	Owensboro-Ashland Company	1982, 1983.
1420-000	Paloma Pipe Line Company	1982, 1983.
1320-000	Phillips Pipe Line Company	1982.
1372-000	Pioneer Pipe Line Company	1982, 1983.
1343-000	Plantation Pipe Line Company	1982, 1983.
1367-000	Platte Pipe Line Company	1982, 1983.
1410-000	Portal Pipe Line Company	1982, 1983.
1347-000	Portland Pipe Line Corporation	1982, 1983.
1327-000	Pure Transportation Company	1982.
1428-000	Santa Fe Pipeline Company	1982.
1450-000	Seaway Pipeline, Inc	1982.
1369-000	Shamrock Pipe Line Corporation, The	1982, 1983.
1326-000	Shell Pipe Line Corporation	1982.
1335-000	Sohio Pipe Line Company	1982.
1424-000	Southcap Pipe Line Company	1982, 1983.
1393-000	Southern Pacific Pipe Lines, Inc	1982.
1370-000	Sun Oil Line Company of Michigan	1982, 1983.
1315-000	Sun Pipe Line Company	1982, 1983.
1386-000	Tecumseh Pipe Line Company	1982, 1983.
1300-000	Texaco-Cities Service Pipe Line Company	1982, 1983.
1408-000	Texas Eastern Transmission Corporation	1982.
1293-000	Texas-New Mexico Pipe Line Company	1982.
1330-000	Texas Pipe Line Company, The	1982.
1449-000	Texoma Pipe Line Company	1982, 1983.
1466-000	Tomahawk Pipe Line Company	1982.
1357-000	Total Pipeline Corporation	1982, 1983.
1379-000	Trans Mountain Oil Pipe Line Corporation	1982, 1983.
1412-000	Trans-Ohio Pipeline Company	1982, 1983.
1388-000	West Emerald Pipe Line Corporation	1982, 1983.
1463-000	Western Oil Transportation Company, Inc	1980, 1981, 1982.
1396-000	West Shore Pipe Line Company	1982, 1983.
1362-000	West Texas Gulf Pipe Line Company	1982.
1421-000	White Shoal Pipeline Corporation	1982, 1983.
1377-000	Wolverine Pipe Line Company	1982, 1983.
1355-000	Wyco Pipe Line Company	1982, 1983.
1373-000	Yellowstone Pipe Line Company	1982, 1983.

Section 19a(h) of the Interstate Commerce Act provides that if no protest is filed within thirty days, the valuation shall become final as of the date thereof. Notice is hereby given that no protest to the valuation reports for any of these carriers have been received and that each valuation report is final as of the date to was issued by the Board.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 85-10630 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RI85-2-000]

ARCO Oil & Gas Co., Division of Atlantic Richfield Co.; Petition for Special Relief

April 26, 1985.

Take notice that on March 11, 1985, ARCO Oil and Gas Company, Division of Atlantic Richfield Company, filed a document styled a motion and, concurrently therewith, a notice of change in rates under its Gas Rate Schedule No. 557 covering sales to El Paso Natural Gas Company under a March 11, 1965 contract from the Hugoton and Panoma Fields, Grant and Staton Counties, Kansas. The motion sought expeditious issuance of an order (1) advising of acceptance of the notice filing, (2) confirming the applicability of increased rates set forth therein, and (3) waiving requirements at 18 CFR 154.94(b) for a thirty day notice period applicable to the filing and permitting the rate change to become effective March 12, 1985.

By letter order issued April 10, 1985, ARCO was informed that its motion is being considered as a petition for special relief. Its notice of change in rate was rejected without prejudice to any action taken on the petition for special relief because action regarding the notice could not be taken separately from consideration of the petition.

ARCO states in its filing that the contract expired pursuant to its terms March 11, 1985; that most of the gas was NGPA section 104 "flowing gas" eligible for a rate of $0.501 per MMBtu; that El Paso has unjustifiably refused to enter into a rollover contract with ARCO concerning the 104 gas; and that the gas has nevertheless become eligible for the NGPA section 106(a) rollover rate, $0.914, effective after expiration of the original contract, *i.e.*, March 12, 1985. The notice of change would increase the rate from the section 104 "flowing gas" rate to the section 106(a) rollover rate. ARCO alleges that El Paso refused to enter into a rollover contract with ARCO unless ARCO made certain concessions to EL Paso concerning gas sales and transactions unrelated to the instant sale, including general efforts by EL Paso to decrease its higher gas costs, obtain market-out provisions in some of its gas purchase contracts, and reduce

its take-or-pay obligations. ARCO argues that apart from NGPA section 106(a), section 104(b)(2) permits an increase to a higher rate if it is applicable to a first sale and is just and reasonable under the Natural Gas Act. It argues that the NGPA section 106(a) rate is just and reasonable under the Natural Gas Act because it was derived from a pre-existing rate which had been found to be just and reasonable under the Natural Gas Act.

On April 5, 1985, El Paso filed a motion to intervene and a protest to ARCO's motion. El Paso need make no further filing concerning its participation in response to this notice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10625 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-138-000]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 26, 1985.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on April 19, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective May 19, 1985:

Second Revised Sheet No. 51;
First Revised Sheet Nos. 52 and 53

These revised tariff sheets are being filed to implement special provisions as part of its RQ Rate Schedule to provide incentives to its customers to encourage the construction and installation of new cogeneration facilities. Because cogeneration is an efficient means to utilize natural gas, reduces the "burner-tip" cost of energy for both industrial and commercial customers and provides a way to retain or improve local employment and improve local economic stability, Consolidated proposes these tariff changes as a promotional effort to encourage natural gas sales to new cogenerators. In addition, this incentive proposal comports with the congressional intent evidenced in the National Energy Act to stimulate congeneration.

Consolidated proposes to exclude cogeneration sales for resale to new "congeneration load" as defined in the Rate Schedule, from the Winter Requirement Quantity (WRQ) computation as well as waive the WRQ charge adjustment for any customer who exceeds its WRQ due to serving congeneration loads. In addition, these provisions will only apply to Consolidated's RQ customers if they have established their own special congeration sales incentive rate. Consolidated also proposes to limit individual cogeneration sales for resale to six million Dt annually.

Copies of this filing have been served upon Consolidated's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10626 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 85-139-000]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 26, 1985.

Take notice that Consolidated Gas Transmission Corporation on April 19, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective May 19, 1985:

Third Revised Sheet No. 31
Original Sheet Nos. 75, 76, 77, 78 and 79
First Revised Sheet Nos. 226 and 227

These tariff sheets are being filed to establish a transportation tariff for interruptible congeneration transportation service (Rate Schedule CT). Service would be performed under Consolidated's blanket certificate and under Order Nos. 319 and 234-B. Rate Schedule CT is being filed to encourage the use of natural gas to any end user with a new qualified cogeneration facility. Because cogeneration is an efficient means to utilize natural gas, reduces the "burner-tip" cost of energy for both industrial and commercial customers and provides a way to retain or improve local employment and improve local economic stability, Consolidated proposes these tariff changes as a promotional effort to encourage these services. In addition, this proposal comports with the congressional intent evidenced in the National Energy Act to stimulate cogeneration.

Consolidated proposes the rate under Rate Schedule CT to be the non-gas component of the RQ commodity rate for *incremental* cogeneration load only. This rate schedule will be available only to end users that are customers of Consolidated's RQ customers and are using the RQ customers' facilities to transport further the CT quantities.

Copies of this filing have been served upon the Company's jurisdictional customers and interested commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before May 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10627 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-26-000]

State of Tennessee, NGPA Section 108 Determination, Philadelphia Oil Company, Rainwater Ramsey Well No. P-15, Larkin Stanley Well No. P-32, Steinman Development Well No. P-39, Thomas Bise Well No. P-55, FERC-JD Nos. 82-52245, 82-52248, 82-52250, and 82-52254; Petition To Reopen and Vacate Well Category Determinations

Issued: April 29, 1985.

On March 29, 1985, Philadelphia Oil Company (Philadelphia), filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and vacate final well category determinations under section 108 of the Natural Gas Policy Act of 1978 (NGPA)[1] for four of its wells in the state of Tennessee.[2] Phialdelphia is a wholly-owned subsidiary of Equitable Resources, Inc.

Section 108 determinations have become final for each of the four wells: the Rainwater Ramsey Well No. P-15, the Larkin Stanley Well No. P-32, the Steinman Development Company Well No. P-39, and the Thomas Bise Well No. P-55. However, a recent review of meter charts of these wells indicates that their maximum efficient rate of flow has been greater than the 60 Mcf per day limitation for a stripper gas well under section 108.

Philadelphia asserts that three of the wells otherwise qualify under section 104 of the NGPA and that one (the P-55 well) has otherwise qualified, pursuant to a final Commission determination, under section 103.

The Commission hereby gives notice that the question of whether refunds, plus interest calculated under 18 CFR 154.102(c), will be required is a matter subject to the review and final determination of the Commission.

Protest and petitions to intervene may be filed in this proceeding with the Federal Energy Regulatory Commission at 825 North Capitol Street NE., Washington, D.C. 20426 within 30 days of the publication of this notice in the Federal Register. All protests filed will be considered; however, a petition to intervene must be filed to become a party to this proceeding. See Rules 211 and 214 of the Commission's Rules of Practice and Procedure.[3]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10628 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3301-3432 (1982).

[2] The petition was filed pursuant to the provisions of 18 CFR 275.205 (1984).

[3] 18 CFR 385.211 and 385.214 (1984).

[Docket No. CI85-400-000]

Vesta Energy Co.; Applications for Blanket Limited Term Certificate and Limited Partial Abandonment Authorization

April 29, 1985.

Take notice that on April 22, 1985 Vesta Energy Company (Vesta), 2414 Fourth National Bank Building, Tulsa, Oklahoma 74119 filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing a special sales program to be called Vesta Energy Trading (VET or the Program), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in Vet Program, and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. Vesta also requests the Commission to declare that, with respect to Vesta and its activities, the Commission will only assert Natural Gas Act jurisdiction over sales for resale and transportation not otherwise exempt from the NGA or the Natural Gas Policy Act of 1978 (NGPA).

Under The Vet Program, Vesta proposed to purchase and resell on a spot basis natural gas qualifying for the section 102, 103 and 107 or 108 rates under the Natural Gas Policy Act of 1978 (NGPA). Only contractually committed gas will be sold. Vesta or the participating producers will seek temporary releases of gas from the purchases to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 13, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10629 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-032]

Pennzoil Co.; Eighteenth Amendment To Application for Immediate Clarification or Abandonment Authorization

April 29, 1985.

Take notice that on April 25, 1985, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-032 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas is required to allow sales of gas to nine new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Eighteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty . . . to provide adequate gas service

to all applicants . . . and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene: Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, May 6, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-032.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10684 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8816-000 et al.]

Hydroelectric Applications (Coffeeville Hydro Associates et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 8816-000.

c. Date Field: December 24, 1984.

d. Applicant: Coffeeville Hydro Associates.

e. Name of Project: Coffeeville Hydro Project.

f. Location: Tombigbee River near Coffeeville, Clarke County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Casey Cummings, 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: June 3, 1985.

j. Competing Application: Project No. 8813-000, Date Filed: December 24, 1984. Comment Due Date: April 1, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Coffeeville Lock and Dam, a 850-foot-long and 300-foot-wide diversion channel and would consist of: (1) A proposed powerhouse located on the north side of the river in the diversion channel housing two 8-MW generators for a total installed capacity of 16 MW; (2) a proposed 44-kV transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmisson system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 55 GWh. All project energy would be sold to Alabama Power Company.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

2a. Type of Application: Preliminary Permit.

b. Project No.: 8815-000.

c. Date Filed: December 24, 1984.

d. Applicant: Oliver Hydro Associates.

e. Name of Project: W. B. Oliver Hydro Project.

f. Location: On the Black Warrior River near Tuscaloosa, Tuscaloosa County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Casey Cummings, 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: June 3, 1985.

j. Competing Application: Project No. 8814-000, Date Filed: December 24, 1984 Comment Due Date: March 29, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' W. B. Oliver Lock and Dam, a 1,000-foot-long and 100-foot-wide diversion channel, and would consist of: (1) A new powerhouse located on the north side of the river in the diversion channel housing two 7.5-MW generators for a total installed capacity of 15 MW; (2) a proposed 44-kV transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 60 GWh. All project energy would be sold to Alabama Power Company.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

3a. Type of Application: Conduit Exemption.

b. Project No.: 9008-000.

c. Date Filed: March 7, 1985.

d. Applicant: Los Angeles County Flood Control District (LACFCD).

e. Name of Project: Alamitos Barrier.

f. Location: Pressure Reduction Station, in the City of Long Beach, Los Angeles County, CA.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. T. A. Tidemanson, Chief Engineer, LACFCD, P.O. Box 2418, Los Angeles, CA 90051, (213) 226-4111.

Mr. Peter McAlpin, President, Hydro Electric Constructors, Inc., 932 Town & Country Road, Orange, CA 92668 (714) 547-6867.

i. Comment Date: May 29, 1985.

j. Description of Project: The proposed project would consist of a single turbin-generator unit with an installed capacity of 250 kW, producing an estimated average annual generation of 1.85 GWh, and located at the Central Basin Service Connection No. 44, an underground pressure reducing station vault used for the distribution of water. A tap transmission line would connect the project to an existing 12-kV Southern California Edison (SCE) line. Project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

4a. Type of Application: Conduit Exemption.

b. Project No.: 9007-000.

c. Date Filed: March 7, 1985.

d. Applicant: Los Angeles County Flood Control District (LACFCD).

e. Name of Project: Dominguez Gap Barrier.

f. Location: Pressure Reduction Station, in the City of Carson, Los Angeles County, CA.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. T. A. Tidemanson, Chief Engineer, LACFCD, P.O. Box 2418, Los Angeles, CA 90051 (213) 226-4111.

Mr. Peter McAlpin, President, Hydro Electric Constructors, Inc., 932 Town & Country Road, Orange, CA 92668 (714) 547-6867.

i. Comment Date: May 29, 1985.

j. Description of Project: The proposed project would consist of a single turbine-generator unit with an installed capacity of 275 kW, producing an estimated average annual generation of 2.20 GWh, and located at the West Coast Basin Service Connection No. 37, an underground pressure reducing station vault used for the distribution of water. A tap transmission line would connect the project to an existing 12-kV Southern California Edison (SCE) line. Project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9010-000.

Date Filed: March 8, 1985.

d. Applicant: Benjamin Falls Hydroelectric Company.

e. Name of Project: Benjamin Falls.

f. Location: Airport Brook in Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)—825(r).

h. Contact Person: Mr. John L. Warshow, Benjamin Falls Hydroelectric Company, 26 State Street, Montpelier, VT 05602.

i. Comment Date: June 13, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 40-foot-long stone and concrete dam owned by the City of Montpelier; (2) an existing reservoir with a surface area of 6.2 acres and a gross storage capacity of 62 acre-feet at elevation 884 feet NGVD; (3) a proposed 3-foot-diameter, 2,200-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 825-kW; (5) a proposed 6-foot-wide, 20-foot-long, 5-foot-high tailrace; and (6) a proposed 300-foot-long transmission line tying into the existing Green Mountain Power Corporation System. The Applicant estimates a 2,000,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No: 8952-000.

c. Date Filed: February 14, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Procupine Gulch.

f. Location: On Procupine Gulch Creek in Summit County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 10,360 feet; (2) a proposed reservoir with a surface area of 450 square feet and a storage capacity of 900 cubic feet; (3) a proposed 4,000-foot-long, 14-inch-diameter penstock; (4) a proposed powerhouse containing two generating units with a total capacity of 300 kW; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 24-kV transmission line, approximately 700 feet long; and (7) appurtenant facilities. The estimated average annual generation of 1.3 million kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $6,000.

7a. Type of Application: Preliminary Permit.

b. Project No: 8944-000.

c. Date Filed: February 11, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Dry Gulch Creek.

f. Location: On the Dry Gulch Creek in Clear Creek County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 10,904 feet; (2) a proposed reservoir with a surface area of 200 square feet and a storage capacity of 600 cubic feet; (3) a proposed 3,200-foot-long, 12-inch-diameter penstock; (4) a proposed powerhouse containing a single generating unit of 120 kW capacity; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 1,600 feet long; and (7) appurtenant facilities. The estimated average annual generation of 500,000 million kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,000.

8a. Type of Application: Major License (Over 5MW).

b. Project No.: 4369–002.

c. Date Filed: August 23, 1984.

d. Applicant: City of Anoka.

e. Name of Project: Coon Rapids Hydroelectric Project.

f. Location On the Mississippi River in Anoka and Hennepin Counties, MN.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Ashok K. Rajpal, Mead & Hunt, Inc., 2320 University Avenue, P.O. Box 5247, Madison, Wisconsin 53705 Mr. Jerry Dulgar, City Hall, 2015 First Avenue, Anoka, Minnesota 55303.

i. Comment Date: June 24, 1985.

j. Description of Project: The Coon Rapids dam is owned by the Hennepin County Park Reserve. The proposed project would consist of: (1) The existing, 2,150-foot-long dam which consists of two earth dikes, a Tainter gate spillway section, and a nonoverflow section. The dam varies in height between 15 feet and 25 feet; (2) an existing reservoir with a surface area of 485 acres and a storage capacity of 4,780 acre-feet at powerpool elevation of 830.1 feet m.s.l.; (3) a proposed headrace; (4) a proposed reinforced concrete powerhouse containing two generating units with a total rated capacity of 10.4 MW; (5) a proposed tailrace; (6) a proposed 13.8–kV transmission line that would be connected to the Northern Power Company's substation located 150 feet south of the existing dam; and (7) appurtenant facilities. The estimated average annual energy output for the project is 47,000,000 kWh.

k. Purpose of Project: Power generated at the project would be sold to the Applicant's customers with the excess sold to the Northern States Power Co.

l. This notice also consists of the following standard paragraphs: A3, A9, B, & C.

9a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7004–001.

c. Date Filed: November 28, 1984, and supplemented February 28, 1985.

d. Applicant: City of Rock Falls, Illinois.

e. Name of Project: Upper Sterling Hydro Project.

f. Location: On the Rock River in Rock Falls, Whiteside County, Illinois.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Honorable Glen R. Kuhlemier, Mayor, City of Rock Falls, 603 10th Street, Rock Falls, Illinois 61071.

i. Comment Date: June 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam approximately 1,300 feet long and 9 feet high inclusive of 28-inch flashboards; (2) an existing 2,400-acre reservoir having a storage capacity of 7,000 acre-feet at an elevation of 636 feet m.s.l.; (3) a proposed powerhouse integral with the dam, located at the east side of the river, housing two 1,000-kW generators for a total installed capacity of 2,000 kW; (4) a proposed buried 35-foot-long 34.5-kV transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual energy generated would be 15.3 GWh. The Applicant holds all real estate interests necessary to devleop and operate the proposed project.

k. Purpose of Project: All energy produced will be used by the Applicant to reduce wholesale power purchases.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

10a. Type of Application: Amendment to Exhibit R (Recreation Plan).

b. Project No: 2409–004.

c. Date Filed: March 7, 1983.

d. Applicant: Calaveras County Water District, California.

e. Name of Project: North Fork Stanislaus River Hydroelectric Development.

f. Location: Utica and Union Reservoirs, Calaveras County, California.

g. Filed Pursuant to: License Article 44.

h. Contact Person: Mr. Steve Felte, General Manager, Calaveras County Water District, 427 East St. Charles Street, San Andreas, CA 95249 (209) 754–3543.

i. Comment Date: June 7, 1985.

j. Description of Project: The Licensee proposes to construct a boat launching facility with 25 spaces for vehicle parking and 15 picnic sites with 15 spaces for vehicle parking within a 30-acre area adjacent to the southern shoreline of Union Reservoir. All parking facilities would be situated along a Forest Service road and away from the shoreline in order to avoid possible conflicts between adjacent uses. Additionally, twenty overnight campsites with associated access roads, parking, water and sanitation systems would be constructed in a 13-acre area at the southwest end of Union Reservoir. Primitive boat access/walking group camps, one of which would be near the southernmost reach of Utica Reservoir and the other along the northeastern shoreline of Union Reservoir are also proposed. Existing boat access group campsites would be redesignated as primative according to Forest Service guidelines with no facilities in order to manage for potential overuse of the area.

k. This notice also consists of the following standard paragraphs: B, C and D2.

11a. Type of Application: Conduit Exemption.

b. Project No.: 8931–000.

c. Date Filed: February 4, 1985.

d. Applicant: Tuolumne County.

e. Name of Project: Eureka Ditch Hydroelectric Project.

f. Location: Within the Eureka Ditch, part of the Applicant's existing water supply system, Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Billy H. Marr, Water Supervisor, Tuolumne County Administration Center, 2 South Street, Sonora, CA 95370.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-inch-diameter, 1,000-foot-long low pressure pipe; (2) a 10-inch-diameter, 1,000-foot-long penstock; and (3) a powerhouse containing a single generating unit with a rated capacity of 109 kW to operate under a head of 560 feet. A 50-foot-long 12-kV transmission line would connect the project with an existing Pacific Gas and Electric Company (PG&E) line at the site.

k. Purpose of Project: The project's estimated annual generation of 956,000 kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D3b.

12a. Type of Application: Conduit Exemption.

b. Project No.: 8937–000.

c. Date Filed: February 6, 1985.

d. Applicant: Amador County Water Agency.

e. Name of Project: Ione Pipeline Hydroelectric Project.

f. Location: On a proposed pipeline that would replace Ione Canal, part of Pacific Gas and Electric Company's Amador Water System, in Amador County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David T. Walker, General Manager, Amador County

Water Agency, 204 Court Street, Jackson, CA 95642.

i. Comment Date: June 7, 1985.

j. Description of Project: The proposed project, near Ione Reservoir, would consist of a generating unit with a rated capacity of 405 kW that would utilize energy that normally would have to be dissipated through pressure reducing values. The head at the generating unit will be between 981 and 1143 feet. A 1,000-foot-long, 12-kV transmission line will connnect the project with an existing Pacific Gas and Electric Company (PG&E) line south of the site.

k. Purpose of Project: the project's estimated annual generation of 1.97 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D3b.

13a. Type of Application: Preliminary Permit.

b. Project No.: 9040–000.

c. Date Filed: March 21, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Gordon Dam.

f. Location: On the Little River in Worcester County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson and Joseph D. Brostmeyer, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high, 50-foot-long concrete gravity dam; (2) a reservoir with a surface area of 25 acres, a storage capacity of 184 acre-feet, and a normal water surface elevation of 479.0 feet m.s.l.; (3) a proposed intake gate; (4) a proposed concete powerhouse connected to the existing dam containing one generating unit with a capacity of 25 kW; (5) a new transmission line, 100 feet long; and (6) appurtenant facilities. The Applicant estimates the average annual generation would be 110,000 kWh. The existing dam is owned by the Gordon Chemical Company, Oxford, Massachusetts.

k. Purpose of Project: Project power would be sold to the Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,000.

14a. Type of Application: Transfer of License.

b. Project No: 1651–004.

c. Date Filed: October 4, 1984.

d. Applicant: Lower Valley Power and Light Inc. (Licensee) and Swift Creek Power Company, Inc. (Transferee).

e. Name of Project: Upper and Lower Swift Creek Hydroelectric.

f. Location: On Swift Creek partially within the Bridger-Teton National Forest, in Lincoln County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. E. Farley Eskelson, Swift Creek Power Company, Inc., 165 Wright Brothers Drive, Salt Lake City, UT 84116 and Boyd Parker, Lower Valley Power and Light, Afton, Wyoming 83110.

i. Comment Date: June 3, 1985.

j. Description of Transfer: On October 4, 1984, Lower Valley Power and Light, Inc. (Licensee) and Swift Creek Power Company, Inc. (Transferee), filed a joint application for transfer of major license for the Upper and Lower Swift Creek Hydroelectric Project No. 1651.

The purpose of the proposed transfer of the license is to facilitate the rehabilitation of the Upper and Lower Swift Creek Project which was originally licensed on December 1, 1942, and has been inoperative since 1969. The Transferee fully intends to rehabilitate and operate the project as per three orders amending the license issued on September 4, 1981; September 3, 1982 and November 7, 1983.

The Transferee is a private corporation, organized under the laws of the State of Wyoming, and domesticated in the State of Wyoming. The Transferee submits that it will comply with all applicable laws of the State of Wyoming as required by section 9(b) of the Federal Power Act.

The Licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The Transferee accepts all the terms and conditions of the license, as amended, and agrees to be bound thereby to the same extent as though it was the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

15a. Type of Application: License (Minor).

b. Project No: 8469–000.

c. Date Filed: July 30, 1984.

d. Applicant: Artwill Incorporated.

e. Name of Project: Rhyne Mill No. 1.

f. Location: South Fork Catawba River, Lincoln County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur W. Yex, 147 Highridge Drive, Spartanburg, South Carolina 29302.

i. Comment Date: June 21, 1985.

j. Description of Project: Applicant proposes to rehabilitate the existing inoperative Rhyne Mill No. 1 Project owned by Rhyne Mills, Inc. of Lincolnton, North Carolina. The proposed project would consist of: (1) An existing stone masonry gravity dam, about 150 feet in length and 13 feet high; (2) an existing reservoir about 20 acres in surface area, with a storage capacity of 90 acre-feet at a pool elevation of 726.0 feet; (3) an existing powerhouse containing two generating units which would be restored to service, with a total capacity of 345 kW; (4) a proposed 150-foot-long tailrace section about 15 feet wide and 4 feet deep; (5) a proposed high voltage transmission line about 850 feet long leading from the powerhouse area to a point of interconnection; and (6) appurtenant facilities.

The project's estimated average annual generation of 2.4 million kWh would be sold to Duke Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B & C.

16a. Type of Application: Preliminary Permit.

b. Project No: 8954–000.

c. Date Filed: February 14, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Hoop Creek.

f. Location: On Hoop Creek in Clear County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 9,924 feet; (2) a proposed reservoir with a surface area of 300 square feet and a storage capacity of 600 cubic feet; (3) a proposed 1,500-foot-long, 14-inch-diameter penstock; (4) a proposed powerhouse containing two generating units with a

total capacity of 200 kW; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 200 feet long: and (7) appurtenant facilities. The estimated average annual generation 800,000 kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $4,000.

17a. Type of Application: Preliminary Permit.

b. Project No: 8953–000.

c. Date Filed: February 14, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Mill Creek.

f. Location: On the Mill Creek in Clear County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 9,800 feet; (2) a proposed reservoir with a surface area of 200 square feet and a storage capacity of 600 cubic feet; (3) a proposed 1,200-foot-long, 14-inch-diameter penstock; (4) a proposed powerhouse containing a single generating unit of 130 kW capacity; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 1,500 feet long; and (7) appurtenant facilities. The estimated average annual generation 500,000 kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $4,000.

18a. Type of Application: Preliminary Permit.

b. Project No.: 8934–000.

c. Date Filed: February 5, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Blue Creek.

f. Location: On the Blue Creek in Clear Creek County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 10,644 feet; (2) a proposed reservoir with a surface area of 450 square feet and a storage capacity of 900 cubic feet; (3) a proposed 3,000-foot-long, 12-inch-diameter penstock; (4) a proposed powerhouse containing two generating units with a total capacity of 500 kW; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 200 feet long; and (7) appurtenant facilities. The estimated average annual generation of 1 million kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

19a. Type of Application: Preliminary Permit.

b. Project No.: 8920–000.

c. Date Filed: February 1, 1985.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Sugar Creek Hydroelectric Project.

f. Location: Catawba River, York County, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, President, Independence Electric Corporation, 919 18th Street, NW., Washington, DC 20006.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A proposed 1,000-foot-long, 50-foot-high earth dam; (2) a proposed reservoir with a surface area of 1,900 acres and a storage capacity of 22,000 acre feet; (3) a proposed powerhouse located in the existing stream bed at the downstream side of the dam, and housing three generating units with a total capacity of 19.5 MW; (4) a proposed 6-mile-long 230-kV transmission line; and (5) appurtenant facilities. The project's estimated average annual generation of 67,000,000 kWh would be sold to a nearby utility.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. The applicant proposes to conduct foundation explorations, including some soil and rock borings along the proposed dam axis, a geophysical seismic survey and geologic mapping in the proposed dam location. No new roads would be constructed for access under these studies and the studies would be conducted without significantly disturbing the land. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

20a. Type of Application: Transfer of License.

b. Project No.: 2966–004.

c. Date Filed: February 14, 1985.

d. Applicant: James C. Katsekas, Zoes J. Dimos, and Clement Dam Development, Inc.

e. Name of Project: Clement Dam Project.

f. Location: On the Winnepesaukee River, near the Town of Tilton, Belknap and Merrimack Counties, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Zoes J. Dimos, 217 Rocking ham Road, Londonderry, NH 03053.

Mr. Eugene J. Garceau, Clement Dam Development, Inc., P.O. Box 1011, Portsmouth, NH 03801.

i. Comment Date: June 6, 1985.

j. Description of Proposed Transfer: On May 17, 1982, a license was issued to Zoes J. Dimos, and James C. Katsekas (Licensees), to construct operate and maintain the Clement Dam Project No. 2966. The Licensees intend to add Clement Dam Development, Inc., to the license in order to obtain the necessary continued financing, and assistance in the operation of the project. For that reason the Licensess and Clement Dam Development, Inc. have filed a request to transfer the license to Zoes J. Dimos, James C. Katsekas, and Clement Dam Development, Inc. (Transferees).

The Licensees have complied with the terms and conditions of the license. The project has been in operation as of December 29, 1984. The Transferees have agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as if it were the original licensees.

k. This notice also consists of the following standard paragraphs: B and C.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or condult exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exeption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application and file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date

for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing prelininary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no láter than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATIONS", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Wahsington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildflife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and reponsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other

formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 29, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10685 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00062; FRL-2828-6]

Open Meeting of Interagency Toxic Substances Data Committee

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: This notice announces the forthcoming meeting of the Interagency Toxic Substances Data Committee. The date of the meeting has been changed from that announced at the March meeting. The meeting is open to the public.

DATE: The meeting will take place from 9:30 a.m. to 12:30 p.m. on June 11, 1985.

ADDRESS: The meeting will be held in the: First Floor Conference Room, Council on Environmental Quality, 722 Jackson Pl., NW., Washington, D.C. 20006. Please use the entrance on Jackson Place.

FOR FURTHER INFORMATION CONTACT: Gerard Brown (TS-793), Executive Secretary, Interagency Toxic Substances Data Committee, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-333, 401 M Street SW., Washington, D.C. 20460 (202-382-3755).

SUPPLEMENTARY INFORMATION: The regular meetings of the Interagency Toxic Substances Data Committee usually are held on the first Tuesday of alternate months. Because of the difficulty of holding a meeting during the summer vacation months, the next meeting has been scheduled for September 10, 1985.

Dated: April 25, 1985.

Gerard Brown,

Executive Secretary, Interagency Toxic Substances Data Committee.

[FR Doc. 85-10657 Filed 5-1-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Office of Information Resources Management

Federal Telecommunication Standards

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunication Standard (FED-STD). FED-STD 1028, "Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment" is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, Office of Technology and Standards, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of telecommunication standards for NCS interoperability and the computer-communication interface.

2. On October 25, 1983, a notice was published in the **Federal Register** (48 FR 49383) that a proposed draft Federal Telecommunications Standard entitled "Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment" was being proposed for Federal use.

3. The justification package as approved by the Director, Office of Science and Technology Policy (OSTP), Executive Office of the President was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

4. The approved standard contains four sections. Sections 1 and 2 provide information regarding description, objectives, application, definitions and referenced documents. Sections 3 and 4 provide the technical requirements of the standard.

5. A copy of the standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), Room 6039, 7th and D Streets, SW, Washington, DC 20407; telephone (202) 472-2205.

Dated: April 4, 1985.

Frank J. Carr,

Assistant Administrator Office of Information Resources Management.

FEDERAL STANDARD

Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard With CCITT Group 3 Facsimile Equipment

This standard is issued by the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

1. *Scope*

1.1 *Description.* This standard specifies interoperability and security related requirements for the use of encryption with CCITT (i.e. International Telegraph and Telephone Consultative Committee) Group 3-type facsimile equipment. The algorithm used for encryption is the Data Encryption Standard (DES), described in Federal Information Processing Standards Publication 46. Requirements contained in section 3 below relate to the interoperation of DES Cryptographic Equipment, or their operation with associated CCITT Group 3 facsimile equipment. Additional security requirements, not directly relating to interoperability, are contained in Federal Standard 1027.

1.2 *Objectives*

1.2.1 *Interoperability.* To facilitate the interoperation of Government facsimile equipment that requires cryptographic protection using the Data Encryption Standard (DES) algorithm.

1.2.2 *Security.* To prevent the disclosure of facsimile documents.

1.3 *Application.* This standard applies to all DES cryptographic components, equipment, systems, and services procured or leased by Federal departments and agencies for the encryption, using the Data Encryption Standard (DES) algorithm, of documents transmitted by CCITT Group 3-type facsimile equipment. Guidance to facilitate the application of this standard, with respect to degradation of security by improper implementation or use, will be provided for in a revision to Federal Property Management Regulation 41, Code of Federal Regulations 101-35.3.

1.4 *Definitions.* Until Federal Standard 1037 is revised to include encryption terms, definitions of encryption-related terms may be found in the National Communications Security Glossary.

2. *Referenced Documents*

a. Federal Information Processing Standards Publication 46: Data Encryption Standard. (Copies of this standard are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

b. Federal Information Processing Standards Publication 81: DES Modes of Operation. (Copies of this standard are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

c. Federal Standard 1026: Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

d. Federal Standard 1027: Telecommunications: General Security Requirements for Equipment Using the Data Encryption Standard. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

e. Federal Standard 1062: Telecommunications: Group 3 Facsimile Apparatus for Document Transmission. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

f. Federal Standard 1063: Telecommunications: Procedures for Document Facsimile Transmission. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

g. National Communications Security Glossary (Controlled Distribution). (Copies of this glossary may be requested from the National Communications Security Committee (NCSC) Secretariat, Room C-2A40, Operations Building 3, National Security Agency, Fort George G. Meade, MD 20755.)

3. *Requirements*

3.1 *Overview.* CCITT (i.e. International Telegraph and Telephone Consultative Committee) Group 3 digital facsimile, transmitted at 2.4, 4.8, 7.2, or 9.6 kbits/s, is encrypted using the Data Encryption Standard (DES) algorithm in the same manner as is described for encrypting synchronous data in Federal Standard 1026. Only Group 3 facsimile documents and optional 2.4 kbit/s binary-coded signals are encrypted. Group 3 facsimile is described in Federal Standard 1062. Binary-coded signals are described in Federal Standard 1063.

3.2 *Mode of Operation.* The 1-bit Cipher Feedback mode of operation shall be used. (Ref. Federal Information Processing Standards Publication 81.)

3.3 *Transmission.* Upon Clear to Send indication (e.g. CCITT Interchange Circuit 106, Ready for Sending, ON) from a primary (i.e. CCITT V.27 ter or V.29) modem, the modem input (e.g. CCITT Interchange Circuit 103, Transmitted Data) is typically in a MARK (all ONES) state. A 48-bit Initializing Vector (IV) is sent at this point in time, preceded by a single ZERO bit (SPACE) to delimit the IV. The first bit transferred of the 48-bit IV is placed in bit position 17 of the DES device input block (Ref. Federal Information Processing Standards Publication 81.) After transmission of the IV, all bits passing through the primary modem are first encrypted. Encryption continues until Clear to Send indication is turned off.

3.4 *Reception.* Upon Receiver Ready indication (e.g. CCITT Interchange Circuit 109, Data Channel Received Line Signal Detector, ON) from a primary (i.e. CCITT V.27 ter or V.29) modem, the moderm output (e.g. CCITT Interchange Circuit 104, Received Data) is typically in a MARK (all ONES) state. The 48 bits received immediately following the first ZERO bit (SPACE) are considered to be the Initializing Vector. All following bits received are decrypted. Decryption continues until Receiver Ready indication is turned off.

3.5 *Encryption Bypass.* Except when DES Cryptographic Equipment is in the bypass mode (reference Federal Standard 1027), it shall not be possible to transmit or receive unencrypted facsimile documents or portions thereof (including Group 1 and 2 documents).

3.6 *DES Key Variable Loading.* The capability shall exist to operate (i.e. encrypt and decrypt facsimile documents) with DES key variables loaded using one of the two methods described in Federal Standard 1027.

4. *Effective Date.* The use of this standard by U.S. government departments and agencies is mandatory effective 180 days following the date of this standard.

5. *Changes.* When a Government department or agency considers that this standard does not provide for its essential needs, a statement citing specific requirements shall be sent in duplicate to the General Services Administration (K), Washington, DC, 20405, in accordance with the provisions of the Federal Property Management Regulation 41 CFR 101-29.403-1. The General Services Administration will determine the appropriate action to be taken and will notify the agency.

Preparing Activity:

National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Military Interests

Military Coordinating Activity: NSA—NS.
Custodians: Army—SC, Navy—EC, Air Force—02.
Review Activities: Army—AD,CR; Navy—AS,OM; Air Force—90; DCA—DC; JTC3A—TT; DLA—DH.
User Activities: Navy—SH,MC.

This document is available from the General Services Administration (GSA), acting as agent for the Superintendent of Documents. A copy for bidding and contracting purposes is available from GSA Business Centers. Copies are for sale at the GSA Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407; telephone (202) 472-2205. Please call in advance for pickup service.

[FR Doc. 85-10433 Filed 5-1-85; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1985 for a Project Grant for Sexually Transmitted Diseases (STD) Professional Education to be funded under the Sexually Transmitted Diseases Research, Demonstration, and Public and Professional Education Grant Program. Catalog of Federal Domestic Assistance Number is 13.978. This program is authorized by section 318(b) of the Public Health Service Act, as amended (42 U.S.C. 247c(b)). Regulations governing Grants for Sexually Transmitted Diseases Research, Demonstration, and Public

and Professional Education (formerly Venereal Disease Research, Demonstrations, and Public Information and Education) are codified in Part 51b at Subparts A and F of Title 42, Code of Federal Regulations.

The objectives of this grant program are to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to support particularly deserving STD public and professional education programs. The professional education segment of the grant program is designed to meet the 1990 Objective for the Nation which states that 95 percent of health providers seeing suspected cases of STD will be capable of diagnosing and treating all diseases and syndromes that fall within that definition. This will be accomplished by training, educating, and updating STD clinical personnel in the public and private sectors and demonstrating quality standards for the care of patients with STD. The achievement of the 1990 objective to improve clinical capability and the other objectives to reduce STD cases and complications are mutually dependent and are national in scope. Therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of the local STD program and that both are coordinated with CDC to assure that the total traning environment represents a national model. The objective of this specific grant offering is to establish a comprehensive STD Prevention/Training (P/T) Center to serve the clinical and Disease Intervention Specialist training needs of personnel from the Western and Southwestern United States.

Eligible applicants, therefore, are the official State of local health agencies of Arizona, California, and Nevada. Awards will be limited to applicants who meet the following minimum requirements:

1. Plan to locate the P/T Center in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients,

b. Serves an average of at least 360 patients per 40 weekly service hours, and

c. Serves patients of sufficient demographic variety and morbidity to support and stimulate the learning process.

2. Have at least one university school of medicine in the vicinity and provide evidence of support, experience, and a firm interest in participating from such a local institution.

3. Provide assurance that a full schedule of training activities will begin within 180 days of the date of grant award.

4. Provide evidence of their capability of adhering to the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1982" (Clinic QAG) in providing diagnostic and treatment services, and to applicable portions of the CDC document entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) in the training of health personnel prior to beginning any training activities.

5. Provide evidence of their willingness to adhere to CDC curriculum in the presentation of STD intervention outreach training courses for federal, State and local health department personnel and for members of the U.S. uniformed services.

Approximately $115,000 will be available for Fiscal Year 1985 to fund one new grant award. It is expected that the initial grant will begin on or about August 1, 1985, and will be funded for 12 months in a 2- to 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, compliance with the P/T Center Guidelines and the Clinic QAG, or future updates thereof, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Funds may be used to support a direct assistance (i.e., "in lieu of cash") position in the dual role of P/T Center coordinator/instructor of STD intervention outreach courses. If such a request is made, CDC will make an individual available for assignment at the earliest possible date following the award. CDC will assist in the training and preparation of the person or persons designated to carry out these responsibilities. Funds will not be awarded for the purchase or lease of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T Center should be located in the health department facility. Funds will not be awarded to renovate existing space, without adequate justification, including appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

An evaluation of each course by each participant (except for the "Update" courses) is required and should be forwarded by CDC within 30 days of the completion of the course. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Applications must include a narrative which, in addition to the minimum requirements for an eligible application as stated above, details the following: (1) Evidence that the State/local health department is willing to work toward meeting the 1990 Objectives for the Nation; (2) evidence that the training component of this project will function in concert with the operating STD clinic and STD intervention outreach components of the local control program; (3) long- and short-term objectives of the proposed training which address the applicant's expected role over the project period in meeting the 1990 Objectives for the Nation and which establish the applicant's anticipated training accomplishments for the initial budget period; (4) the activities and methods which will be employed to accomplish the objectives, (including relationships, responsibilities, and procedures that ensure the P/T Center functions according to the Clinic QAG and the P/T Center Guidelines); (5) a description of the existing medical school-health department liaison activities needed to develop and implement clinical training; (6) an evaluation plan which will help determine if the methods are effective and the objectives are being achieved; (7) a budget with justification; and (8) any other information which will support the request for assistance.

Grant applications will be reviewed and evaluated based on the evidence submitted which specifically describes (with documentation and attachments) the applicant's ability to meet the following criteria:

1. The applicant conveys a satisfactory commitment from the State/local health department administration toward meeting the 1990 Objectives for the Nation, and specifically, that objective related to the preparation of health providers to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities.

2. The applicant satisfactorily describes how the P/T Center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T Center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the

total training environment represents a national model.

3. The applicant's expected role over the project period in meeting the 1990 Objectives for the Nation and anticipated training accomplishments for the initial budget period are satisfactorily addressed in the long- and short-term objectives.

4. The applicant adequately assures that STD diagnostic and treatment services will be provided principally in accordance with the Clinic QAG, in particular:

a. There will be adequate space and staff to accommodate patient volume.

b. There will be at least 5 days of full clinical services provided (a minimum of 35 registration hours during a minimum of 40 patient service hours, including at least 1 evening or Saturday session each week) with no interim daily shutdowns.

c. Clinic management responsibility will be assigned to one person with clinical and/or administrative skills and experience.

d. Diagnosis and treatment will be provided for most STD and their syndromes (e.g., syphilis, gonorrhea, nongonococcal urethritis, PID, herpes, trichomoniasis, human papilloma virus, scabies, etc.).

e. A nurse clinician or nurse clinician and physician assistant model of care will be used with a physician available on-site for consultation.

f. An integrated flow will be used which minimizes the number of patient stops and the amount of patient waiting time.

g. Patients will be seen, regardless of sex, by the next available clinician.

h. Confidentiality will be observed during both patient registration and patient care service delivery.

i. A standardized (e.g., "checkoff"), fully auditable, STD medical record will be employed.

j. There will be an on-site laboratory facility which offers a range of available stat tests for commonly seen STD.

k. There will be quality assurance procedures through which clinical care is audited systematically and the proficiency of stat laboratory activities are assessed periodically through smear/culture and serologic test correlations.

l. CDC diagnostic guidelines will be used (e.g., bimanual examinations for women, complete genital examinations for males).

m. The policies and procedures of the STD clinic will harmoniously complement the activities of the disease intervention outreach component of the program.

n. CDC recommended treatment schedules will be used.

5. The applicant adequately assures that the development and operation of the clinical training component of the proposed P/T Center will be according to the P/T Center Guidelines, in particular:

a. There will be adequate training space for both clinical and STD intervention outreach courses and assurances that it will be available for all scheduled courses.

b. Classroom space will be adequately furnished and equipped.

c. A clerical resource will be identified and available on-site to assist the P/T Center Training coordinator or will be provided for through a proposal to create and fill such a position.

d. The curricula will be developed according to P/T Center Guidelines.

e. The clinic and stat laboratory practicum will be structured such that participants are provided "hands-on" practice.

f. There will be an evaluation of participant and medical school teaching faculty performance.

g. A minimum of 400 hours of instruction will be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described by the P/T Center Guidelines.

h. The medical school personnel will play a dominant role in classroom training.

6. There is a commitment in principle from a local university medical school to participate with the applicant in the establishment of a P/T Center which addresses the following:

a. Part of the time of a liaison/coordinating person (a physician, preferably a physician in the second or third year of a fellowship) with the expense of medical school faculty instructional services being covered by the most cost-effective mechanism possible.

b. The medical school's participation in the development of curriculum that is governed by the P/T Center Guidelines.

c. A minimum of 400 hours of instruction that will be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described in the P/T Center Guidelines.

d. Faculty assistance from the medical school in clinic practicum through the use of residents or fellows.

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum.

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the center for training and clinic practicum.

7. The applicant provides a satisfactory evaluation plan which will help determine if the methods are effective and the objectives are being achieved.

8. The budget request is clearly explained, adequately justified, reasonable, cost-effective, and consistent with the intended use of grant funds.

9. The site of the proposed P/T Center is sufficiently near to major highways that accessibility by car is a reasonable option (since driving has been the common mode of travel used by people in the area to attend these courses).

10. The location of the proposed P/T Center is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport.

Site visits may also be made in connection with the review of applications.

The original and one copy of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.) on May 31, 1985.

Deadlines

Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or,

2. Sent on or before 4:30 p.m. (e.d.t.) on May 31, 1985, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health

Planning and Resources Development Act of 1974.

Information on application procedures, copies of application forms, and other material may be obtained from Nancy Bridger, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Cheryl A. Blackmore, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 329-2558 or FTS 236-2558.

Dated: April 26, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-10641 Filed 5-1-85; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

"Low Income Levels" for Health Careers Opportunity Grants and Nursing Special Project Grants

This Notice updates the income levels that are used to define a "low income family" for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Grants, and section 820, Nursing Special Project Grants of the Public Health Service Act.

Sections 57.1804(b)(2) and 57.1905(b)(2) of the program regulations (42 CFR Part 57, Subparts S and T) require that the Secretary publish periodically in the **Federal Register** the low income levels which will be used for Public Health Service grants to institutions which provide training for individuals from disadvantage backgrounds.

The income figures below were taken from low income levels, published by the U.S. Bureau of Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1984.

	Income Level [2]
Size of parents' family: [1]	
1	$7,000
2	9,000
3	10,800
4	13,800
5	16,200
6 or more	18,300

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100. Adjusted gross income for calendar year 1984.

Dated: April 26, 1985.

Robert Graham, M.D.,

Administrator Assistant Surgeon General.

[FR Doc. 85-10664, Filed 5-1-85; 8:45 am]

BILLING CODE 4160-16-M

Social Security Administration

Transitional-Employment Training Demonstration

SUMMARY: The Acting Commissioner of Social Security announces a demonstration project providing on-the-job training for 350 to 500 mentally retarded individuals who are currently receiving Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act (the Act). The Social Security Administration (SSA) wants to find out from this project the costs and benefits to be derived from this kind of transitional-employment training. This project is authorized under section 1110(b) of the Act. We are publishing this notice to comply with 20 CFR 416.250 which requires SSA to publish a notice in the **Federal Register** describing the project.

FOR FURTHER INFORMATION CONTACT: Dr. Aaron Prero, Office of Policy, ORSIP, SSA, 2-N-7 Annex Building, 6401 Security Blvd., Baltimore, Maryland 21235; Phone (301) 594-6594 or (301) 594-6591.

SUPPLEMENTARY INFORMATION:

Project Objectives

The purpose of this demonstration project is to determine:

(1) The costs of transitional-employment training of mentally retarded SSI recipients; and

(2) The benefits that can be achieved by such training (e.g., the percentage of participants that can be permanently placed in jobs upon conclusion of training).

Description of the Project

This demonstration project will provide on-the-job training at 8 training sites to some 350 to 500 mentally retarded SSI recipients whose ages will range from 18 to 40. The SSI recipients who qualify for the project and who agree to participate will be trained in private sector jobs for up to a year. This on-the-job training will include vocational training but the emphasis will be on providing the participants with the needed social skills for acceptance by supervisors and co-workers. If the training is successful, the project participant will be placed in a potentially permanent position.

An equal number of mentally retarded SSI recipients with ages also ranging from 18 to 40 will serve as a control group. This group will be interviewed and their progress followed through their SSI records. They will serve as a basis for comparison with the worker trainee participants.

This demonstration project is designed under contract with SSA by Mathmatica Policy Research, Inc. (MPR)., PO Box 2393, Princeton NJ 08540. MPR will administer the project, compile the data, and evaluate the results.

Authority to undertake this project is provided by section 1110(b) of the Act (42 U.S.C. 1310(b)). As required by section 1110(b), participation in this project is voluntary and a written consent will be obtained from or on behalf of each participant. Most of the participants will be receiving only SSI benefits under title XVI of the Act. However, a significant percentage also could be concurrently entitled to either disability insurance benefits or childhood disability benefits under title II of the Act.

Since we are conducting this project under the authority of section 1110(b) of the Act only, we may waive for participants only the requirements for eligibility to SSI benefits. A participant who is concurrently entitled to benefits under title XVI and title II could have his or her eligibility for benefits end under title II but continue under title XVI as a result of the work performed under this project.

Statutory and Regulatory Provisions Being Waived To Conduct This Project

We are waiving until April 30, 1988, the following statutory provisions of title XVI of the Act and the implementing regulations so that they will not apply to the 350-500 trainees under this project:

(1) Section 1614(a)(3) (D), (E), and (F); 20 CFR 416.974, and 416.975 to the extent they would require the training work be evaluated under the substantial gainful activity (SGA) criteria.

(2) Section 1614(a)(4) (B), (C) and (D); 20 CFR 416.992 to the extent they would require the training work be counted as

part of the worker trainee's trial period (TWP).

(3) Section 1614(a)(3)(F); 20 CFR 416.992a, 416.994, and 416.1331 regarding the extended period of eligibility (EPE), but only for the purpose of allowing a full EPE at the end of the training period for those participants whose TWP ended at an earlier time.

(4) Section 1611(a); 20 CFR 416.1205, 416.1324 to the extent necessary to exclude accumulated income from this work as part of the worker trainee's resources.

(Catalogue of Federal Domestic Assistance Program No. 13.812—Assistance Payment—Research)

Dated: April 26, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 85-10636 Filed 5-1-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-85-797; FR-1966]

Delegation of Authority

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Delegation of authority.

SUMMARY: This delegation of authority delegates from the Secretary to (1) each Regional Administrator-Regional Housing Commissioner the authority to designate any HUD officer or employee who is employed in the region for which the Regional Administrator-Regional Housing Commissioner is reponsible, to act as chief of a Category D Field Office during an absence, disability, or vacancy in the position of chief and (2) each Manager the authority to designate any HUD officer or employee who is employed in the Field Office for which the Manager is responsible, to act as Manager during an absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Room 10254, Department of Housing and Urban Development, 451 Seventh, SW., Washington, D.C. 20410, (202) 755-7137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 6, 1983, HUD implemented its field reorganization plan (see 48 FR 7562, February 22, 1983). As the result of this plan, all of the categories of field offices (Categories A, B and C) are headed by a Manager, except for the Category D Field Office, which is headed by a Chief.

This delegation of authority delegates from the Secretary to (1) each Regional Administrator-Regional Housing Commissioner, the authority to designate any HUD officer or employee who is employed in the region for which the Regional Administrator-Regional Housing Commissioner is responsible, to act as Chief of a Category D Field Office during an absence, disability, or vacancy in the position of Chief and (2) each Manager the authority to designate any HUD officer or employee who is employed in the Field Office for which the Manager is responsible, to act as Manager during an absence, disability, or vacancy in the position of Manager.

Authorities Delegated

(1) Each Regional Administrator-Regional Housing Commissioner is hereby delegated the authority to designate any HUD officer or employee who is employed in the region for which the Regional Administrator-Regional Housing Commissioner is responsible, to act as Chief of a Category D Field Office during an abasence, disability, or vacancy in the position of Chief.

(2) Each Manager is hereby delegated the authority to designate any HUD officer or employee who is employed in the Field Office for which the Manager is responsible, to act as Manager during an absence, disability, or vacancy in the position of Manager.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 23, 1985.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 85-10635 Filed 5-1-85; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-85-1527]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Approval of Advances Under Preliminary Loan Contracts
Office: Public and Indian Housing
Form No.: HUD-51991
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit and Small Businesses or Organizations
Estimated Burden Hours: 225
Status: Extension
Contact: George C. Davis, HUD, (202) 755-6444, Robert Fishman, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 9, 1985.

Proposal: Community Development Block Grant (CDBG) Program Small Cities Performance Assessment Report (PAR)
Office: Community Planning and Development
Form No.: HUD–4052
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 60,900
Status: Reinstatement
Contact: Helen Duncan, HUD, (202) 755–6322, Robert Fishman, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 22, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85–10633 Filed 5–1–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Becharof National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Becharof National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes five strategies for long-term management of the 1.2 million acre refuge. Each alternative also recommends additions to the National Wilderness Preservation System. The extent of the Refuge that would be recommended varies from approximately 695,000 acres (in Alternative A) to 158,000 acres (Alternative E). At present, about 33 percent of Becharof Refuge is in the Wilderness Preservation System.

DATE: Comments on the final CCP/EIS must be submitted on or before June 28, 1985, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786–3399.

A final CCP/EIS has been prepared for general distribution. Copies of the final comprehensive plan will be sent to all persons and organizations who participated in either the scoping, alternative workshops, and/or public hearing/meetings. Copies of the final document are available upon request from Mr. William Knauer.

Copies of the final CCP/EIS have been sent to all agencies that participated in the public review process and to agencies and persons who have already requested copies. Those wishing to receive a copy of the final may obtain one by contacting Mr. Knauer. Copies of the final CCP/EIS are also available for review at the above location, at the Becharof National Wildlife Refuge Office, King Salmon, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets, NW, Department of the Interior, Washington, D.C. 20240
U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The final CCP/EIS for the Becharof National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans. In addition, the final CCP/EIS and Wilderness Review also describes the general wilderness suitability of various acreages of non-wilderness refuge lands, under each management alternative, in order to comply with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1987.

As a result of the public review process several changes have been made in the organization and content of the draft document. Several sections have been added to address comments received or to meet more accurately the planning obligations, as required in ANILCA. Furthermore, responding to public comments about the draft Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Becharof National Wildlife Refuge, the U.S. Fish and Wildlife Service revised the document and changed the preferred alternative, from Alternative C in the draft plan to a *new* Alternative B.

This *new* Alternative B emphasizes: Maintenance of the Refuge's natural diversity and key fish and wildlife populations and habitats by minimizing potential impacts from development; provision for future opportunities for oil and gas exploration in designated areas; recommendation of wilderness designation for (1) the northeast section of the refuge including the drainages of Big Creek, the eastern reaches of the King Salmon River, and Gertrude Creek and (2) the southeast section of the Refuge including Mount Peulik-Gas Rocks area, Mount Becharof, and the drainage of Otter Creek, Featherly Creek, and Island Arm; maintenance of traditional access; provision for continued subsistence use of the resources of the Refuge; and maintenance of opportunities for recreational hunting and fishing.

Major issues addressed by the plan include intensive human use in sensitive fish and wildlife habitats; off-Refuge commercial and sport harvest of adult salmon; loss of wilderness values; lack of resource data; designation of wilderness in the Refuge; protection of fish and wildlife; protection of subsistence lifestyle; provision of additional opportunties for access in the Refuge; development and use of adjacent state and private lands and of inholdings; the refuge planning process; oil and gas development; other economic development in the area; development and use of adjacent state and private lands; and protection of cultural resources and historical sites.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was

published in the October 29, 1981, Federal Register. Other government agencies and the general public contributed to the development of this final CCP/EIS and Wilderness Review. After dissemination of the draft version two public meetings were held in the villages of Naknek and Egegik, Alaska, on May 22 and 23, 1984. A public hearing was held in Anchorage, Alaska, on May 30, 1984.

The U.S. Fish and Wildlife Service will issue a Record of Decision on this CCP/EIS no earlier than July 1, 1985.

Dated: April 15, 1985.

Robert D. Jacobsen,

Acting Regional Director.

[FR Doc. 85-10623 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Wildlife and Plants; Availability of a Draft Environmental Assessment (EA); Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft EA on the proposed protection of endangered bat habitat in Adair and Delaware Counties, Oklahoma, is available for public review. Comments and suggestions are requested. Proposed is the acquisition, by U.S. Fish and Wildlife Service (FWS), of conservation easements on approximately 1,200 acres of land in Adair and Delaware Counties, Oklahoma. The areas proposed for conservation easement would be protected to ensure the continued survival of the endangerd Ozark big-eared bat *(Plecotus townsendii ingens)*, and the endangered gray bat *(Myotis grisescens)*. These endangered bats require protection of their foraging areas and caves used for maternity and hibernation purposes. Five alternative protection measures were considered and the less-than-fee acquisition method was found to be the most cost effective and least disruptive to the local communities.

DATES: Written comments are required by: July 1, 1985.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish had Wildlife Service (RE), P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Bruce G. Halstead, Ascertainment Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103 (Telephone: (505) 766-2174 or FTS 474-2174).

Individuals wishing copies of the Draft EA for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Bruce G. Halstead is the primary author of this document. The U.S. Fish and Wildlife Service, Department of the Interior, has prepared a Draft EA on its proposal to protect approximately 1,200 acres of endangered bat habitat in Adair and Delaware Counties, Oklahoma. Of the approximately 1,200 acreas proposed for protection, 1000+ acres occur in Adair County and 200+ acres occur in Delaware County. The 1,200 acres are comprised of ten units ranging in size from 5 to 400 acres. Eight units are located in Adair County and are within 5 to 15 miles of the City of Stilwell and two units are in Delaware County and are within 5 to 10 miles of the City of Groves.

The areas proposed for protection would be preserved to ensure the continued survival of the endangered Ozark big-eared bat and the endangered gray bat. These areas contain several cave units used for maternity and hibernacula purposes by the endangered bats. Additionally, the adjacent forested-riparian areas, which are used by the endangered bats for feeding and cover purposes would be protected. This action is considered necessary in order to prevent extinction of the endangered Ozark big-eared bat and help halt the population decline of the endangered gray bat.

These ten areas and the cave units contained in them provide the only know habitat in Oklahoma for the endangered Ozark big-eared bat and support significant numbers of the Oklahoma population of the endangered gray bat. The cave ecosystems also support floral and faunal assemblages that are unique, possibly including the Ozark cavefish, which has been listed as threatened by FWS.

These bats are considered endangered due to their small population size and very limited distribution. Their habit of concentrating large segments of the total population in a small number of caves to form maternity colonies in the spring and summer, and hibernating colonies in the winter has made them highly vulnerable to human disturbance. This distrubance is believed to have increased in recent years due to growing interest in cave related research and sport spelunking. Their vulnerability is further increased by their exotic appearance which makes them targets of collection and intensive observation and their low tolerance to disturbance.

The action is designed to reduce human disturbance and vandalism in caves occupied by the bats. Control of human intrusion on the bats during the maternity and hibernacula periods is considered to be the major action that could lead to the recovery of the bats.

Secondarily, and in conjunction with the reduction in human disturbance, bat foraging an cover habitat must be protected from destruction or other extreme modification. Implementation of these two objectives, coupled with public support and continued research could ultimately lead to delisting these two endangered bats.

By acquiring easements on these lands, FWS would continue to meet its mandate under the Endangered Species Act, by providing for the conservation of habitat necessary to recover the endandered Ozark big-eared and gray bats from endangered status.

This action will result in permanent protection for the bat caves and bat foraging areas. The areas proposed for protection would continue to be used by the landowners for much the same purposes as they are presently being used. No modifications other than posting, some cave gating, and/or fencing will be required. The cave areas would be closed to public and private entry during the periods when the bats are present. Acquisition of easements on the proposed lands would not remove those lands from the local tax rolls.

The major alternatives under consideration that were analyzed and evaluated during planning are:

No Action

No action by the FWS would maintain the status quo and the possible extinction of the Ozark big-eared bat in Oklahoma and allow the population levels of the gray bat to continue to decline.

Protection via Existing Local, State, and Federal Regulations

Protection via existing local, State, and Federal regulations has not proven effective in protecting the bats and the results of relying on this alternative would be the same as for taking no action.

Acquisition/Management by Others

Acquisition/management by others will be encouraged by the FWS to the maximum extent possible. The Nature Conservancy (TNC) has already purchased one of the most important bat caves and foraging areas in Oklahoma. Landowners, caving groups, and other

concerned groups will be supported by the FWS in an effort to gain public support and local protection for the resource. However, it is highly improbable that this alternative will provide the level of protection that is required to halt the downward population trends of these bats.

Less-Than-Fee Acquisition

Less-than-fee acquisition is the preferred alternative. This alternative would allow the FWS to undertake whatever measures are necessary to protect the caves and still allow the landowner to use the land, much as has been done in the past. It is anticipated that perpetual or long-term conservation easements will be the less-than-fee aquisition agreement between FWS and the landowner.

Fee Acquisition

Fee acquisition would accomplish the same goals as the less-than-fee acquisition alternatives, but would displace the landowner and possibly eliminate his use of the land.

Coordination

Other Government agencies and several members of the general public contributed to the planning and evaluation of the proposal and in the preparation of this Draft EA.

All agencies and individuals are urged to provide comments and suggestions for improving this Draft EA as soon as possible. All comments received by the dates given above will be considered in preparation of the Final EA for this proposed action.

The FWS has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order E.O. 11821, as amended by E.O. 11949, and OMB Circular A-107.

Dated: April 25, 1985.

Michael Spear,

Regional Director.

[FR Doc. 85-10724 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Carle Foundation Hospital

The public is invited to comment on the following application for renewal of a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant: Name: Carle Foundation Hospital, 611 West Park Street, Urbana, IL. *File No.* PRT 691972.

Type of Permit: Scientific Research.

Animal: Polar bear—(*Ursus maritimus*).

Summary of Activity to be Authorized: The applicant proposes to import approximately 300 blood samples per year to be analyzed for urea, creatinine, carnitine and other substances felt to be essential for polar bear survival under extreme conditions.

Source of Marine Mammals for Research: Canada.

Period of Activity: Annually.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application is available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: April 29, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-10673 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; International Succulent Institute et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: International Succulent Institute, Orinda, CA; PRT-691945

The applicant requests a permit to export 25 artifically propagated Sneed's pincushion cacti (*Coryphantha sneedii* var. *sneedii*) to N.E. Wilbraham, Cheshire, England for enhancement of propagation.

Applicant: Gary R. Walker, Pueblo, CO; PRT-692112

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled from the captive herd of Lud de Bruijn, Somerset East, South Africa for the purpose of enhancement of propagation of the herd.

Applicant: James Eugene Gardner, Urbana, IL; PRT-692814

The applicant requests a permit to take (band) Indiana bats (*Myotis sodalis*) and gray bats (*M. grisescens*) from locations in Illinios for scientific research purposes.

Applicant: Scovill Children's Zoo, Decatur, IL; PRT-692989

The applicant requests a permit to purchase a pair of captive-bred Galapagos tortoises (*Geochelone elephantopus*) from International Animal Exchange, Ferndale, MI, for the purpose of enhancement of propagation.

Applicant: Marge & William Moss, McLean, VA; PRT-692534, PRT-692535

The applicants request permits to import personal sport-hunted bontebok (*Damaliscus dorcas dorcas*) trophies culled from the captive-herd of J.J. de Smidt, Douglas, South Africa for purposes of enhancement of propagation of the herd.

Applicant: USFWS/San Francisco Bay National Wildlife Refuge Complex, Newark, CA; PRT 2-10255

The applicant requests to amend their permit for the banding of California clapper rails (*Rallus longirostris obsoletus*) to include the take of 30 rail eggs for a contaminant evaluation study.

Applicant: Leonard Hinckley, Camp Hill, PA; PRT-693097

The applicant requests a permit to import a personal sport-hunted bontebok (*Damaliscus dorcas dorcas*) trophy culled from a captive herd for enhancement of propagation of the herd.

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI; PRT-693096

The applicant requests a permit to export one captive bred female snow leopard (*Panthera unica*) to the Zoologischer Garten of Leipzig, East Germany, for enhancement of propagation.

Applicant: Kenneth M. Henderson, Gilbert, AZ; PRT-692994

The applicant requests a permit to purchase in interstate commerce two pairs of Hawaiian (=nene) geese [*Nesochen* (=*Branta sandviscensis*] from Charles Nugent, Kimbolton, OH, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 29, 1985.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-10672 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Final Determination That the United Lumbee Nation of North Carolina and America, Inc., Does Not Exist as an Indian Tribe

April 19, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f), notice is hereby given that the Assistant Secretary has determined that the United Lumbee Nation of North Carolina and America, Inc., does not exist as an Indian tribe within the meaning of the Federal law. This notice is based on a confirmed determination, following a review of public comments on the proposed finding, that the group does not satisfy five of the seven mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

Notice of the proposed finding to decline to acknowledge the group was first published on page 14590 of the **Federal Register** on Thursday, April 12, 1984. Interested parties were given 120 days in which to submit factual or legal arguments to rebut evidence used to support the proposed finding. The initial 120-day comment period was subsequently extended for an additional 120 days from September 7, 1984 when it was discovered that some of the principal parties received incomplete reports. The notice of extended appeared in the **Federal Register** on November 1, 1984 on page 44024.

During the comment period and its extension, one letter in agreement with the finding was receiving on July 24, 1984. This letter supported the recommendation against Federal acknowledgment in principle and provided minor corrections to some statements in the proposed finding document. In addition to the letter of support, two reports, one with supporting documents were submitted from the groups's leader, Mrs. Eva Reed, challenging the proposed finding. One was received August 13, 1984 and the other January 10, 1985. These reports were carefully considered to determine whether the evidence and arguments would strengthen the group's overall petition for acknowledgment. While these reports did provide information to correct some minor factual errors in the proposed finding, they did not present evidence which would warrant changing the conclusion that the United Lumbee Nation of North Carolina and America, Inc., does not exist as an Indian tribe within the meaning of Federal law.

Neither the original petition nor the later reports submitted by the group demonstrate that a antecedent Lumbee group existed in that part of California or that an organized group of Lumbee ever migrated there. The petitioners could not establish the group's descendency either culturally, politically, or genealogically from any tribe which existed historically in the area.

Evidence presented demonstrate that the group's membership was quite dispered, and no documentation was provided to show that a substantial portion of the group lives in a distinct community which is recognized as Indian. In addition, no evidence was offered to show that the group exercises any tribal political authority over its members.

The United Lumbee Nation of North Carolina and America, Inc. is a group which can be characterized as a voluntary organization. Members have the option of joining. Prospective members of the United Lumbee Nation are expected to have an interest in Indians and Indian culture and their own membership criteria require 1/16 degree of Indian blood. The group has accepted as members individuals who do not meet the blood degree requirement. United Lumbee Nation members claim to descend from a variety of recognized and unrecognized Indian tribes and groups, including, but not limited to Lumbee. Most claim Cherokee or Choctaw ancestry.

In accordance with 25 CFR 83.9(j) of the acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment are available under which the United Lumbee Nation could make application for services and other benefits. No viable alternatives could be found due to the group's mixed and uncertain Indian ancestry, the geographical dispersion of its membership, and the group's lack of inherent social and political cohesion and continuity. The conclusion is based on the factual arguments and evidence presented in the group's petition, the group's comments to the proposed finding, and the acknowledgment staff's independent research.

This determination is final and will become effective 60 days from the date of publication, unless the Secretary of the Interior requests the determination be reconsidered pursuant to 25 CFR 83.10.

John W. Fritz,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-10732 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[W-80359; 5-22823-GP5-4310-22]

Wyoming; Exchange of Public Lands in Crook and Weston Counties for Private Lands in Crook County, Transfer of Administrative Jurisdiction

April 24, 1985.

1. Notice is hereby given that, pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1982), the following public lands, including all minerals except oil and gas, have been conveyed to Homestake Forest Products Company, Lead, South Dakota:

Sixth Principal Meridian, Wyoming

T. 48 N., R. 60 W.,
Sec. 5, lot 5;
Sec. 6, lots 8, 9, and 10;
Sec. 17, SW¼SE¼.
T. 49 N., R. 61 W.,
Sec. 5, NE¼SW¼;
Sec. 22, NE¼NE¼;
Sec. 27, SW¼SE¼.
T. 50 N., R. 61 W.,
Sec. 6, SE¼SE¼;
Sec. 8, NE¼NE¼.
T. 51 N., R. 61 W.,
Sec. 9, SE¼SE¼;
Sec. 29, SE¼SE¼;
Sec. 32, NE¼NE¼.
T. 55 N., R. 62 W.,
Sec. 5, lot 11.
Containing 606.43 acres.

2. The following public land, surface estate only, has been conveyed to Homestake Forest Products Company:

Sixth Principal Meridian, Wyoming

T. 54 N., R. 64 W.,
Sec. 25, SE¼NE¼.
Containing 40.00 acres.

All minerals in the above land are outstanding of record in third parties.

3. In exchange, the United States acquired the following described lands, surface estate only, from Homestake Forest Products Company:

Sixth Principal Meridian, Wyoming

T. 52 N., R. 60 W.,
Sec. 30, E½SW¼ and W½SE¼.
T. 51 N., R. 61 W.,
Tracts 37, 40, and 41.
T. 52 N., R. 61 W.,
Sec. 35, SE¼SW¼.
Containing 640.12 acres.

The above lands are located within the boundaries of the Black Hills National Forest and were acquired by the United States for the benefit of the Department of Agriculture, U.S. Forest Service.

4. Pursuant to section 206(c) of the Federal Land Policy and Management Act of 1976, the lands described in paragraph 3 are hereby transferred to the jurisdiction of the Secretary of Agriculture effective March 15, 1985, the date of acceptance of title to the lands by the United States, for administration as National Forest System lands of the Black Hills National Forest. The lands are open to such forms of appropriation and disposition as may, by law, be made of National Forest System lands, subject to valid existing rights and to all the laws, rules, and regulations applicable to the National Forest System.

James L. Edlefsen,
Chief, Branch of Land Resources.
[FR Doc. 85-10720 Filed 5-1-85; 8:45 am]
BILLING CODE 4310-22-M

Intent To Prepare Lemhi Resource Management Plan and Environmental Impact Statement; Salmon District, ID

AGENCY: Bureau of Land Management (BLM), Interior.

This notice supersedes the notice of July 7, 1983. It also constitutes the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7).

Proposed Planning Action

The Bureau of Land Management is preparing a Resource Management Plan and Environmental Impact Statement for public lands in the Lemhi Resource Area, Salmon District, Idaho.

Location

The Lemhi Resource Area is located in south central Idaho and encompasses approximately 459,566 acres of public land. The Lemhi Planning Area encompasses all of the Lemhi Resource Area within Lemhi County, Idaho. The area takes in the lands surrounding the town of Salmon, laying in the northern end of the Salmon District, and then stretches to the southeast along the Lemhi River Valley and the upper reaches of Birch Creek joining the Idaho Falls District at the Clark County line.

Issues

The following issues have been identified.

1. Livestock Grazing Management

The Issue. a. How should the range resource be managed to meet existing and future livestock demand?

b. How much and where should forage be designated for livestock and wildlife use?

c. What special management techniques should be initiated on livestock grazing to improve sensitive areas?

2. Wildlife Habitat Management

The Issue. a. Management of fisheries habitat and seasonal range for big game and sage grouse.

b. Disposal of public lands containing important wildlife habitat.

c. Management of habitat for threatened and endangered species.

3. Land Tenure Adjustment

The Issue. The disposal or retention of public lands.

4. Forest Management

The Issue. a. The availability of forest lands for intensive forest management.

b. What forest lands should be subject to restricted forest management to protest high recreation, watershed, and wildlife values?

5. Wilderness Suitability

The Issue. The suitability or nonsuitability of the Eighteen Mile Wilderness Study Area (WSA) for wilderness designation.

6. Off-Road Vehicle (ORV) Management

The Issue. Management of ORV use and designation of open, limited, and closed use areas.

7. Recreation Management

The Issue. a. The overcrowding of existing recreational facilities and the deterioration in the quality of recreational experiences in the Lemhi Resource Area.

b. What management practices should occur within areas of National significance?

8. Energy and Minerals Management

The Issue. a. How will energy and mineral resource development be accommodated?

b. What public land, if any, should be withdrawn from energy and mineral exploration and/or development in order to protect surface and groundwater quality, visual quality, wildlife habitat and other resource values?

9. Watershed

The Issue. a. Riparian area degradation due to livestock grazing.

b. Water quality and fisheries habitat degradation due to forestry practices.

c. Early spring turnout and overgrazing by livestock on highly erosive, low elevation rangeland.

The following resources represented in the development of the Lemhi RMP/EIS: Lands, minerals, forestry, range, watershed, soils, wildlife, fisheries, recreation/wilderness, cultural resources, and fire.

Key public input points are as follows:

1. Issue identification, July 7, 1983
2. Finalize issues and Planning Criteria January 15, 1984
3. Prepare Alternatives March 22, 1985
4. Public Review (at least 90 days) October 1985
5. Public Review (at least 30 days) May 9, 1986

Meetings: A public meeting will be held November 1985.

FOR MORE INFORMATION CONTACT: Jerry A. Wilfong, Lemhi Resource Area Manager, Salmon District, BLM, P.O. Box 430, Salmon, Idaho 83467, (208) 756-2201.

Planning documents for the Lemhi RMP/EIS are available at the address shown above.

Dated: April 19, 1985.

Kenneth G. Walker,
District Manager.
[FR Doc. 85-10723 Filed 5-1-85; 8:45 am]
BILLING CODE 4310-GG-M

[OR 38509; 5-00250-162]

Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN

	Acreage
Harney County Tracts	
T. 33 S., R. 30 E.:	
Sec. 2: Lots 2, 3, 4, S½NE¼, S½NW¼, W½SW¼	316.64
Sec. 12: SW¼	160.00
Sec. 13: NW¼	160.00
Sec. 15: S½	320.00
Sec. 21: NE¼, E½NW¼, NW¼SW¼, E½SW¼, W½SE¼, NE¼SE¼	480.00
Sec. 22: N½, N½S½, SE¼SW¼, S½SE¼	600.00
Sec. 24: All	640.00
Sec. 25: W½	320.00
Sec. 26: E½, NW¼	480.00
T. 33 S., R. 31 E., W.M.:	
Sec. 2: Lots 3 & 4, S½NW¼, SW¼	321.22
Sec. 3: Lots 1 & 2, S½NE¼SE¼	322.14
Sec. 5: Lots 1 & 2, S½NE¼, SE¼	317.63
Sec. 10: E½	320.00
Sec. 14: W½	320.00
Sec. 15: All	640.00
Sec. 17: E½	320.00
Sec. 19: Lots 1 thru 4 incl., E½, E½W½	642.95
Sec. 21: N½	320.00
Sec. 22: NW¼	160.00
Sec. 23: NW¼	160.00
Sec. 27: W½	320.00
Sec. 30: Lots 3, 4, E½SW¼, SE¼	320.56
T. 34 S., R. 31 E.:	
Sec. 15: N½, N½S½, SE¼SE¼	560.00
Sec. 19: NE¼	160.00
Sec. 20: W½NW¼	80.00
Sec. 22: NE¼NE¼, S½NE¼, E½SE¼	200.00
Sec. 27: N½	320.00
T. 26 S., R. 34 E.:	
Sec. 31: Lots 1 through 4, inclusive	129.45
Grant County Tracts	
T. 7 S., R. 29 E.:	
Sec. 17: NW¼SE¼	40.00
T. 10 S., R. 31 E.:	
Sec. 29: W½SW¼	80.00
Sec. 30: Lot 2	39.62
T. 12 S., R. 30 E.:	
Sec. 34: W½W½	160.00
T. 12 S., R. 32 E.:	
Sec. 26: NW¼	160.00
Sec. 28: N½NE¼, SE¼NE¼	120.00
Sec. 32: NW¼SW¼	40.00
T. 12 S., R. 34 E.:	
Sec. 27: SE¼NE¼	40.00
T. 13 S., R. 29 E.:	
Sec. 29: W½SW¼	80.00
T. 13 S., R. 30 E.:	
Sec. 4: SE¼SE¼	40.00
Sec. 14: NW¼NE¼, NE¼NW¼, S½SE¼	160.00
T. 13 S., R. 31 E.:	
Sec. 6: Lot 1	40.06
Sec. 35: E½NW¼SE¼	20.00
T. 13 S., R. 33 E.:	
Sec. 4: Lots 3 & 4, S½NW¼, SW¼	320.63

The area described aggregates approximately 9410.59(±) acres in Harney County, and 1340.31(±) acres in Grant County, Oregon. In exchange for all or some of these lands the United States will acquire some of the following described private land from the Trust for Public Land and/or Mr. Rex Clemens (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN

	Acreage
To 33 S., R 32½ E., W.M.	
Sec. 1: Lots 1 & 2, S½NE¼, S½SW¼, W½SE¼	306.99
Sec. 2: S½S½	160.00
Sec. 4: SE¼NE¼	40.00
Sec. 11: S½S½	160.00
Sec. 12: W½W½	160.00
Sec. 13: N½, E½SE¼	400.00

WILLAMETTE MERIDIAN—Continued

	Acreage
Sec. 14: NE¼NE¼	40.00
Sec. 36: All	640.00
T. 34 S., R. 32½ E., W.M.:	
Sec. 1: Lots 2 & 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼	444.45
Sec. 12: N½NE¼, NE¼NW¼	120.00
T. 33 S., R. 32¾ E., W.M.:	
Sec. 13: SW¼NW¼, SW¼, W½SE¼, SE¼SE¼	320.00
Sec. 14: SE¼NE¼, SW¼, E½SE¼	280.00
Sec. 15: S½SE¼	80.00
Sec. 16: All	640.00
Sec. 17: SE¼	160.00
Sec. 19: SE¼	160.00
Sec. 20: N½NE¼	80.00
Sec. 21: W½NE¼, N½NW¼, SE¼SW¼, W½SE¼	280.00
Sec. 22: NE¼, E½NW¼	240.00
Sec. 23: NW¼	160.00
Sec. 24: N½N½	160.00
Sec. 28: W½E½	160.00
Sec. 30: NW¼NE¼, SE¼SW¼, SW¼SE¼	120.00
Sec. 31: Lot 1, W½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼	226.87
Sec. 33: W½E½, SE¼NW¼, N½SW¼, SE¼SW¼	320.00
Sec. 32: W½SW¼, SE¼SW¼, SW¼SE¼, E½SE¼	240.00
T. 34 S., R. 32¾ E., W.M.	
Sec. 2: SW¼	160.00
Sec. 3: SW¼NE¼, SE¼SW¼, SE¼	240.00
Sec. 4: SW¼SE¼	40.00
Sec. 7: Lots 1 & 2	59.39
Sec. 8: N½NE¼, E½NW¼	160.00
Sec. 9: NE¼, N½NW¼, N½SE¼	320.00
Sec. 10: N½N½, SW¼NW¼, NE¼SW¼	240.00
Sec. 11: NW¼	160.00

The area described aggregates approximately 7477.70(±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and riparian habitat. Acquisition of these tracts will also provide access to otherwise "locked up" Public Lands as well as providing an access route for portions of the proposed High Desert Trail.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. This exchange may be done in three steps and will entail the use of other or further Federal lands. Another notice will be published when these lands have been identified. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: April 24, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-10722 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-33-M

Albuquerque District, NM, Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Advisory Council Meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will be meeting June 5, 1985, in the 7th Floor Conference Room of the Western Bank

Building, 505 Marquette Street in downtown Albuquerque. The meeting will begin at 10:00 a.m.

The Agenda will include presentations to the Council on the Forest Service/BLM Interchange Program, Albuquerque District planning efforts, the Navajo relocation issue, and the preparation of Wilderness Management Plans for the Bisti and De-na-zin Wilderness Areas.

Public comments to the Council will be accepted at 2:30 p.m.

The District Advisory Council is managed in accordance with the Federal Advisory Committee Act 1972, the Federal Land Policy and Management Act of 1976, and the Rangeland Improvement Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting.

For more information, contact R. Alan Hoffmeister, Public Affairs Officer, (505) 766-2455.

L. Paul Applegate,

District Manager.

[FR Doc. 85-10728 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-FB-M

Safford District, A2; Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, June 7, 1985; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463 and 94-579. The agenda for the meeting will include:

1. Field tour to see water developments (slickrock catchment, masonry dams) on allotments 5113 and 5103.
2. Proposed Range Improvement projects for Fiscal Year 86.
3. Progress report on Fiscal Year 85 Range Improvements.
4. Grazing fee study.
5. BLM/FS interchange.
6. Discussion on subleasing.
7. BLM management update.
8. Business from the floor.

Board members will meet at the BLM Office, 425 E. 4th Street, Safford, Arizona at 9:00 a.m. From here we will depart via BLM-provided vehicles for the field tour. Members of the public may accompany the tour but must provide their own transportation.

It is expected the Board members will return to the Safford District Office at approximatey 1:30 p.m. to continue with the agenda for the meeting.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 2:00 p.m. and 3:00 p.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, June 6, 1985.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: April 25, 1985.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 85-10721 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-32-M

[OR 26635(Wash; 5-00250-GP5-146]

Franklin County, WA; Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

Under the provisions of Pub. L. 97-451 petition for reinstatement of oil and gas lease OR 26635(Wash) for lands in Franklin County, Washington, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1985, the date of termination.

No valid lease has been issued affecting the lands. The Lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16-⅔%, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: April 24, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-10714 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-33-M

[Group 668]

Filing of Plat of Survey; California

April 24, 1985

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Tuolumne County

T. 2 N., R. 15 E.

2. This plat, representing the dependent resurvey of a portion of the west and north boundaries, a portion of the subdivisional lines, and the boundaries of certain mineral surveys, and the survey of the subdivision of sections 4, 6, 8, 17, 18, 19, 20, and 30, in Township 2 North, Range 15 East, Mount Diablo Meridian, under Group No. 668, California, was accepted April 4, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-10725, Filed 5-1-85; 8:45 am]

BILLING CODE 4310-40-M

[ES-034841, Group 129]

Meridian; Filing of Plat of Dependent Resurvey; WI

April 26, 1985.

1. The plat of the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and subdivision of section 30, Township 40 North, Range 6 East, Fourth Principal Meridian, Wisconsin, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on Junne 10, 1985.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 10, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-10716 Filed 5-1-85; 8:45 pm]

BILLING CODE 4310-GJ-M

Realty Action, Competitive Sale of Public Lands in Bear Lake and Caribou Counties, ID

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: Based on public support land use plans, the following lands have been examined and identified for disposal under Section 203(a) of the Federal Land Policy and Management Act of 1976, for no less than the appraised fair market value (FMV).

Tract	Legal description	Acres	County	Fair market value
I-17736	T. 16 S., R. 45 E., B.M.; Sec. 11: E1/2SE¼	80	Bear Lake	$6,000
I-19694	T. 5 S., R. 41 E., B.M.; Sec. 29: NW¼SW¼	40	Caribou	3,000
I-19713	T. 6 S., R. 39 E., B.M.; Sec. 24: NE¼SW¼	40	Caribou	3,000

Sealed bids only are solicited for each tract offered. Acceptable bids must meet the FMV or higher and include a deposit of 30 percent of the full price bid. In addition, a bid for Tract I-19713 will constitute an application for conveyance of all salable and locatable minerals. The declared high bidder will be required to deposit a $50 non-refundable filing fee to process the conveyance. Failure to do so will result in disqualification as high bidder.

The lands will be subject to the following reservations and conditions when patented:

1. Ditches and canals.

2. All minerals for I-17736 and I-19694 and all leasable minerals only for I-19713.

3. All valid existing rights and reservations of record.

4. (I-17736 only) A reservation to the United States of an easement over and across an existing road.

Upon publication in the **Federal Register**, the Tracts are segregated from all forms of appropriation under the public land laws, including he mining laws, but excepting the mineral leasing laws, as provided by 43 CFR 2711.1-2(a), for a period of 270 days, or until patent is issued.

DATES AND ADDRESSES: Sealed bids should be submitted to the Manager, Pocatello Resource Area Office, 250 South 4th Ave., Pocatello, Idaho 83201, prior to sale time. Bids will be opened on July 9, 1985, at 1 p.m. in the basement meeting room B-43 in the Federal Building, 250 South 4th Ave, Pocatello, Idaho. If no bids are received by this date, bids will be accepted until, and opened on, July 30, 1985, at 11 a.m. at the Idaho Falls district BLM Office, 940, Lincoln Road, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning reservations, conditions, terms, bidding procedures and other items should be obtained by contacting Wallace Evans, Area Manager, Pocatello Resource Area, 250 South 4th Ave., Pocatello, Idaho 83201, or by calling (208) 236-6860 during office hours.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Area Manager at the above address.

Dated: April 24, 1985.

O'dell A. Frandsen,

District Manager.

[FR Doc. 85-10715 Filed 5-1-85; 8:45 p.m.]

BILLING CODE 4310-85-M

[C-28263; 5-00258-GP5-053]

Proposed Modification of Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that those orders which withdrew lands for the South Platte Project be modified to expire in 25 years insofar as they affect 8,032.82 acres of national forest system lands. The lands will remain closed to surface entry and mining but have been and will continue to be open to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 303-294-7635.

The Bureau of Reclamation proposes that portions of the existing land withdrawals made by two Secretarial Orders dated May 13, 1943, as amended, be modified to expire in 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect national forest system lands located in Tps. 7 and 8 S., R. 69 W., and Tps. 7, 8, and 9 S., R. 70 W., 6th P.M. These areas aggregate 8,032.82 acres in Douglas and Jefferson Counties.

The purpose of these withdrawals is for the administration and protection of the proposed South Platte Project. No change is proposed in the purpose or segregative effect of the withdrawals. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal modification may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the modification of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-10729 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-JB-M

[NM 54691 (OK)]

New Mexico; Correction of Proposed Withdrawal and Reservation of Lands

The Notice published in **Federal Register** Doc. 83-1227 filed January 14, 1983, 8:45 a.m., published on page 2070-2071 in the issue of January 17, 1983, is

corrected as to the time allowed for submitting comments, suggestions, or objections in connection with the proposed withdrawal. The time is extended to allow an additional 38 days from the date of publication of this notice.

Dated: April 24, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-10733 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-FB-M

[AA-055393; 5-00164]

Realty Action; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action lease of public lands in southwestern Alaska (AA-055393).

SUMMARY: This Notice of Realty Action involves a proposed lease on public lands administered by the Bureau of Land Management (BLM) approximately 18 miles south of the Village of Holy Cross. The lease would authorize the construction of a hunting and trapping cabin and use of approximately one (1) acre of public land near Pike Lake. The proposal has been found to be suitable under the provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, and is located within the area described as follows:

Seward Meridian, Alaska

Section 5, Township 21 North, Range 56 West.

The lands would be leased on a non-competitive basis. Annual rental has been estimated at $100 per acre per year, subject to final appraisal. No application will be accepted for less than the appraised price per acre. In addition, the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the lease.

Applications may be hand-delivered or mailed to the Anchorage District Office, Bureau of Land Management, 4700 East 71nd Avenue, Anchorage, Alaska 99507, within 60 days following publication of this notice. Applications must include a reference to this notice.

For more details of application content, refer to 43 CFR Part 2920, copies of which are available at the BLM Anchorage District Office, McGrath Resource Area. Also available is information on terms and conditions that would apply to the lease, location maps, etc.

For a period of 60 days following **Federal Register** publication, interested parties may submit comments to the McGrath Resource Area Manager, 4700 E. 72nd Avenue, Anchorage, Alaska 99507. Any adverse comments will be evaluated by the Area Manager who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the District Manager, this realty action will become the final determination of the Bureau.

Robert Conquergood,

Area Manager, McGrath Resource Area.

[FR Doc. 85-10713 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-JA-M

[22642]

Realty Action; Sale of Public Lands; Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U-52428, sale of public lands in Emery County, Utah.

SUMMARY: The following described parcel of land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713 (FLPMA), using modified bidding procedures (43 CFR 2711.3-2) at no less than the appraised fair market value. Bids at less than such value will be rejected as required by FLPMA.

Legal description	Acreage	Value
Salt Lake Meridian: T. 18 S., R. 8 E., Sec. 23, SE¼SE¼; Sec. 26, NE¼NE¼	80.00	$12,000

Sealed bids will be accepted at the San Rafael Resource Area Office, P.O. Drawer AB, 900 North 7th East, Price, Utah 84501, until 11:00 a.m. on June 25, 1985, at which time the bids will be opened. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The oral bidding, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared.

As there is no public access to the sale lands, Nile Kay and Arvella E. Wilbery and Wayne Wilberg, adjoining landowners of record, will be given a preference right to meet the high bid for a period of 30 days following date of sale. Where two or more designated bidders exercise preference consideration, the designated bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absense of a written agreement, the preference right bidders shall be allowed to continue bidding orally at a supplemental bidding to be held July 26, 1985, at 11:00 a.m., to determine the high bidder. Failure to submit a bid prior to the sale date or meet the highest bid shall constitute a waiver of such bidding provision.

If not sold as outlined above, the parcel remain available for sale over the counter each Monday from July 29 until December 30, 1985 from 10:00 a.m. to 11:00 a.m. until sold or withdrawn.

The terms and conditions applicable to this sale are:

1. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

2. All minerals, including oil and gas, will be reserved to the United States with the right to explore, prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is a available for review at the above office.

3. Patent will be subject to all valid existing rights and reservations of record.

Existing rights of record include:

a. U-54173—Oil and gas lease, Chandler & Associates, Inc., Texas Intenational Petroleum Corp., and Amerada Hess Corp., lessees.

Additional information concerning the land, terms and conditions of sale, and bidding instruction may be obtained from Laurelle Hughes, Area Realty Specialist at above address, (801) 637-4584, or Brad Groesbeck, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the fianl determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be

fully consistent with section 203(g) of FLPMA or other applicable laws.

Upon publication of the Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from the date this Notice is published in the **Federal Register**, whichever occurs first.

Gene Nodine,

District Manager.

April 26, 1985.

[FR Doc. 85-10708 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-DQ-M

[M 64885 (ND); 4-20703-ILM

North Dakota; Invitation Coal Exploration License Application

Members of the public are hereby invited to participate with the Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Mercer County, North Dakota:

T. 145 N., R. 87 W., 5th P.M.
Sec. 6: SE¼
T. 144 N., R. 88 W., 5th P.M.
Sec. 2: Lots 3,4, S½NW¼
Sec. 2: Lot 1, SE¼NE¼
562.51 acres.

Any party electing to participate in this exploration program shall notify, *In writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and The Coteau Properties Company, 2000 Schafer Street, P.O. Box 2200, Bismarck, North Dakota 58502-2200. Such written notice must refer to serial number M 64885(ND) and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of the Notice in the Beulah Beacon, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: April 25, 1985.

Robert T. Webb,

Chief, Branch of Solid Minerals.

[FR Doc. 85-10707 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-DN-M

[Designation Order CO-070-0851]

Grand Junction District Office; Colorado Off-Road Vehicle Designations

AGENCY: Bureau of Land Management.

ACTION: Notice of off-road vehicle designation decisions.

Decision: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Grand Junction District of the Bureau of Land Management are designated as closed, limited, or open to off-road motorized vehicle use.

The 566,042 acres of public land affected by the designations are within the Glenwood Springs Resource Area, which includes portions of public land in Eagle, Garfield, and Pitkin Counties, Colorado. The designations are a result of resource management decisions made in the 1984 Glenwood Springs Resource Management Plan. Comments received from public meetings in 1979 and 1982, coordination with other federal, state, and local agencies, and comments received during a 90-day public comment period held in 1982-1983, which included formal public hearings, influenced these designation decisions. These designations for public land located within the areas listed below become effective immediately and will remain in effect until modified or rescinded by the Authorized Officer. This designation order supersedes a previous emergency off-road vehicle decision for the Glenwood Springs Debris Flow Hazard Zone.

A. Closed Designation

All motorized vehicle use is prohibited year-around.

1. Bull Gulch—9,852 acres located 10 miles north of Gypsum, Colorado.

2. Hack Lake—3,102 acres located 15 miles north of Dotsero, Colorado.

3. Deep Creek—2,380 acres located 3 miles northwest of Dotsero, Colorado.

4. Thompson Creek—4, 286 acres located 6 miles southwest of Carbondale, Colorado.

B. Limited Designation

1. Limited to Designated Roads and Trails Year-Around Motorized Vehicle use is permitted only on routes signed as open for use and cross-country travel is prohibited, except for somemobile use.

a. Castle Peak—19,526 acres located 6 miles north of Eagle, Colorado.

b. Eagle—1,683 acres located .5 mile east of Eagle, Colorado.

c. Glenwood Springs Debris Flow Hazard Zone—5,952 acres located adjacent to Glenwood Springs, Colorado.

2. Limited to Existing Roads and Trails Year-Around Motorized Vehicle use is permitted only on existing routes and cross-country travel is prohibited, except for snowmoble use.

a. Blue Hill—3,655 acres located 2 miles northeast of Burns, Colorado.

b. Pisgah Mountain—15,770 acres located 1 miles northeast of McCoy, Colorado.

c. Tenderfoot Gulch—3,970 acres located 1 mile southeast Gypsum, Colorado.

d. Red Hill—14,823 acres located 1 mile southwest of Gypsum, Colorado.

e. Sunlight—1,708 acres located 5 miles southwest of Glenwood Spring, Colorado.

f. Center Mountain—3,709 acres located 8 miles southeast of New Castle, Colorado.

g. Gibson Gulch—8,489 acres located 6 miles south of New Castle, Colorado.

h. East Elk Creek—1,331 acres located 2 miles north of New Castle, Colorado.

i. Ward Gulch—3,777 acres located 8 miles northeast of Rifle, Colorado.

3. Seasonal Limitations. The restrictions listed below are in effect for specific periods of the year. During those periods not listed for a particlar area, the area is open to motorized vehicle use.

a. Transfer Trail—1.6 miles located 1 mile north of Glenwood Springs, Colorado. Between December 1 and April 30, motorized vehicle use is prohibited except for snowmobile use.

b. The Crown—8,482 acres located 3 miles southeast of Carbondale, Colorado. Between December 1 and April 30, motorized vehicle use is prohibited except for snowmobiles operating on the existing road along Prince Creek. Between May 1 and June 1, motorized vehicle use is permitted only on existing roads and trails.

c. East Elk Creek—3,431 acres located 3 miles north of New Castle, Colorado. Between December 1 and April 30, all motorized vehicle use is prohibited. Between May 1 and November 30,

motorized vehicle use is permitted only on existing roads and trails.

d. Flat Iron Mesa—736 acres located 5 miles south of Rifle, Colorado. Between December 1 and April 30, all motorized vehicle use is prohibited. Between May 1 and November 30, motorized vehicle use is permitted only on existing roads and trails.

C. Open Designation

Motorized vehicles may be operated on the remaining 449,518 acres of public land in the Glenwood Springs Resource Area, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR Part 8340).

An environmental assessement describing the impact of these designations and maps of the areas are available at the offices listed below.

ADDRESS: For further information about these designations, contact either of the following Bureau of Land Management Offices:

Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506.

Glenwood Springs Resource Area Office, P.O. Box 1009, 50629 Highway 6 and 24, Glenwood Springs, Colorado 81602.

Dated: April 24, 1985.

Wright Sheldon,

District Manager.

[FR Doc. 85-10709 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on April 23, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 23, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10726 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 2-85]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e)(4) and (11), notice is given that the Department of Justice proposes to modify a system of records entitled "Alien Status Verification Index, JUSTICE/INS—009," which was last published in the **Federal Register** on November 15, 1983 (48 FR 51989). Specifically, the "Categories of Records in the System" section of the notice has been changed to reflect the addition of the social security account number as a data element in the record, and to correct the term "Immigration and Naturalization Act" to read "Immigration and Nationality Act." The "Retrievability" section of "Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System" is changed to add "name and social security account number" to the data items used to retrieve records from this system. The modified system is reprinted below.

You may submit any inquiries or comments in writing to Thomas F. O'Leary, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

Dated: April 22, 1985.

W. Lawrence Wallace,

Acting Assistant Attorney General For Administration.

JUSTICE/INS-009

SYSTEM NAME:

Alien Status Verification Index JUSTICE/INS-009.

SYSTEM LOCATION:

Central, Regional, District, and other files control offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS-999. Remote access terminals will also be located in state employment security offices (SESA's) and other Federal, State, and local agencies nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the immigration and nationality laws of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records are limited to index and file locater data including name, alien registration number (or "A-file" number), date and place of birth, social security account number, date and port of entry, coded status transaction data, immigration status classification, and office location of related records files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 290, of the Immigration and Nationality Act, as amended (8 U.S.C. 1360).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEFORIES OF USES AND THE PURPOSES OF SUCH USES:

This system of records is used to verify an alien's status or to locate the INS file control office for the alien file of a particular individual.

A. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local government agency, in rsponse to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the

letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

B. A record from this system may be disclosed to other Federal, State, of local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation, or for criminal or civil law enforcement purposes.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available for systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service:

A record from this system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. Access is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Centralized index records stored on magnetic disk and tape are updated periodically and maintained for the life of the related record.

SYSTEM MANAGER AND ADDRESS:

The Associate Commissioner, Information Systems, Immigration and Naturalization Service, Central Office, 425 I Street, NW., Washington, D.C. is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORDS ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. if a request for access is made in mail, the envelope and letter shall be clearly marked "Privacy Access Request." The requester shall include the name, date and place of birth of the person whose record is sought and, if known, the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the System Manager or to the INS office that maintains the file. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and report on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-10727 Filed 5-1-85; 8:45 am]
BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: May 13-14, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Divisions of General Program, for projects beginning after October 1, 1985.

Date: May 16-17, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Divisions of General Programs, for projects beginning after October 1, 1985.

Date: May 20-21, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted for Central Disciplines in Undergraduate Education—Improving Introductory Courses, Promoting Excellence in a Field, and Fostering Coherence Throughout an Institution, for projects beginning after October 1, 1985.

Date: May 23-24, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted for Central Disciplines in Undergraduate Education—Improving Introductory Courses, Promoting Excellence in a Field, and Fostering Coherence Throughout an Institution, for projects beginning after October 1, 1985.

Date: May 23-24, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1985.

Date: May 30-31, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1985.

The proposed meetings are for the purpose of panel review, discussion evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 522b of Title 45, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McClearly, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee, Monagement Officer.

[FR Doc. 85–10660 Filed 5–1–85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 7, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the third calendar quarter of 1984. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were four abnormal occurrences at the nuclear power plants licensed to operate. These involved degraded isolation valves in emergency core cooling systems, degraded shutdown systems, a loss of offsite and onsite AC electrical power, and a refueling cavity water seal failure, respectively. There was one abnormal occurrence at a fuel cycle facility; the event involved degraded material access area barriers. There were four abnormal occurrences at the other NRC licensees. One involved contaminated radiopharmaceuticals used in several diagnostic administrations. Two involved therapeutic medical misadministrations. The other involved significant internal exposure to iodine-125 to a hospital employee. There was one abnormal occurrence reported by an Agreement State; the event involved contaminated radiopharmaceuticals used in several diagnostic administrations.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG–0090, Vol. 7, No. 3 (or any of the previous reports in this series), may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7982. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, MasterCard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 26th day of April 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 85–10690 Filed 5–1–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Metal Components and Structural Engineering; Meeting

The ACRS Subcommittee on Metal Components and Structural Engineering will hold a combined meeting on May 23 and 24, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 23, 1985—8:30 a.m. until the conclusion of business

Friday, May 24, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will discuss modifications to General Design Criterion-4 that will account for the use of the leak-before-break concept in piping system in operating plants and plants under construction. Status of the NRC Piping Review Committee reports (NUREG–1061, Volumes 1–5) will also be discussed at this meeting.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meetings 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 ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

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, its consultants, and other interested persons regarding this review.

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 ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 29, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–10693 Filed 5–1–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on May 16, 1985 from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, PA 17101. The meeting will be open to the public.

At this meeting the Panel will discuss and formulate a position on the level of the Panel's inquiry into health effects studies and data related to the radioactive release during the TMI-2 accident. The Panel will also receive a presentation from representatives of General Public Utilities Nuclear Corporation on plans for reactor fuel removal and storage. The Department of Energy will brief the Panel on the current status of fuel shipping casks that will be used for offsite transport of fuel and debris removed from the reactor. The Nuclear Regulatory staff will provide the Panel with an update on the status of NRC investigations and enforcement actions.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone 301/492-7466.

Dated: April 29, 1985.

John C. Hoyle,

Advisory Committee Management Officer

[FR Doc. 85-10692 Filed 5-1-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Meeting

AGENCY: Production Planning Advisory Committee of the Pacific Northwest Elecric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Review of goals work plan
- Review related production planning activities
- Development of systemwide distribution policy
- Accounting/modeling, problem and issues
- Other
- Public comment

Status. Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee.

DATE: May 8, 1985. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ronald J. Eggers, 503-222-5161.

Edward Sheets,

Executive Director

[FR Doc. 85-10712 Filed 5-1-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21969; File No. SR-CSE-85-2]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Exchange Dues

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1985, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective March 6, 1985, the Board of Trustees of The Cincinnati Stock Exchange revised the Exchange's dues which now are as follows (new language italicized and deleted language bracketed):

EXCHANGE DUES

The dues of all proprietary members shall be [nine hundred dollars ($900)] *fifteen hundred dollars ($1,500)* per annum payable [semi-annually] *quarterly*, in advance, on January 1st, *April 1st*, [and] July 1st, and *October 1st*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Trustees determined that administrative expenses and operational expenditures warrant an increase in Exchange dues. The Proposed Rule Change is based on and consistent with section 6(b)(4) of the Act, which requires the rules of an exchange to provide for the equitable allocation of reasonable dues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the Proposed Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 23, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

April 24, 1985.

[FR Doc. 85-10696 Filed 5-1-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21971; File No. SR-NYSE-85-11]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Revised Requirements Respecting Allied Member Candidate Examinations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange has proposed to discontinue the currently administered allied member examination and instead require allied member candidates to pass examinations commensurate with their job responsibilities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Exchange, in its continuing effort to review and evaluate the examination criteria applied to its member organizations, has determined to phase out the Allied Member Examination (the "exam") and provide for alternate means of satisfying the examination requirement for allied member candidates as contained in Exchange Rule 304A.

With a move to more functional lines of responsibility, the Exchange has determined that an allied member candidate will be required to pass an examination or examinations which provides an effective test of the candidates' responsibilities. Examinations which could be required are those for sales persons (including registered representative, commodity futures, interest rate options, foreign currency options, direct participation program representative, municipal securities representative, and investment company products/variable contracts) and principals (including securities sales supervisor, general securities principal, registered options principal, supervisory analyst, financial and operations principal, direct participation program principal, investment company products/variable contracts principals, municipal securities principal and municipal securities financial and operations principal). For those candidates for allied membership for which there is no appropriate examination, none will be required. Individuals currently approved as allied members may be subject to new examination requirements if there is a significant change in their duties and if they have not satisified an examination requirement for such responsibilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will be available for inspection and copying at the principal office of the above mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by May 23, 1985.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.

Dated: April 22, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-10695 Filed 5-1-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2188]

Michigan; Declaration of Disaster Loan Area

Monroe and St. Clair Counties and the adjacent Counties of Macomb and Wayne in the State of Michigan

constitute a disaster area because of damage caused by wind swept high water and flooding which occurred March 31 through April 6, 1985. Applications for loans for physical damage may be filed until the close of business on June 25, 1985, and for economic injury until the close of business on August 1, 1985, at the address listed below:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW. Suite 822, Atlanta, GA 30303

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 218806 for physical damage and for economic injury the number is 629900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 26, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-10643 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/05-0008]

First Miami Small Business Investment Co.; Licenses Surrender

Notice is hereby given that First Miami Small Business Investment Company, 1195 NE. 125th Street, North Miami, Florida 33161, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). First Miami Small Business Investment Company was licensed by the Small Business Administration on September 5, 1959.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on April 15, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 24, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-10649 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective *May 1, 1985,* and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is *11.245%* per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: April 25, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-10642 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Birmingham, AL and Jackson, MI; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, Alabama, and Jackson, Mississippi, will hold a public meeting from 9:00 a.m. to 2:00 p.m., on Thursday, May 30, 1985, in the Howard Johnson, Meridian, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 Eight Avenue, North Suite 200, Birmingham, Alabama 35203, (205) 254-1341.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 25, 1985.

[FR Doc. 85-10646 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Jacksonville, FL; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting from 9:30 a.m. to approximately 3:00 p.m. at the Yearling Room, Ramada Inn, 3810 NW. Blitchton Road, Ocala, Florida 32675 (Junction I-75 and U.S. 27) to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Douglas E. McAllister, District Director, U.S. Small Business Administration, 400 West Bay Street, Jacksonville, Florida 32202. Telephone (904) 791-3103.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1985.

[FR Doc. 85-10644 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Miami, FL; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Miami, Florida, will hold a public meeting at 9:30 a.m., on Tuesday, May 14, 1985, in the Board Room of the Wackenhut Corporation, 1500 San Remo Avenue, Coral Gables, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 2222 Ponce de Leon Boulevard, 5th Floor, Coral Gables, Florida 33134, telephone (305) 350-5533.,

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1985.

[FR Doc. 85-10645 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Providence, RI Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Wednesday, May 29, 1985, at Camille's Roman Garden, 71 Bradford Street, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James A. Hague, District Director, U.S. Small Business Administration, 380 Westminister Mall, Providence, Rhode Island 02903. Telephone number (401) 528-4562.

Dated: April 25, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-10647 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Nashville, TN Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, Tennessee, will hold a public meeting at 9 a.m. on Wednesday, June 5, 1985, in the Board Room of Commerce Union Bank, One Commerce Place, Nashville, Tennessee 37219, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, Suite 1012 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37219. Telephone (615) 251-5850.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 25, 1985.

[FR Doc. 85-10648 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/849]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual meeting on Wednesday, June 19, 1985, 9:30 a.m., in Conference Room 1406, Department of State Building, Washington, D.C.

Agenda items scheduled for discussion are as follows:

I. Welcome and Introduction of Participants

II. Greetings from the Department of State

III. Results of Surveys Concerning School Fund-Raising Efforts and Reports Regarding Activities of Regional School Associations

IV. Council's Program of Educational Assistance

(a) Final Report of 1983 Program and Progress Report on 1984 Program

(b) Report of Meeting with Excutive Directors of the Regional Overseas School Associations at the Association for the Advancement of International Education Conference in San Antonio on March 5, 1985

(c) Council's Efforts in Securing Contributions for 1985 Program

(d) Discussions Concerning Plans and Suggestions Related to Future Council's Programs

V. Council Communication with U.S. Corporations and Foundations

VI. Other Business

For purposes of fulfilling building security, members of the public desiring to attend the meeting should call Ms. Joyce Bruce, Office of Overseas Schools, Department of State, Washington, D.C., Area Code 703-235-9600, prior to June 19. The public may participate in discussions at the Chairman's instructions.

Dated: April 24, 1985.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 85-10731 Filed 5-1-85; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/848]

Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 30, 1985 at 10:00 a.m., in Room 2925, Department of State, 2201 C Street, NW., Washington, D.C.

Study Group A deals with U.S. Government aspects of international telegram and telephone operations and tariffs; Study Group B deals with international telecommunications terminal equipment.

The Study Groups will discuss international telecommunications questions relating to telephone, telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at the upcoming international meeting of CCITT Study Group VIII (June 5-14, 1985) in Kyoto and will include a debriefing of the meetings of CCITT Study Groups I and III held in May in Geneva.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632-3405. All attendees must use the C Street entrance to the building.

Earl S. Barbely,

Chairman, CCITT National Committee.

April 24, 1985.

[FR Doc. 85-10730 Filed 5-1-85; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Extension of Deadline for Public Comment on Multifiber Arrangement

A notice was published in the **Federal Register** (50 FR 8428) on March 1, 1985 advising that the Multifiber Arrangement, which governs trade in textiles and apparel and to which the United States is a signatory, expires on July 31, 1986. The notice further invited any party wishing to consult on the renewal, modification or discontinuance of the Multifiber Arrangement, or to provide information on domestic production or the availability of textiles and apparel affected by the Arrangement, to submit such comments or information in ten copies to Ambassador Richard H. Imus, Chief Textile Negotiator, Executive Office of the President, Office of the United States Trade Representative, Washington, D.C. 20506 by April 30, 1985. The purpose of this notice is to advise that the deadline for submitting comments or information has been extended to June 15, 1985.

Richard H. Imus,

Chief Textile Negotiator.

[FR Doc. 85-10674 Filed 5-1-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-85-035]

Ship Structure Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Ship Structure Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1, section 10(a)(2)).

DATE: June 3, 1985, 9:15 a.m. to 11:30 a.m.

ADDRESS: U.S. Coast Guard Headquarters, 2100 Second Street, SW.—Room 2415, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: CDR D. B. ANDERSON, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters (G-MTH-5/13), Washington, D.C. 20593, (202) 426-2187.

SUPPLEMENTARY INFORMATION: The agenda for this meeting is as follows: To approve research projects of the Committee for fiscal year 1986 and to review ongoing research projects of the Committee. Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify CDR D. B. ANDERSON, Secretary, Ship Structure Committee not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

Dated: April 29, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-10682 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

Urban Mass Transportation Administration

[Docket No. 84-G]

Exemption From Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of exemption from buy America requirements.

SUMMARY: Section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) provides that Federal funds may not be obligated by the Urban Mass Transportation Administration (UMTA) for mass transportation projects unless steel and manufactured products used in the project are produced in the United States. Section 165 further provides that any of its provisions may be waived if their application would be inconsistent with the public interest. The American Association of State Highway and Transportation Officials (AASHTO) petitioned UMTA to grant public interest waiver for the procurement of microcomputers. The basis of the petition is that presently domestically produced microcomputers fail to meet Buy America requirements because the chips and some major components of the equipments are not made in the United States. UMTA has reviewed and analyzed the comments and recommendations of interested and affected parties, and has decided that a Buy America waiver for microcomputers will be granted for a one-year period.

DATE: This waiver is effected on the date of publication.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-4063.

SUPPLEMENTARY INFORMATION: Notice of this petition was published in the **Federal Register** on Wednesday, January 9, 1985, and an opportunity afforded to all interested parties to provide comments (50 FR 1156.) Twenty-two responses were received on the petition.

Based upon its review and analysis of the comments, UMTA will grant the requested waiver for a one-year period. Under UMTA programs, recipients of Federal funds are given discretion in determining what kind of equipment they will procure with Federal assistance. AASHTO's waiver request indicated that several grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs. Section 165(b)(2) of the STAA provides that a waiver may be granted if materials and products being procured are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. Under UMTA regulations, the item being procured is presumed to be unavailable if no responsive bid is received which will provide a domestically produced product.

After considering the comments received, UMTA has determined that the waiver will streamline the purchasing process for all grantees who will need or expect to need microcomputers during this exemption period. However, given the rapid technological changes in an expanding market for domestically produced computers, UMTA will limit the exemption for a one-year period. At the end of this period, UMTA will review the availability of domestically produced microcomputers and evaluate the need for allowing the exemption to continue.

UMTA's analysis is based upon the responses to four specific questions posed in the original notice. UMTA solicited comments on the definition of "microcomputer." Some comments expressed concern that any definition would be too restrictive given the market's rapid technological changes and the varied uses of the equipment in the transit industry.

Of the responses that suggested definitions, those suggestions addressed the need for a definition broad enough to encompass a microcomputer system. UMTA has decided to adopt the definition of microcomputer as published in the *American National Dictionary for Information Processing Systems*. According to that definition, a microcomputer is:

> A computer system whose processing unit is a microprocessor. A basic microcomputer includes a microprocessor, storage, and input/output facility, which may or may not be on one chip.

The same source defines computer system as:

> A functional unit consisting of one or more computers and associated software, that uses common storage for all or part of a program and also for all or part of the date necessary for the execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation, including arithmetic operations and logic operations; and that can execute programs that modify themselves during their executions. A computer system may be a stand-alone unit or may consist of several interconnected units. Synonymous with ADP system, computing system.

UMTA solicited comments on whether the waiver should apply to both hardware and software. Several of the responses indicated that a waiver applicable to microcomputer hardware should also be applicable to microcomputer software to ensure compatibility and cost-effectiveness. UMTA has decided to include software in the waiver's applicability based upon the definition of microcomputer that it has adopted and upon the recommendations received.

Since AASHTO's request highlighted specifically the problems of small to

medium-size transit industries in procuring microcomputers, UMTA requested comments on whether the waiver's application should be limited to grantees of a certain size. The responses were unanimous in indicating that the waiver should apply to all grantees given the expanding use of microcomputers in the transit industry. UMTA has decided, therefore, to apply the waiver to all grantees.

Finally, UMTA solicited comments on whether there should be a dollar limitation on the procurement. Again, a majority of the responses indicated that such a limitation would be too restrictive given the varied types of systems available, and their costs as well as the varying needs of the user. UMTA has decided not to impose a dollar limitation on the applicability of the waive.

Therefore, under the provisions of section 165(b)(1) and (b)(2) of the STAA of 1982, a Buy America exemption is granted to all UMTA grantees for the procurement of microcomputers, as defined in this Notice. Accordingly, requests for individual waivers for purchase of microcomputer hardware and software are not necessary. This general exemption will be in effect until April 30, 1986.

Dated: April 26, 1985.

Ralph L. Stanley,

Administrator.

[FR Doc. 85-10650 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[4-00236]

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service; Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6-8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 9% for the fourth quarter of FY 1985.

DATE: The rate will be in effect for the period beginning on July 1, 1985 and ending on September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, PB-711, Washington, D.C. 20226 (Telephone: 202/634-5131).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal cash management systems and is based on investment rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. Computed each year by averaging investment rates for the twelve-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate in effect for the fourth quarter of FY 1985 reflects the average investment rates for the twelve-month period ended March 31, 1985. The applicable rate will be published on or around the end of the first month of a given quarter for use during the succeeding calendar quarter.

Dated: April 25, 1985.

Richard A. Greenstein,

Director, Working Capital Group.

[FR Doc. 85-10665 Filed 5-1-85; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains revisions and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 29, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

1. Department of Veterans Benefits
2. Health Authority Approval-Individual Water-Supply and Sewage-Disposal System
3. VA Form 26-6395
4. On occasion
5. State or local government
6. 15,000 responses
7. 7,500 hours
8. Not applicable

Revision

1. Department of Veterans Benefits
2. Property Management Consolidated Invoice
3. VA Form 26-8974
4. Monthly
5. Business or other for-profit, Small businesses or organizations
6. 240,000 responses
7. 20,000 hours

[FR Doc. 85-10663 Filed 5-1-85; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Report of New Matching Program

AGENCY: Veterans Admninistration.

ACTION: Notice of matching program—Veterans Administration records of physicians, dentists and other health care professionals/State licensing records.

SUMMARY: The Veterans Administration is providing notice that the Office of Inspector General will conduct computer matches of VA records of physicians, dentists and other health care professionals with State licensing and registration records.

The goal of these matches is to verify that physicians, dentists, podiatrists, optometrists, and psychologists employed or utilized by the Agency are holding current, unrestricted licenses to practice and that nurses and pharmacists are registered in a State.

DATES: It is anticipated the matches will commence in approximately May 1985.

ADDRESS: Interested individuals may comment on the proposed matches by writing to the Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

FOR FURTHER INFORMATION CONTACT: Mr. Jack H. Kroll, Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, area code 202–389–5297.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: April 25, 1985.

Harry N. Walters,

Administrator.

Report of Matching Program: Veterans Administration Records of Physicians, Dentists and Other health care Professionals/State Licensing Records

a. Authority

The Inspector General Act of 1978, Pub. L. 95–452.

b. Program Description

(1) *Purpose:* The Office of Inspector General (OIG) plans to match lists of full and part-time physicans, dentists, podiatrists, optometrists, psychologists, nurses and pharmacists employed by the Agency, as well as consultants, attendings and fee-basis medical practioners utilized by the agency to provide health care, with the licensing and registration records of States having automated records. Title 38, United States Code, section 4105 specifies that any person to be eligible for appointment as a physician, dentist, podiatrist, optometrist, psychologist, nurse or pharmacist in the Department of Medicine and Surgery must hold the appropriate degree from a college, university or school approved by the Administrator of Veterans affairs, have completed an internship satisfactory to the Administrator in the case of physicians and psychologists, and be licensed, certified or registered to practice their profession in a State. The matches will verify that these health care profesionals employed or utilized by the VA possess current, unrestricted licenses or are currently registered in a State. For purposes of this computer matching program, "State" means any of the fifty States, the District of Columbia and the Commonwealth of Puerto Rico.

(2) *Procedures:* The initial match will be conducted with the State of California. The VA OIG will perform the match using extracts of three VA systems of records consisting of names, dates of birth and social security numbers and records in a similar format provided by the State. In the event of a "hit", i.e., the determination through the matching program that a license to practice or State registration has expired, or has been suspended, restricted or revoked, the identify of the individual will be confirmed and the information fowarded to the Chief Medical Director for consideration of appropriate personnel action. When needed to confirm the identities of an individual who may be listed in State records, the OIG will request that the state furnish additional information or the OIG may release additional identifying data to a State in accordance with published routine uses. Where there are reasonable grounds to believe there has been a violation of criminal law, the matter will be investigated and referred for prosecutive consideration.

If the program demonstrates the effectiveness of matching VA and State licensing and registration records as a means of identifying employees or other health care professionals utilized by the VA who do not have current, unrestricted licenses, or current registration, the Inspector General may direct that additional matches be conducted. In conducting matches with States other than California, the OIG will request that the States provide computerized excerpts containing the names, dates of birth, social security numbers and status of the licenses or registration of health care professionals. If the laws or regulations of a State require that the State conduct such a match, the OIG will submit computerized tapes or records containing only names, dates of birth and social security numbers of the records to be matched. The loan of any VA records to a state for matching purposes will be in accordance with OMB Matching Guidelines which require the recipient to agree to the followign: That the source matching file will remain the property of the VA and will be returned to the OIG at the end of the matching program (or destroyed as appropriate); that the file will be used and accessed only to match the files previously agreed to; that the file will not be used to extract informatin concerning "non-hit" individuals for any purpose; and that the file will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the VA OIG. These matches may be cyclical or may be repeated periodically.

c. Records to be Matched

Lists extracted from the following systems of records will be matched with State licensing and registration records:

(1) Individuals Submitting Invoices/Vouchers for Payment-Va (13VA047) (Privacy Act Issuances, 1980 Compilation, Vol. V, p. 667).

(2) Patient Fee Basis Medical and Pharmacy Records-VA (23VA136) (Privacy Act Issuances, 1980 Compilation, Vol. V, p. 671).

(3) Personnel and Accounting Pay System-VA (27VA047) (Privacy Act Issuances, 1980 Compilation, Vol. V, p. 673).

The disclosure of information from these systems of records, for the purpose of the matching program, is permitted by published routine uses.

d. Period of Match

Intermittently from approximately April 1985.

e. Safeguards

Records used in the matches and data generated as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the matches or follow-up actions. All of the material will be stored in locked containers when not in use. The matching files to be used in this project will remain under the control of the OIG and will be returned to the Department of Medicine and Surgery and Office of Budget and Finance or destroyed upon completion of the match. The matching file will be used and accessed only to match files in accordance with this notice; will not be used to extract information concerning "non-hit" individuals for any purpose; and will not be disseminated outside the OIG unless authorized by the Chief Medical Director or the Director, Office of Budget and Finance.

f. Retention and Disposition

Records not resulting in "hits" will be destroyed by burning, shredding or electronic erasing within two months of the completion of the individual match. Records resulting in "hits" will be retained by either the OIG or the Department of Medicine and Surgery until the completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 85-10637 Filed 5-1-85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 85
Thursday, May 2, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, May 3, 1985.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS OF BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–10782 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 10, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–10783 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 17, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–10784 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 24, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–10785 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 29, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for designation in the long-term Municipal Bond Index.

Rule 1.62—Contract Market Enforcement of Floor Broker Registration Requirements.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–10786 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351–01–M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 31, 1985.

PLACE: 2033 K Street, NW., Washington D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–10787 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351–01–M

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"Federal Register" Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 7, 1985.

CHANGE IN THE MEETING: The following matter was added to the agenda for the open portion of the meeting: "Request to Revise Office of Management Service Areas".

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: April 29, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued April 29, 1985.

[FR Doc. 85–10770 Filed 4–30–85; 1:10 pm]

BILLING CODE 6750–06–M

8

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"Federal Register" Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 7, 1985.

CHANGE IN THE MEETING: The following matter was added to the agenda for the open portion of the meeting: "Amendments to the Commission's section 4(g) of the ADEA Regulations"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: April 30, 1985.

Cynthia C. Matthews, Executive Officer,

Executive Secretariat.

This Notice Issued April 30, 1985.

[FR Doc. 85-10815 Filed 4-30-85; 3:25 p.m.]

BILLING CODE 6750-06-M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Additional Matter to be Considered at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that, in addition to those matters previously announced, the following matter will be placed on the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Monday, May 6, 1985, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.:

Memorandum and resolution re: Issuance of a Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions which policy provides for disclosure and publication of all final orders issued by the Corporation under its statutory enforcement authority.Q04

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10860 Filed 5-1-85; 11:00 am]

BILLING CODE 6714-01-M

10

FEDERAL ELECTION COMMISSION

DATE: Tuesday, May 7, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, May 9, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Eligibility for Candidates To Receive Presidential Primary Matching Funds
Draft Advisory Opinion 1985-13: Gwen Tillemans, Chairman, Committee to Re-Elect Congressman Lagomarsino
Net Outstanding Campaign Obligations (NOCO) Determination—Mondale for President Committee, Inc.
Proposed Regulations Governing Standards of Conduct for Employees
Mid-Year Reallocation Recommendations
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-10806 Filed 4-30-85; 3:25 pm]

BILLING CODE 6715-01-M

11

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol No. 50, Page No. 16385, Date Published—Thursday, April 25, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6677).

CHANGES IN THE MEETING: The following items have been withdrawn from the open portion of the Bank Board meeting scheduled Tuesday, April 30, at 10:00 a.m.

Loans-to-one-borrower regulations
Industry conflicts-of-interest regulations

Jeff Sconyers,

Secretary

April 30, 1985.

[FR Doc. 85-10781 Filed 4-30-85; 1:10 pm]

BILLING CODE 6720-01-M

12

FEDERAL HOME LOAN MORTGAGE CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 F.R. 16,386, Thursday, April 25, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Monday, April 29, 1985.

PLACE: 1769 Business Center Drive, Reston Virginia, Main Conference Room.

STATUS: Closed.

CHANGES IN THE MEETING: Thursday, May 2, 1985, 8:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013, (202) 789-4763.

Date sent to Federal Register: April 29, 1985.

Maud Mater,

Secretary.

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Thursday
May 2, 1985

Part II

Federal Reserve System

12 CFR Part 268

Revision of Rules Regarding Equal Opportunity; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R-0527]

Revision of Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") has revised and expanded its Equal Opportunity Regulation principally for the following purposes:

1. To designate clear responsibility for equal opportunity functions in light of changes in the Board's organizational structure; 2. to prohibit discrimination against handicapped persons in programs and activities conducted by the Board; and 3. to provide for review by the Equal Opportunity Commission ("EEOC") of Board decisions on individual and class complaints of discrimination in employment.

EFFECTIVE DATE: June 1, 1985.

Public Inspection: Comments received on the Notice of Proposed Rule Making will remain available for public inspection in the Board's Freedom of Information Office, Room B-1122, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551. Comments may be inspected between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Senior Counsel (202/452-3920); Portia Thompson, EEO Programs Officer (202/452-3549); Joy W. O'Connell, TDD (202/452-3244).

SUPPLEMENTARY INFORMATION: On August 24, 1984, the Board published a Notice of Proposed Rule Making for the purposes of revising and expanding its Equal Opportunity Regulation. 49 FR 33822 (August 24, 1984). The comment period closed October 23, 1984. The Board received ten comment letters in response to its Notice of Proposed Rule Making. The comments and recommendations made are discussed below.

Background

The Board as a matter of policy has long recognized that it should afford to its employees, applicants for employment, and others the same substantive and procedural rights as are enjoyed by such persons in their dealings with other Government agencies. Pursuant to this policy the present Part 268 was issued by the Board to provide for equal opportunity in employment in compliance with the spirit of Title VII of the Civil Rights Act of 1964, as amended. Also pursuant to this policy, the Board has designated an EEO Programs Officer, a Federal Women's Program Manager, a Hispanic Program Coordinator, and a Handicapped Program Coordinator, and has formulated and implemented affirmative action plans which are routinely submitted to the EEOC for review and advice.

The present Part 268 has not been updated in several years. The Board believes that certain omissions need to be corrected. The revised Part 268 is also intended to provide Board employees, applicants for employment, and others with the same substantive and procedural rights guaranteed to Government employees and others generally by the Equal Pay Act, the Age Discrimination in Employment Act, and the Rehabilitation Act and thus to comply with the spirit of those laws. The Board has addressed these matters in its revision of Part 268.

The present Part 268 makes no provision for review by the EEOC of Board decisions on complaints of discrimination. The Board now desires to provide for EEOC review of Board decisions on complaints of discrimination, at the request of any complainant, in order to provide its employees and applicants for employment with this additional level of administrative review. The Board believes that such review can be permitted consistent with the Board's independent status as provided for by the Federal Reserve Act. This matter is addressed in subpart H.

Additional revisions in Part 268 are made necessary by changes in the Board's organizational structure within the past several years in order clearly to designate staff responsibility for important equal opportunity functions.

The revised Part 268 is intended to conform in so far as possible to existing regulations issued by the EEOC and, with respect to section 504 of the Rehabilitation Act, by the Department of Justice ("DOJ"). To this end, major portions of the Board's revised Part 268 are derived substantially verbatim from the EEOC's equal opportunity regulations, primarily 29 CFR Part 1613, and DOJ's regulation applying section 504 to Federally conducted programs, 28 CFR Part 39.

Analysis of the Regulation

I. Administration

Subpart B, "Administration", defines the powers and responsibilities of various Board officials under this Regulation. This subpart delegates to the Administrative Governor, a member of the Board of Governors, authority to make decisions on complaints of discrimination on behalf of the Board pursuant to §§ 268.311, 268.412, and 268.711(k), if no member of the Board of Governors elects to have the Board of Governors make the decision on complaints. This subpart also permits the Administrative Governor to delegate such authority to the Staff Director For Management, a Board official responsible directly to the Administrative Governor and to the Board of Governors, or to other appropriate officers and employees of the Board. These delegations of authority are qualified, however, by a requirement that, at the request of any member of the Board, the decision on any such complaint of discrimination shall be made by the Board rather than by any delegee of the Board. Responsibility for day to day management of the Board's equal opportunity programs is vested principally in the EEO Programs Officer, who is also an official of the Board.

II. Processing of Complaints

Subparts C and D of the revised Part 268 establish procedures for processing individual and class complaints of discrimination in employment on the basis of race, color, religion, sex, national origin, age, and physical or mental handicap. These subparts track in large measure the corresponding regulations of the EEOC. The principal difference between Part 268 and the EEOC regulations have to do with decisions on complaints, in light of the Board's organizational structure. Because the Board does not use the title "Equal Employment Opportunity Director", the responsibility for functions assigned generally to the Director in the EEOC's regulation is given to officials specifically identified in the revised Part 268 in order to avoid confusion.

III. Nondiscrimination on Account of Age

Subpart E of revised Part 268 establishes rights conforming to those granted to Federal employees and applicants for employment by the Age Discrimination in Employment Act.

IV. Prohibition Against Discrimination Because of a Physical or Mental Handicap

Subpart F defines rights conforming to those granted to Federal employees and applicants for employment under section 501 of the Rehabilitation Act.

The language of the subpart conforms substantially to the EEOC regulation, 29 CFR 1613.701 *et seq.*

Subpart G, "Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap," defines rights of the kind established by section 504 of the Rehabilitation Act. The Board does not conduct any programs of federal financial assistance within the meaning of section 504. Subpart G defines the rights of handicapped persons in connection with the programs and activities of the Board and tracks to a large extent DOJ's recently promulgated regulation applying section 504 to Federally conducted programs, 28 CFR Part 39, 49 FR 35724 (September 11, 1984). Subpart G does not govern the conduct of Federal Reserve Banks or of depository institutions or other companies supervised or regulated by the Board.

The Board has received a comment proposing that Subpart G should govern the conduct of Federal Reserve Banks and of depository institutions and other companies supervised or regulated by the Board. Federal Reserve Banks are Federally chartered privately owned institutions which perform both governmental and nongovernmental functions. The Federal Reserve Banks are not government agencies for purposes of the Civil Rights Act, the Rehabilitation Act, and other similar laws. For this reason, the Federal Reserve Banks have long interacted with the EEOC under those provisions of Title VII of the Civil Rights Act of 1964, as amended, that apply to nongovernmental employers. *See Cooper* v. *Federal Reserve Bank of Richmond*, 104 S.Ct. 2794 (1984). Depository institutions and other companies supervised or regulated by the Board are nongovernment employers for the purposes of those Acts; and, as set out more fully below, the Board has no authority to enforce such laws with respect to such companies.

V. Review by the Equal Employment Opportunity Commission

Subpart H is intended to provide for review by the EEOC of any Board decision on a complaint of discrimination under the revised Part 268. Subpart H also provides that any findings by the EEOC following its review of a Board determination shall be returned to the Board for consideration by the Board. Subpart H as presented in the Notice of Proposed Rule Making has been amended by deletion of references to automatic reconsideration by the Board following EEOC review. As a result of discussions with EEOC in light of that Agency's comments on the proposed Regulation, the Board has determined that a provision for automatic reconsideration is not required by sections 10(4) and 11(*l*) of the Federal Reserve Act, and that the Board's independence established by these provisions is not offended by the revised language of subpart H. By its terms, section 10(4) of the Federal Reserve Act may be changed only by specific amendments to the Federal Reserve Act itself.

VI. Equal Pay

Subpart I of the revised Part 268 covers matters addressed with regard to other agencies by the Equal Pay Act and by regulations of the EEOC, 29 CFR 1620.21 and 1620.22. The language is Subpart I is adopted from the statute and the cited regulations.

Amendments to the Proposed Rule and Response to Comments Generally

The Board has made certain technical corrections to the text of its final Equal Opportunity Regulation. Since such corrections did not change the substance of the regulation, they are not discussed herein.

In response to a comment from DOJ, the Board has revised the final Equal Opportunity Regulation to make it gender neutral.

One commenter also suggested that these rules should be made retroactive, i.e., applicable to all pending compliants. The Board cannot make the rules retroactive in such a way as to deny any complainant substantive rights that he or she would have under the Board's present Equal Opportunity Regulation; nor would it be appropriate to permit reopening of any concluded proceedings on any such complaints merely because of subsequent changes in the Regulation. However, the final Regulation will be applicable to all further proceedings on any complaints that may be pending on the effective date of the Regulation.

Subpart A—General Provisions

Section 268.101 Authority, purpose, and scope.

The Board has revised § 268.101(a) to add a reference to section 10(4) of the Federal Reserve Act, 12 U.S.C. 244. Section 10(4) provides that the employment, compensation, leave and expenses of Board employees shall be governed solely by the provisions of the Federal Reserve Act, specific amendments of that Act, and rules and regulations of the Board that are not inconsistent therewith.

Section 268.102 Board Program.

Two commenters suggested that the Board incorporate additional provisions of the EEOC's regulation relating to agency programs and policies. One of these commenters erroneously indicated that the Board has no affirmative action program. In response to these comments, the Board has added a new paragraph (a) which commits the Board to provide sufficient resources to its equal opportunity program and to ensure that its officials responsible for carrying out its equal opportunity program meet established qualifications requirements; has redesignated proposed paragraph (a) as paragraph (b); has eliminated proposed paragraph (b) and incorporated its provisions into a new paragraph (m); has revised paragraph (c) to describe some of the ways in which employees may be given opportunities to enhance their skills; has revised paragraph (d) to provide that the Board will solicit community assistance in recruiting employees; has revised paragraph (e) to provide that the Board will work with community groups to improve employment opportunities; has added a new paragraph (m), which incorporates and expands upon provisions of paragraph (b), and which provides generally that the Board will utilize to the fullest extent the skills of its employees; and, has added a new paragraph (n) to provide that the Board will prepare annually equal opportunity plans.

The Board had previously excluded some of these provisions in the interest of avoiding unnecessary verbiage. For example, it should not be necessary for an agency to state that it will devote sufficient resources to do what it has committed itself by regulation to do. Further, the Board has a long standing commitment to implement affirmative action plans without benefit of any specific language in Part 268. Nevertheless, these changes have been made to assure all commenters of the Board's commitment to its equal opportunity program.

Section 268.103 Definitions.

The EEOC noted that some provisions of the proposed Regulation appeared to apply only to employees because applicants for employment are not mentioned in such provisions. The Board did not mention "applicants for employment" in these provisions because it had defined "employee" or "employees" to include "applicants for employment" in proposed paragraph (d) of this section. It appears that at least one of these provisions may have been

ambiguous in light of its wording in relation to that of paragraph (d) of this section. The Board has determined to eliminate the definition of "employee" or "employees" in this section and to revise appropriate language throughout the Regulation in order to avoid any possible confusion regarding the applicability of particular provisons to employees and/of applicants for employment.

DOJ has suggested that the language of the Regulation be made gender neutral. In response, the Board has eliminated paragraph (f)—which defined "he" or "his" to mean "he or she" or "his or her"—and has revised language throughout the Regulation to make it gender neutral.

Subpart B—Administration

Generally

A commenter recommended that the role of the EEO Officer be defined in this subpart. The duties of the EEO Officer are well understood in the civil rights community and the EEOC has not found it necessary to define or otherwise limit the duties of the EEO Officer in other agencies by specific provisions in 29 CFR Part 1613. Accordingly, the Board believes that no useful purpose would be served by specific definition or limitation of the role of the EEO Officer in the Regulation.

Section 268.202 The Administrative Governor.

As set forth more fully below, the Board has made several revisions to proposed subpart G. Accordingly, this section has been revised to reflect the addition of § 268.711(k) to subpart G delegating decision making authority to the Administrative Governor.

A commentator suggested that paragraph (c) of this section be revised to require that any person delegated the authority to make any decisions under this Regulation by the Administrative Governor shall be one who is fair, impartial, and objective. The Board believes that it is understood that any person making decisions under this Regulation and other regulations of the Board must be fair, impartial, and objective and that any statement to that effect in this Regulation only would be unnecessary and potentially confusing. Board employees are strictly prohibited from taking any action which might result in or create the appearance of "losing complete independence or impartiality". 12 CFR 264.735–6(a)(4). Specific allegations of bias in the complaint process can be addressed in due course under the procedures set forth in this Regulation.

Section 268.203 The Staff Director For Management.

This section has been revised to reflect revisions to subpart G delegating authority to the Staff Director For Management to issue letters of findings *See* § 268.711(g).

A commenter suggested that the Staff Director for Management be prohibited from making any decisions under this Regulation if he has any supervisory authority with respect to the Board Division out of which a particular complaint arises. The Board is aware of the need to ensure that decision makers are free of conflicts of interest with regard to matters on which they act. However, such potential conflicts in the administration of this and other regulations of the Board are dealt with generally in the Board's Rules Regarding Employee Responsibilities and Conduct, 12 CFR Part 264. Repetition of these standards in this Regulation is unnecessary.

Section 268.204 The EEO Programs Officer.

A commenter suggested that because the EEO Programs Officer has not received all the powers held previously by the EEO Director, such differences in functions will diminish the authority and effectiveness of the EEO Programs Officer. Under the Board's structure and this Regulation, essentially all the powers and functions formerly exercised by the EEO Director are given to the EEO Programs Officer, except the power to make final decisions on complaints of discrimination. Under the Board's present Regulation and the corresponding EEOC regulation, an EEO Director can make such decisions only when authorized to do by head of the Agency, but previous EEO Directors at the Board rarely exercised such powers. Accordingly, the Board believes that there has been no substantial change in the Board's procedures and that the EEO Programs Officer has all of the authority necessary to carry out his or her duties effectively under this Regulation. The EEO Programs Officer is an official of the Board.

Two commenters suggested that paragraph (g) of this section and § 268.306(a) be revised to provide that any person appointed to investigate allegations of discrimination be an employee of another agency. Another commenter suggested that such investigative officers not be members of the Board's Legal Division. The commenters have suggested that investigative officers who are employees of the Board, and in particular members of the Board's Legal Division, may have difficulty being fair, impartial, and objective, and that their other duties may create conflicts of interest. In response, the Board notes that it is accepted practice in the Government to use investigators from the agency in which the complaint arose; and the Board sees no problem with this practice so long as the investigators chosen are fair and impartial in accordance with the Board's Rules Regarding Employee Responsibilities and Conduct, 12 CFR Part 264. As a result of a recent review of the Board's equal opportunity program, it has been determined that personnel of the Board's Legal Division should not be used as investigative officers in the future, and the Board is considering the alternatives of training other employees in this task or hiring an outside agency to perform the investigative functions required under this Regulation. However, the Board does not believe that this issue is required to be addressed further in this Regulation.

Section 268.207 Handicapped Program Coordinator.

DOJ suggested that handicapped persons do not like to be referred to as "the handicapped". At DOJ's request, this section has been revised by substituting "handicapped person" for "the handicapped".

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap

Section 268.301 Precomplaint Processing.

Paragraph (a) of this section has been revised to provide that the Equal Employment Opportunity Counselor shall "seek" a solution to a complaint of discrimination rather than "propose" a solution. This revision was made in response to a comment from the EEOC that the Board's use of "propose" rather than "seek", which is used by the EEOC in its regulation, may suggest that the EEO Counselor will not be a neutral party.

Paragraph (a) of this section and § 268.402(c) have been revised on the recommendation of the EEOC to eliminate those provisions which allowed for an extension of the counseling period to seek informal resolution of a complaint. The EEOC pointed out that those provisions could operate to unduly delay the processing of a complaint, and suggested that there are ample opportunities to attempt to informally resolve the complaint during the 180 day processing period.

Accordingly, the Board in making this change does not mean to discourage efforts to achieve early resolution of complaints of discrimination.

Section 268.302 Filing of Complaint.

A commenter noted that paragraph (a)(1)(ii) of this section requires the complainant to file a complaint of discrimination within 15 calendar days of the date of the final interview between the EEO Counselor and the complainant, while § 268.301(a) requires the complainant to file the complaint within 15 calendar days of the date of receipt of the notice of the complainant's right to file a complaint. Since § 268.301(a) requires the EEO Counselor to provide the complainant with the notice of the right to file a complaint during the final interview between the EEO Counselor and the complainant, there is no substantive difference between § 268.301(a) and 268.302(a)(1)(ii). However, if for some reason the EEO Counselor does not provide the complainant with the notice of right to file a complaint of discrimination at the time of the final interview, the Board will accept any complaint of discrimination filed within 15 calendar days of the date of receipt by the complainant of the notice of the right of the complainant to file a complaint of discrimination.

Section 268.306 Investigation.

Several commenters suggested that persons investigating complaints of discrimination should not be Board employees or, in particular, members of the Board's Legal Division. As explained above, members of the Board's Legal will not be used as investigative officers in the future; and the Board will either train other employees or hire outside agencies to perform the investigative functions under this Regulation.

A commenter recommended that this section be revised to provide that, prior to completion of an investigation, the complainant be allowed to rebut any statements by persons interviewed that are contrary to the allegations in the complaint, that the complainant be advised of the names of all witnesses to be interviewed and be allowed to suggest additional witnesses to be interviewed at any stage of the investigation, and that if the investigative officer does not interview any witnesses suggested by the complainant, the reasons why the investigative officer did not interview such witnesses be set forth in writing in the complaint file. The investigative officer under this section is required to conduct a thorough investigation of allegations made in the complaint. The investigative officer is expected to interview the complainant and may receive suggestions from the complainant as to witnesses that should be interviewed. If complainant upon receipt of the investigative file is unsatisfied with statements and other material contained in the investigative file, or desires witnesses who were not interviewed to be heard, he or she may request a hearing and ask that the complaints examiner reopen the investigation pursuant to § 268.308(b). In addition, the complaints examiner may, on his or her own initiative if he or she determines that further investigation is necessary, remand a complaint to the Board's EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed additional information at the hearing pursuant to § 268.308(e). The Board does not believe it would be appropriate to impose on the investigative process additional procedures of the type that have been developed for use at the hearing stage. Complainants' rights are well protected by the procedures outlined above, including the right to demand a single hearing; and adoption of unnecessary additional procedures will serve only to unduly delay the complaints process.

Section 268.307 Adjustment of Complaint and Offer of Hearing.

A commenter stated that paragraph (c) of this section authorizes the Board to improperly rescind an agreed upon action to resolve a complaint and that this may be unfair to a complainant. On the contrary, paragraph (c) merely sets forth the procedures to be followed if the Board in fact fails to carry out or rescinds an agreed upon action. Paragraph (c) is thus meant to preserve the rights of a complainant should the Board violate any agreement resolving a complaint of discrimination.

A commenter stated that under paragraph (d) of this section, the complainant should have the right to a decision by someone other than the Administrative Governor or Staff Director For Management because those officials may not be fair, impartial, and objective. The Board's Rules Regarding Employee Responsibilities and Conduct, 12 CFR Part 264, prohibit Board members, officers and employees from acting in matters in which they have any conflicts of interest. In addition, § 268.311(a) of this subpart has been revised to provide that any member of the Board of Governors may elect to have the Board of Governors make the decision on the complaint under that section and § 268.202(d) provides that the Administrative Governor may refer any particular matters to the Board for decision. Accordingly, the Board believes the recommended change is not necessary.

Section 268.308 Hearing on the Complaint.

A commenter suggested that the Board revise paragraph (a) to set forth various professional prerequisites for service as a "claims examiner", since complaints examiners, under this Regulation, possess a host of legal powers. The commentator also suggested that the complaints examiner be required to be an attorney. Except in highly unusual cases, all complaints examiners used by the Board under this section are employees of the EEOC and are certified by that Agency as being qualified to act as complaints examiners. The Board feels it is entitled to rely on the EEOC's expertise in the selection and training of complaints examiners.

Paragraph (a) of this section provides that the Board may use its own employees as complaints examiners where the Board may be prevented by reason of law from divulging information concerning the matter complained of to a person who has not received a required security clearance. The EEOC noted that it has complaints examiners having all required security clearances. This exception is meant to apply only if the EEOC cannot provide a complaints examiner with the required clearances.

As recommended by the EEOC, the Board has revised paragraph (c)(1) of this section to eliminate the last sentence of the paragraph which gave the complaints examiner discretion to permit attendance at the hearing of interested persons who are not parties to the complaint. Since the complaints examiner will almost always be an EEOC employee, use of such discretion by the complaints examiner is considered unlikely in view of the narrower provision of the corresponding EEOC regulation, to which this paragraph now conforms.

A commenter has suggested that paragraph (c)(2) of this section be revised to provide an opportunity for the complainant to cross-exam witnesses whose written statements are part of the hearing record, and if such witnesses are not available to be cross-examined, that the complainant be allowed to submit written rebuttals to any written interrogatories. Paragraph (c)(2) permits complainant to submit any relevant evidence, subject to rulings by the complaints examiner, and paragraph (e) permits the complainant to request the

attendance of witnesses to testify on his behalf. For these reasons and those set forth above in connection with this same commenter's remarks on § 268.306, the Board believes that there is no need to revise this paragraph as suggested.

A commenter noted that § 268.408(b) of subpart B provides for discovery of and objection to evidence in class complaints and further noted that paragraph (c)(2) of this section contains no equivalent provision. The commenter stated that the Regulation should provide the same opportunities and rights in the processing of individual and class complaints. Paragraph (c)(2) provides that the complaints examiner shall conduct the hearing so as to bring out the pertinent facts, including the production of documents. While paragraph (c)(2) does not spell out rules of discovery, it is clear that the complaints examiner is required by paragraph (c)(2) to regulate the discovery and production of evidence. The Board believes that paragraph (c)(2) provides for the discovery of and objection to the production of evidence and, accordingly, that paragraph (c)(2) and § 268.408(b) do not differ substantively.

Paragraph (e) of this section has been revised to make it clear that other Federal agencies may be requested to produce witnesses by an EEOC certified complaints examiner. This amendment was made in response to a comment made by the EEOC that its complaints examiners exercise jurisdiction over other Federal agencies and may require such agencies to produce witnesses even though the Board itself does not possess such authority. Except in unusual cases, all complaints examiners used by the Board will be persons employed and certified by the EEOC.

Paragraph (e) of this section has been revised at the suggestion of EEOC to change "[w]hen it is not administratively practicable to comply with the request for a witness, * * *" to "[w]hen it is administratively impracticable to comply with the request for a witness * * *." This revision will have no substantive effect.

A commenter suggested that paragraph (e) be revised to state that the complaints examiner shall request the Board to make available as a witness any employee whose testimony the examiner determines is "relevant" rather than "necessary". The commentator noted that "relevant" is used in the Board's present Equal Opportunity Regulation and that this standard is more liberal. The Board considers "necessary" to be more appropriate in light of the complaints examiner's authority to "exclude irrelevant or unduly repetitious evidence" and the related provision that rules of evidence shall not be applied strictly, § 268.308(c)(2).

A commenter suggested that paragraph (f) of this section be revised by substituting "immediately" for "promptly" in the third and fourth sentences. The commentator stated that the Board's use of the word "promptly" is too vague. The Board believes that "immediately" is too inflexible. The complaints examiner has full authority to regulate the course of the hearing pursuant to paragraph (d)(2) of this section and may use such authority to insure that paragraph (f) is complied with in a manner that is fair to all parties.

Section 268.309 Relationship to Other Agency Appellate Procedure.

Paragraph (a) of this section has been revised to eliminate provisions permitting complaints of discrimination filed under the Board's grievance procedure to be processed under the grievance procedures at a complainant's request and to require that all such complaints of discrimination filed under the Board's grievance procedure be processed under this Regulation instead. This change was made at the suggestion of the EEOC, which indicated that permitting use of the grievance procedure at the complainant's option may impair complainant's rights under this Regulation. The Board believes that complainants were adequately protected under its proposal because the grievance filing was deemed a dual filing under both the grievance procedure and this Regulation. Nevertheless, the Board has determined to accept the EEOC's advice on this point in order to avoid confusion and to further simplify its complaints process. The Board wishes to encourage use of its grievance procedure in all appropriate cases.

Section 268.310 Avoidance of Delay.

Paragraph (b) of this section was revised in response to a comment that this section appears to permit cancellation of a complaint for failure to prosecute without consideration of special circumstances that may have caused the failure to prosecute. This paragraph states that a complaint may be cancelled if a complainant fails to prosecute a complaint "without undue delay". The Board believes that the concept of "undue delay" takes into consideration special circumstances. However, the Board noted that this section differs from the equivalent section applicable to class action complaints, § 268.404, in that it does not provide for notice of proposed cancellation to the complainant. Accordingly, the Board has revised paragraph (b) to provide for such notice in advance of any decision to cancel a complaint.

Section 268.311 Decision on the Complaint.

The Board has revised paragraph (a) of this section to provide that the EEO Programs Officer shall notify the Board of Governors when a complaint is ripe for decision under this subpart, and that at the request of any member of the Board of Governors, the decision on the complaint shall be made by the Board itself. If no such request is made, the Administrative Governor or the Staff Director For Management, if he or she has been delegated authority to make the decision pursuant to § 268.202(c), shall make the decision. The Board has also revised references to this section throughout the Regulation to reflect this revision. The Board believes it is appropriate to retain in the Regulation an opportunity for decisions on complaints by the full Board in appropriate cases.

A commenter stated that this section is unclear as to what determines whether a case will be decided merely on the information contained in the complaint file without a hearing or on the basis of a full hearing. This section provides that the decision maker shall make the decision on the complaint based on the material in the complaint file. Section 268.307(d) permits a complainant to request a hearing prior to a decision on the complaint, and § 268.312 provides for inclusion of the record of any such hearing and the recommended decision of the complaints examiner in the complaint file which is considered by the appropriate decision maker.

Section 268.312 Complaint File.

A commenter suggested that paragraph (a) of this section be revised to require that the complaint file contain correspondence and a record of all meetings and communications between the complainant and the staff of the Board related to the complaint but not contained in the complaint file (e.g., post investigation meetings to agree on adjustment of the complaint). Paragraph (a) describes all the documents that must be included in the complaint file. The complaint file is the record on which decisions on complaints of discrimination are made pursuant to § 268.311. The Board believes that paragraph (a) describes without limitation all documents that must be

included in the complaint file and that other documents not specifically listed may be included in appropriate cases. The Board also believes that adoption of the suggested change may require inclusion in the complaint file of matters which should not be included such as, for example, records of unsuccessful settlement negotiations.

Section 268.314 Freedom From Reprisal or Interference.

The EEOC commented that paragraph (b) of this section which states that a complainant, a representative, or a witness, "if an employee", may have the allegation of reprisal reviewed as an individual complaint of discrimination, implies that applicants for employment are not covered by this section. The Board in § 268.103(e) defined "employee" or "employees" for the purpose of this Regulation to include "applicants for employment". Accordingly, § 268.314 did not apply to employees only. However, in order to avoid confusion in this matter and in other provisions of this Regulation, the Board has eliminated its proposed definition of "employee" or "employees" from § 268.103 and has revised this section and other provisions of this Regulation to specifically mention "applicants for employment".

A commenter objected to the "deletion" of the procedures for review of charges of reprisal which appear in § 268.112(c) of the Board's present Regulation. The procedures for review of changes of reprisals were changed to conform to similar recent changes in the EEOC's regulation. The EEOC stated that it eliminated the 15 day procedure for consideration of charges of reprisal because the 15 day rapid consideration procedure has proven to be impractical and has served to impair an aggrieved individual's right to administrative due process. *See* 48 FR 19705 (May 2, 1983). The Board finds this explanation reasonable and persuasive. The Board believes that the new procedures will deal fairly with complaints of reprisal filed under this Regulation.

Section 268.315 Remedial Actions.

Paragraphs (a)(1) and (b)(1) were revised to reference the addition of a new paragraph (d) which sets out the manner in which back pay is to be calculated.

A new paragraph (d) was added on the recommendation of the EEOC to set forth the manner in which back pay is to be calculated. This paragraph provides for calculation of back pay in the same manner as it is calculated for employees of other Federal agencies under the Back Pay Act and 5 CFR 550.805.

Former Section 268.316 Reconsideration.

A commenter recommended that this section be revised to provide that a complainant shall be advised in writing that he or she has the right to request reconsideration by the Board of Governors. The EEOC recommended that this section be eliminated because the Board of Governors, by taking 30 calendar days to reconsider a decision on a complaint of discrimination by its Administrative Governor or other appropriate official, would unduly delay and unnecessarily complicate the complaint process. Upon further review, the Board has determined that this provision for reconsideration is not necessary and has eliminated this provision and all references to this provision elsewhere in the Regulation.

Section 268.316 Right To File a Civil Action.

Paragraph (a) has been revised and a new paragraph (c) has been added in response to comments made by the EEOC. The EEOC pointed out that the Age Discrimination in Employment Act does not contain a statute of limitation governing the filing of civil actions by Federal employees under the Act. In addition, the EEOC has suggested that the timeframes for filing civil actions under subpart C and D, §§ 268.316 and 268.415, are inappropriate for complaints of denial of equal pay, since such suits against other agencies may be filed within 6 years of the accrual of the cause of action under a statute which allows Federal employees who are members of the competitive civil service to sue the Comptroller General of the United States for back pay. The Board has amended this section by providing that civil actions on complaints of age discrimination and of denial of equal pay shall be filed pursuant to § 268.505, in the case of age discrimination, and § 268.904, in the case of denial of equal pay. These sections incorporate a six year statute of limitations for filing civil actions applicable to suits against the United States, 28 U.S.C. 2401(a).

Paragraph (a) has been revised to insert "or" between paragraphs (a) (3) and (4) on the recommendation of one commentator. Paragraphs (a) (1) through (4) describe the various time limits for filing civil actions.

Paragraph (c) as presented in the proposal for public comment has been eliminated as unnecessary in light of elimination from the final rule of the provision for reconsideration by the full Board of decisions on complaints of discrimination in proposed § 268.316.

Section 268.317 Notice of Right.

This section was revised to reflect revision of § 268.316 and the addition of §§ 268.505 and 268.904.

Subpart D Class Complaints of Discrimination

Section 268.402 Precomplaint Processing

Paragraph (c) of this section was revised to eliminate the provisions of this paragraph which permitted an extension of the counselling period in order to attempt informal resolution of the complaint. This amendment was made at the suggestion of the EEOC which noted with regard to this section and § 268.301 that there are ample opportunities to attempt informal resolution of the complaint during the 180 day processing period for complaints of discrimination.

Section 268.408 Obtaining Evidence Concerning the Complaint.

A commenter noted that paragraph (b) of this section provides for discovery of and objections to evidence in class complaints and further noted that § 268.308(c)(2) contains no equivalent provisions. The commenter stated that the Regulation should provide the same opportunities and rights in the processing of individual and class complaints. This comment is dealt with in the discussion of § 268.308(c)(2) above.

Section 268.412 Board Decision.

The Board has added a new paragraph (a)(1) to this section which provides that the EEO Programs Officer shall notify the Board of Governors when a complaint is ripe for decision under this subpart, and that at the request of any member of the Board of Governors, the decision on the complaint shall be made by the Board itself. If no such request is made, the Administrative Governor or the Staff Director For Management, if he or she has been delegated authority to make the decision pursuant to § 268.202(c), shall make the decision. The Board has also revised references to this section throughout the Regulation to reflect this revision. The Board believes it is appropriate to retain in the Regulation an opportunity for decisions on complaints by the full Board in appropriate cases.

Section 268.415 Right To File a Civil Action.

This section was revised to remove references to reconsideration by the full Board of decisions on complaints of

discrimination and to indicate that civil actions on complaints of age discrimination and denial of equal pay are to be filed in accordance with §§ 268.505 and 268.904 respectively. This section is revised for the same reasons that section 268.316 was revised, as indicated above.

Former Section 268.416 Reconsideration.

The EEOC commented that this section should be eliminated because the Board of Governors, by taking 30 calendar days to reconsider a decision on a complaint of discrimination by its Administrative Governor or other appropriate officials, may unduly delay and unnecessarily complicate process. The Board has eliminated this section and has also eliminated references to this section throughout the body of this subpart.

Subpart E—Nondiscrimination on Account of Age

Section 268.501 Policy Statement.

In its comment letter, EEOC recommended deletion of this section as unnecessary. After further consultation with EEOC, the Board has determined to retain the section to establish for Board employees and applicants for employment the same rights enjoyed by employees and applicants at other agencies. The Board believes such action is necessary because of the provision of the Federal Reserve Act which give the Board authority to determine all matters relating to the employment and compensation of its staff.

Section 268.502 Processing of Complaints.

This section has been revised on the recommendations of EECO to indicate that while individual and class complaints of discrimination because of age are to be processed under Subparts C and D, civil actions against the Board are to be brought pursuant to § 268.505, and to indicate that § 268.315(c) which provides for award of attorney's fees and/or costs does not apply to complaints of age discrimination.

Section 268.504 Exceptions.

This section has been revised on the recommendation of EEOC to provide that the Board may adopt exemptions to this subpart that are adopted by the EEOC. EEOC also advised the Board that certain portions of the proposed section would adopt portions of the Age Discrimination In Employment Act which do not apply to Federal agencies or which apply only to particular agencies specifically identified in the Act.

A commenter stated that the phrase "reasonable factors other than age" in paragraph (a) of this section is too vague. The commenter also stated that the term "reasonable" should be clarified and suggested that "reasonable factors other than age" be determined according to pre-defined job requirements. The phrase "reasonable factors other than age" is deleted in the final rule for the reasons set forth above. Accordingly, the suggested change is moot.

Section 268.505 Right To File Civil Action.

This section has been added in response to EEOC's observation that the Age Discrimination In Employment Act does not contain a statute of limitations for the filing of civil action by Federal employees. This section applies a general statute of limitations, 28 U.S.C. 2401(a), which is applicable to all civil actions against the United States that are not subject to any other statute of limitations. This section requires all complainants to file civil actions on complaints of age discrimination within six years of the date of the matter causing the complainant to believe that he or she has been discriminated against because of age.

Subpart F—Prohibition Against Discrimination in Employment Because of a Physical or Mental Handicap

Section 268.601 Definitions.

Several of the proposed definitions under this section applied to Subpart G by cross-reference. Several comments received by the Board indicated some confusion among the commenters regarding the applicability of these definitions. Accordingly, the Board has eliminated all such cross-references. In the final rule, Subparts F and G each contain all definitions applicable to each subpart.

Paragraph (f) defines "qualified handicapped person" to mean, in part, a handicapped person who can perform the essential functions of the position in question without endangering the health and safety of the handicapped person or others. A commenter objected to the phrase "without endangering the health and safety of the handicapped person or others". The commenter alleged that this requirement is overly broad, is burdensome, and is unsubstantiated; and the commenter further stated that it could not imagine a situation at the Board where a handicapped person might endanger the health and safety of the handicapped person and others. The commenter also stated that this provision takes the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), out of context.

The Board's proposed definition of "qualified handicapped person" was adopted verbatim from a similar provision in the EEOC's regulation, which itself is based on a definition of "qualified handicapped person" in a 1975 regulation of the former Civil Service Commission. Accordingly, the definition that the Board proposes to adopt is one of long standing in connection with the employment of handicapped persons by Federal agencies. It was not adopted as a result of the Supreme Court's decision in *Davis;* but it is consistent with that decision. There is no evidence that the definition unduly restricts the employment of handicapped persons. The Board believes it owes a duty to its employees, including handicapped employees, and others not to place them in hazardous situations. Accordingly, the Board does not believe that its definition of "qualified handicapped person" is unjustified or that it imposes a unlawful barrier to the employment of handicapped persons. The Board has a long standing commitment to be a model employer of handicapped persons which is reaffirmed in § 268.602 of this subpart. Accordingly, the Board does not believe that any revision to this definition is required.

EEOC's equivalent regulation does not define "facility" for the purposes of employment of handicapped persons. However, because Subpart F uses the term "facility", the Board has decided to define the term for the purposes of Subpart F. Further, the Board has determined that DOJ's definition of "facility" in its regulation apply section 504 of the Rehabilitation Act to Federally conducted programs is equally applicable to employment of handicapped persons under section 501 of the Rehabilitation Act and has, accordingly, adopted DOJ's definition of "facility" for the purposes of Subpart F. Paragraph (f) of this section was amended to add "rolling stock and other conveyances" to the definition of "facility" in order to bring this paragraph into conformity with the definition of facility in DOJ's final rule implementing section 504 of the Rehabilitation Act.

Section 268.602 General Policy.

This section was revised at the suggestion of EEOC to provide that the Board will be model employer of handicapped individuals.

Section 268.603 Reasonable Accommodation.

A commenter noted that the Board's proposed paragraph (a) requires only that the Board "determine" that an accommodation would impose an undue hardship whereas the equivalent EEOC regulation requires that an agency "demonstrate" that an accommodation would impose an undue hardship. The commenter stated that the proposed Regulation would impose a lesser standard on the Board than the EEOC's regulation applies to other agencies by allowing the Board to make subjective determinations while the EEOC's regulation requires proof of undue hardship. The Board has revised this section to require that the Board "demonstrate" that an accommodation would impose an undue hardship.

Paragraph (b) was revised at the request of the EEOC to add reassignment to the list of ways in which reasonable accommodation may be made.

Section 268.605 Preemployment Inquiries.

A commenter suggested that paragraph (c) be revised to prohibit oral questioning about a handicap for affirmative action purposes since oral questioning cannot be monitored. The Board believes that the suggested revision is impracticable and unnecessary. Written questionaires may not be practicable in all cases since written questionaires may not be an appropriate means of communicating with individuals with certian types of disabilities. Further, this section states that a handicapped person may be questioned regarding his or her handicap for only limited purposes and in precisely defined situations. Any violation of this section could be the subject of a complaint of discrimination.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap

Generally

The Board does not conduct any programs of Federal financial assistance within the meaning of section 504 of the Rehabilitation Act. Further, the Board is not an executive agency within the meaning of section 504 of the Rehabilitation Act. The Board has promulgated this subpart pursuant to its authority under sections 10(4) and 11(*l*) of the Federal Reserve Act in order to provide handicapped persons in their dealings with the Board with the same rights and privileges that they have in their dealings with other Federal agencies under section 504 of the Rehabilitation Act.

Section 268.701 Purpose and Application.

The wording of paragraph (b) of this section has been changed on the advice of DOJ to focus on the activities conducted by the Board instead of the activities of the public interacting with the Board.

A commenter objected to the Board's statement in the preamble to the Regulation and in paragraph (b)(4) of this section providing that subpart G does not apply to the Federal Reserve banks or to depository institutions and other companies supervised and regulated by the Board. The commenter stated that the Board by this exclusion is abrogating its responsibility to implement section 504 of the Rehabilitation Act. The commenter further asserted that the relationship among the Board, the 12 Federal Reserve banks, and the depository institutions and other companies supervised or regulated by the Board is such that the activities of such Federal Reserve banks, depository institutions and other companies are "Federally conducted programs."

The commenter alleges that because the Board carries out various monetary and fiscal policies through the activities of the Federal Reserve banks, the Federal Reserve banks' activities are "Federally conducted" programs and activities within the meaning of section 504 of the Rehabilitation Act. The Board notes that Federal Reserve banks are not recipients of Federal financial assistance, and notes further that the Federal Reserve has no responsibility for Government fiscal policy. The Federal Reserve banks are not Federal agencies. For this reason, Federal Reserve banks have interacted with the EEOC as nongovernment employers under EEOC's regulations concerning equal opportunity. *See Cooper, v. Federal Reserve Bank of Richmond,* 104 S.Ct. 2794 (1984).

The commenter stated that the Board has regulatory power over the depository institutions and other companies and accused the Board of indicating that civil rights enforcement is not one of the Board's responsibilities. The commenter stated that the Board can fulfill many of its "fiscal" responsibilities only through the institutions it supervises and regulates and that the Board's alleged failure to "supervise and regulate" the institutions' conduct with regard to section 504 and other civil rights acts must arise because the Board wishes the supervised institutions to be free agents in this area.

The commenter is reading "federally conducted programs and activities" too broadly. The Supreme Court has held that the fact that a company is supervised and regulated by a Federal agency is not sufficient to give that Federal agency enforcement power under section 504 absent a clear grant of such enforcement power through the statutes giving the agency jurisdiction over such company. *See Community Television of Southern California v. Gottfried,* 103 S.Ct. 885 (1983). While the Board may carry out its responsibilities under the Federal Reserve Act and other legislation in part through regulations governing the conduct of depository institutions, such authority does not permit the Board to regulate the conduct of such institutions in matters not germane to those laws. Accordingly, the Board does not believe that it may apply Subpart G to the depository institutions and other companies that it supervises and regulates.

Section 268.702 Definitions.

Several of the comments received by the Board indicated some confusion among the commenters regarding the cross-references in this section to definitions in § 268.601 of Subpart F. In order to avoid further confusion, the Board has deleted all cross-references in this section to the definitions in § 268.601 and has added all crossed-referenced definitions from § 268.601 to this section. Any comments received in connection with Subpart G regarding any definitions in § 268.601 which were formerly incorporated by reference in Subpart G are discussed below.

Paragraph (a) of this section, which defines "auxiliary aids", has been revised to include examples of types of auxiliary aids which may be provided. This revision was made following the receipt of several comments recommending that the Board's definition of "auxiliary aids" include such examples.

One commenter objected to the term "auxiliary" by stating that the term implies something that is extra or discretionary and suggested use of the term "aids for reasonable accommodation". The Board believes that the term "auxiliary aids" adequately indicates what is intended and what should be required. Further, the term "reasonable accommodation" is a term of art applicable only to discrimination in employment of the type addressed by section 501 of the Rehabilitation Act, and its use in

Subpart G would be inappropriate and confusing.

Paragraph (b) of this section was reworded on advice of DOJ to indicate that the "complete complaint" should describe the subject of the complaint rather than describe the nature and date of the complaint as indicated in the original proposed paragraph (b).

The Board has added a new paragraph (c) which defines "facility" for the purposes of Subpart G. Two comments received in connection with the Board's definition of "facility" in § 268.601(f) of Subpart F, which formerly applied by reference to Subpart G, suggested that this definition should be expanded to include all facilities in which programs or activities are conducted by the Board, regardless of whether such facilities are owned, leased, or used on some other basis by the Board. "Facility" as defined in this paragraph refers to structures and not intangible property rights such as leases, easements, and the like. Accordingly, the fact that a structure is owned, leased, or held in some other manner by the Board would have no effect on the scope of coverage of this Regulation on the structures in which the Board's programs and activities are conducted. The Board has added "rolling stock and other conveyances" to its definition of "facility" in §§ 268.601(f) and 268.702(c) in order to conform these definitions with the definition of "facility" in DOJ's final rule implementing section 504 of the Rehabilitation Act.

The Board has added a new paragraph (d) defining "handicapped person" for the purposes of Subpart G. The Board also added a new paragraph (e) defining "physical and mental impairment" for the purposes of Subpart G. These definitions were formerly incorporated in Subpart G by reference from Subpart F in the proposed Regulation as published for public comment.

The Board received comments from the DOJ and two other commenters concerning its definition of "physical and mental impairment" in § 268.601(a) of Subpart F, which formerly applied to Subpart G by reference, that the definition does not include a list of examples of physical and mental impairment. DOJ and other commenters stated that such a list is necessary to define "physical and mental impairment" in connection with Subpart G. This definition was taken verbatim from the equivalent section of EEOC's regulation under section 501 of the Rehabilitation Act concerning employment in Federal agencies which is identical with the definition of "physical and mental impairment" in DOJ's regulation under section 504 of the Rehabilitation Act effecting Federally conducted programs and activities, except that DOJ's regulation contains a list of examples of physical and mental impairment which does not appear in EEOC's regulation. The Board does not believe that the addition of a list of examples of physical and mental impairment such as appears in DOJ's regulation alters the definition of "physical and mental impairment" in any material way. However, in order to reassure the commenters that the Board does not intend to use a definition in this subpart that is different from that used by DOJ in connection with its regulation implementing section 504 of the Rehabilitation Act, the Board has added to its definition of "physical and mental impairment" in this section the recommended list of examples of physical and mental impairment.

The Board has added new paragraphs (f) and (g) defining "major life activities" and "has a record of such an impairment." These definitions were formerly incorporated in Subpart G by reference from Subpart F in the proposed Regulation as published for public comment.

Paragraph (i) of this section (originally proposed as paragraph (d)), defining "qualified handicapped persons", was revised to make clear that a "qualified handicapped person" is one who can achieve the purpose of a program or activity without modifications of the program which the "Board can determine based on a written record" would result in a fundamental alteration of the nature of the program or activity. The purpose of this revision is to require that the Board develop an adequate written record to assist the Board in making such determinations and to assist any judicial review of such a determination. This revision was made in response to a number of comments indicating that the Board's originally proposed definition would allow the Board to make a subjective determination without an adequate basis upon which to review the Board's action. As set forth below, the Board has also revised certain other sections of this subpart to require that all Board determinations that a modification which would result in "fundamental alterations" in a program or activity or in "undue financial and administrative burdens" are made on the basis of a written record which will facilitate Board determinations as well as judicial review.

DOJ and the commenters also recommended that the Board go further by adopting provisions in DOJ's final rule which require the Agency to assume the "burden of proof" with regard to any determination that a proposed modification in a program or activity would cause a fundamental alteration in the nature of the program or activity or result in undue financial or administrative burdens. The Board believes that it cannot usurp the powers of the courts to determine who shall bear the "burden of proof" in any litigation that may arise under this Regulation. DOJ, in discussing the promulgation of its final rule under section 504 of the Rehabilitation Act, acknowledged its own lack of authority to dictate to the courts, standards governing any judicial review of complaints under this section. *See* 49 FR 35724, 35733 (September 11, 1984).

The Board has concluded that it should not include the recommended language regarding burden of proof, because such determinations in judicial proceedings must be left to the courts, and also because such language in the Regulation will most likely be read as permitting a person seeking an administrative determination that he or she is a "qualified handicapped person" or that a proposed modification would not result in "fundamental alterations" or "undue administrative and financial burdens" to rest a claim upon bare allegations without presenting any evidence in support of such allegations. It is the Board's experience that compiling an adequate record in such cases normally requires the cooperation of the complainant. This is especially true where the complainant is not a Board employee.

The Board received comments from two organizations representing handicapped persons which state that the Board is applying lesser standards to its programs and activities under this subpart than standards which are applicable under regulations of other agencies applying section 504 of the Rehabilitation Act to programs receiving Federal financial assistance. These commenters state that the regulations applying section 504 to programs receiving Federal financial assistance do not require that "qualified handicapped persons" achieve the purpose of an activity or program without a modification of the activity or program which would result in a fundamental alteration in the activity or program or in undue administrative or financial burdens. These same commentators and others made the very same comments to DOJ regarding an equivalent provision in the DOJ's final rule implementing section 504 of the Rehabilitation Act. DOJ declined to alter its final rule in response to these comments.

These commenters further state that the Board and DOJ are misapplying *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In *Davis*, the Supreme Court, interpreting section 504 of the Rehabilitation Act with regard to a program receiving Federal finanical assistance, stated that section 504 did not require a school to modify its training program for nurses to accommodate a hearing impaired person, since that person's hearing disability would prevent her from safely participating in the clinical training program and from rendering adequate care to patients. These commenters argue that *Davis* created a narrow exemption to the requirements of section 504 of the Rehabilitation Act and that DOJ's and the Board's actions in inserting a "fundamental alterations" and an "undue burdens" defense regarding modifications of their programs and activities are wrong.

DOJ stated in the **Federal Register** notice accompanying its final rule implementing section 504 of the Rehabilitation Act in connection with Federally conducted programs and activities that *Davis* and several other court decisions indicate that section 504 of the Rehabilitation Act does not require modifications of an activity or program which receives Federal financial assistance if such modifications would result in a fundamental alteration in the nature of the program or activity or would result in undue financial or administrative burdens. *See Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979); *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2nd Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981). DOJ noted that since most of the regulations implementing section 504 for programs receiving Federal financial assistance were written prior to *Davis*, in light of *Davis* and the other cited cases there is no substantive difference between regulations applicable to programs receiving Federal financial assistance and its recent regulation establishing standards for Federally conducted programs and activities. In other words, the prior regulations relating to Federal financial assistance must be read and applied in accordance with the Supreme Court's holding in *Davis*. DOJ also noted that it previously adopted the arguments used by these commenters, but those arguments were rejected by the court in *American Public Transit Ass'n* v. *Lewis*, *supra*.

The Board has considered the cited cases and other authorities interpreting section 504 of the Rehabilitation Act and has concluded that the proposed sections of this Regulation which provide that the Board is not required to modify a program or activity if such modification would result in a fundamental alteration in the program or activity or in undue financial or administrative burdens are reasonable and should be adopted.

A commenter objected to the fact that Subpart G does not contain definitions of "facility", "handicapped person", "respondent", and "section 504". The Board in its proposed rule had incorporated into Subpart G by reference the definitions of "facility" and "handicapped person" found in § 368.601 of Subpart F. As explained above, to avoid confusion, the Board has added definitions of "facility" and "handicapped person" and other definitions to Subpart G and has removed all cross-references in Subpart G to definitions in Subpart F. The Board has not defined "respondent" in Subpart G because the Board has no supervisory authority over other agencies and has no independent organizational units within the Board. Accordingly, since the Board itself is the only possible respondent under its Regulation, the Board does not believe that "respondent" needs to be defined. The Board also has not defined "section 504" because the Board is not an executive agency subject to section 504. The Board is implementing this subpart because it wishes to provide handicapped persons dealing with the Board with the same rights that are applicable to handicapped persons in their dealings with other Federal agencies. Accordingly, the Board is implementing this subpart pursuant to its authority under the Federal Reserve Act.

Section 268.703 Self Evaluation.

The Board has revised this section to provide for a single evaluation of the Board's policies and practices in light of Subpart G and to provide for the participation of interested persons in the evaluation process. The Board in its original proposed rule was guided by a December 11, 1983, version of DOJ's proto-type rule promulgating section 504 and not a more recent version. This revision was made at the suggestion of DOJ and other commenters and follows almost verbatim DOJ's final rule. It should be noted, however that this change does not preclude the Board from periodically reviewing its policies and practices in the future.

Section 268.704 Notice.

This is a new section which was added in response to comments from DOJ and other commenters who stated that the Board did not provide for adequate notice of the applicability of Subpart G to the Board's programs and activities. This section repeats virtually verbatim an equivalent section in DOJ's final rule. The Board intends to make available to all interested persons information regarding this subpart and to make such information available in any manner that the Board finds necessary to apprise interested persons of this subpart.

Section 268.705 Prohibition Against Discrimination.

As proposed, Subpart G substituted a general prohibition of discrimination for the very detailed specific prohibitions contained in DOJ's model regulation. Several commentators, including DOJ, suggested that the Board insert additional provisions from DOJ's model regulation in its final rule. Upon further consideration, the Board has revised this section by adopting virtually verbatim the equivalent provisions from DOJ's final rule. This was done to avoid confusion regarding the scope of the Board's prohibitions of discrimination against handicapped persons.

The Board has revised this section by adding paragraph (b) which states that the Board shall not refuse to provide a qualified handicapped person, either directly or indirectly, through its administration, criteria, methods, contracts, licensing, or other arrangements, with an aid, benefit, or service available to others. This paragraph also states that the Board shall not afford such person a benefit, aid, or service that is not equal to that afforded by others. Paragraph (b) further states that the Board shall not provide any benefit, aid, or service to qualified handicapped persons that is not as effective as that provided to others, or in a different or separate form than that provided to others without justification. Paragraph (b) also provides that the Board may not deny a qualified handicapped person an opportunity to participate as a member of any planning or advisory board or otherwise limit a qualified handicapped person from enjoying any right, privilege, advantage, or opportunity enjoyed by others.

The Board has added paragragh (c) which permits the exclusion of non-handicapped persons from programs the benefits of which are limited by Federal statute or Board Order to handicapped persons or to specific classes of handicapped persons. The Board has also added paragraph (d) which states that the Board shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Both DOJ and EEOC noted that the Board's proposed Regulation used the term "reasonable accommodation" in this section. Both DOJ and EEOC indicated that "reasonable accommodation" is a term of art used in the context of employment of handicapped persons under section 501 of the Rehabilitation Act and stated that its use in this section may be confusing and inappropriate. The Board agrees and, accordingly, has removed the reference to "reasonable accommodation" from this section.

A commenter suggested that the Board revise this section to provide that the Board will not aid or perpetuate discrimination against a qualified handicapped person by another agency, organization, or person by providing significant assistance to such other agency, organization, or person that discriminates. The commentator stated that several Federal agencies are not required to promulgate regulations under section 504 of the Rehabilitation Act. The commentator added that such a revision would allow a person who has been discriminated against by another agency, organization, or person to file a complaint with the Board regarding the discriminatory actions of such other agencies if the Board has provided assistance to the discriminating agency. This comment suggests insertion of language applicable to programs receiving Federal financial assistance into this subpart. The Board does not conduct any programs of Federal financial assistance. In addition, the courts have held that a Federal agency having supervisory or regulatory authority over a company does not have authority to enforce section 504 of the Rehabilitation Act against such company absent a clear grant of statutory authority to do so. *See Community Television of Southern California* v. *Gottfried*, 103 S.Ct. 885 (1983). Finally, the Board knows of no lawful bias for refusing to carry out its responsibilities under laws and regulations that it administers because of any perceived violation of the Rehabilitation Act by another Federal agency; and the notion that the Board may adjudicate complaints of discrimination against another agency is simply wrong.

Section 268.706 Employment.

This section was revised on the advice of the EEOC to make clear that complaints of discrimination in employment on the basis of handicap against the Board are to be processed under Subpart F of this Regulation.

Section 268.707 Program Accessibility: Discrimination Prohibited.

This section was revised to delete reference to § 268.709 (originally proposed as § 268.708) which provides that new facilities should be constructed in such a manner as to be accessible to handicapped persons. This revision was made on the advice of DOJ that since new facilities should be planned so as to be accessible by handicapped persons, the reference to § 268.709 is unnecessary.

Section 268.708 Program Accessibility: Existing Facilities.

DOJ and several commenters noted that DOJ in its final rule implementing section 504 assumed the burden of proving that a proposed action to modify a program or activity would result in a fundamental alteration in a program or activity or in undue financial and administrative burdens. DOJ and the other commentators stated that assumption of the burden of proof by Federal agencies is necessary so as to not discourage handicapped persons from filing complaints of discrimination because of the difficulty for a handicapped person to prove that a modification would not result in a fundamental alteration in the agency's programs or activities or in undue financial and administrative burdens for the agency.

As discussed above in connection with § 268.702, the Board believes that it cannot dictate to the courts the standards for reviewing Board actions. However, as stated above, the Board also believes it should develop an adequate record in making determinations under this section. Accordingly, the Board has revised paragraph (a)(2) to require that all Board determinations that a modification would result in "fundamental alterations" in a program or activity or result in "undue financial and administrative burdens" be made on the basis of a written record which will facilitate the Board's determination and any subsequent judicial review. The Board has also revised paragraph (a)(2) by adopting procedures substantially similar to those adopted by DOJ for making a determination that a modification would result in a fundamental alteration in a program or activity or in undue financial or administrative burdens. However, the Board does not believe it should include the recommended language regarding burden of proof, because such determinations in judicial proceedings must be left to the courts, and also because such language may be read as permitting a person seeking an administrative determination that he or she is a "qualified handicapped person" or that a proposed modification would not result in "fundamental alterations" or "undue financial and administrative burdens" to rest a claim upon bare allegations without presenting any evidence in support of the allegations. It is the Board's experience that compiling an adequate record in such cases normally requires the cooperation of the complainant. This is especially true where the complainant is not a Board employee.

The Board has revised paragraph (b) to add home visits and use of accessible rolling stock and other conveyances to the list of modifications the Board may make to comply with the requirements of this section. This revision was adopted to bring the Board's regulation into conformity with the equivalent section in DOJ's final rule.

The Board has revised paragraph (d) at the suggestion of the DOJ to provide for public participation in the preparation of any transition plans to make existing facilities accessible to handicapped persons. DOJ noted that handicapped persons often can provide insight and suggestions about making facilities accessible which are more cost efficient than methods that may be thought of by the agency.

Section 268.709 Program Accessibility: New Construction and Alterations.

This section has been revised by deleting the last two sentences of the original proposed section. This change was made at the suggestion of DOJ which pointed at that since construction of new facilities should take into consideration accessibility by handicapped persons, such construction cannot result in a modification of a program or activity that would be a fundamental alteration or administrative costs.

Section 268.710 Communications.

Paragraph (d) of this section has been revised by eliminating the originally proposed paragraph (d) in light of the adoption of the notice provision in § 268.704 and by redesignating proposed paragraph (e) to (d). New paragraph (d) has been revised to require that the Board make any determinations that a modification would result in a fundamental alteration of a program or activity or result in undue financial or administrative burdens be based on a written record.

Section 268.711 Compliance Procedures.

Paragraph (d) has been revised at the suggestion of the EEOC to make clear that complaints of discrimination in employment by the Board on the basis of handicap are to be processed under Subpart F.

The Board in § 268.711 (originally proposed as § 268.710) sought to simplify the compliance procedures from DOJ's model rule. Several commentators suggested that the Board insert additional provisions from DOJ's model regulation in its final rule. Upon further consideration, the Board has revised this section by adopting virtually verbatim the equivalent provisions from DOJ's final rule. This was done to avoid confusion regarding filing and processing complaints of discrimination under this subpart. These provisions have been added to this section as paragraphs (c) through (k).

Paragraph (c) makes the EEO Programs Officer responsible for implementation of this section. Paragraph (d) sets forth the criteria and procedures for filing a complaint. Complaints must be filed within 180 days of the alleged act of discrimination. Paragraph (e) sets forth the criteria and procedures for accepting a complaint. Paragraph (e) also sets forth the criteria and procedures for cancelling an incomplete complaint. Paragraph (f) sets forth the procedures to be followed in investigating a complaint, requires the investigation be completed within 180 days of receipt of the complete complaint, and provides for resolution of the complaint informally. Paragraph (g) provides that if there is no satisfactory resolution of the complaint, the Staff Director For Management shall issue a letter of findings which shall set forth the results of the investigation, findings of fact and conclusions of law, a remedy for each violation found, and a notice to the complainant of his or her right to appeal the letter of findings to the Board of Governors or the Administrative Governor for a decision under paragraph (k) of this section and to request a hearing. Paragraph (h) sets forth the procedures for filing an appeal, with or without hearing, to the Administrative Governor and requires that notice of such appeal be filed with the EEO Programs Officer within 30 days of issuance of the letter of findings. Paragraph (h) also provides that if no notice of appeal is filed within 30 days of issuance of a letter of findings, the EEO Programs Officer shall certify the letter of findings as the final decision of the Board. Paragraph (i) sets forth the procedures for acceptance of a notice of appeal and also provides complainant with an opportunity to appeal to the Administrative Governor any determination by the EEO Programs Officer that an appeal is untimely. Paragraph (h) set forth the procedures for conducting a hearing and provides that the hearing be conducted by an administrative law judge. Paragraph (h) provides that the hearing, decision, and any administrative review thereof be conducted in accordance with the Administrative Procedure Act. Paragraph (k) provides that the EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this paragraph, and that at the request of any member of the Board of Governors, the Board of Governors shall make the decision on the complaint. Paragraph (k) also provides that if no such request is made, the Administrative Governor shall make the decision on the complaint under this paragraph. Paragraph (k) makes the decision maker responsible for insuring compliance by the Board with his or her decision.

A commentator has suggested that this section be revised to provide for consultations with the Architectural and Transportation Barriers Compliance Board. The Board is not subject to the jurisdiction of the Architectural and Transportation Barriers Compliance Board ("ATBCB") under the Architectural Barriers Act. However, the Board has indicated that it follows ATBCB's guidelines and consults with the ATBCB when necessary. Accordingly, the Board believes that the suggested revision is neither necessary or appropriate.

A commentator has suggested that this section be revised to provide for judicial review of decisions under this section. Section 504 of the Rehabilitation Act does not provide for judicial review of violations of section 504 in connection with Federally conducted programs. Accordingly, the Board believes this question is more appropriately left to the courts and should not be addressed in this Regulation.

Subpart H—Review by the Equal Employment Opportunity Commission

Section 268.801 Entitlement.

The last sentence of paragraph (a) of this section was revised to bring this paragraph into conformity with the equivalent paragraph in EEOC's regulation. This revision was made after a commenter indicated some confusion as to the meaning of this paragraph. This paragraph is intended to avoid a second review by the EEOC of a complaint or issue previously reviewed by the EEOC and submitted by the same complainant, agent, or claimant.

Section 268.803 Time Limits.

A commenter stated that paragraph (a) of this section allows EEOC review only after the Board has made a decision to award or not award attorney's fees. The commenter stated that any decision to award or not award attorney's fees should be made only after the EEOC review process is completed in order to avoid the possibility that such a decision on attorney's fees might deprive a complainant of counsel during the EEOC reiew proceeding. This paragraph was adopted virtually verbatim from the equivalent provision in the EEOC's regulation. The EEOC intended its review process to include any decisions on whether or not to award attorney's fees. Accordingly, the Board is required to make its decision on attorney's fees prior to EEOC review. However, this section is not intended to imply that a complainant may not ask for an award of attorney's fees and/or costs incurred in filing a request for review by EEOC. Section 268.315(c) of Subpart C provides that the complainant may request an award of attorney's fees and/or costs incurred as a result of an appeal to the EEOC of a Board decision on a complaint of discrimination.

Section 268.804 Procedures.

In its comments to the Board, the EEOC stated that it sees no need for automatic reconsideration by the Board of any findings by EEOC's Office of Review and Appeals on a request for review of a Board decision on a complaint because the Board may request reconsideration of the findings of the Office of Review and Appeals by the Commissioner of the EEOC if the Board is not satisfied with the findings of the Office of Review and Appeals. Another commenter stated that the Board should be required to give reasons for a rejection of EEOC's findings, that the EEOC should be given further review powers following any Board rejection of EEOC findings, and that the Board should establish a presumption that the Board will accept the EEOC's findings unless there are strong contrary reasons not to.

As a result of discussions with EEOC in light of that Agency's comments on the proposed regulation, the Board has determined that provision for automatic reconsideration of EEOC's findings on a request for review of a Board decision under this Regulation is not necessary to preserve the Board's exclusive control of the conditions of employment and

compensation of its staff as mandated by sections 10(4) and 11(*l*) of the Federal Reserve Act. By its terms, section 10(4)'s statutory grant of authority may be changed only by specific amendment of the Federal Reserve Act, and the Board may not by regulation waive such authority. *See* 58 *Comp. Gen.* 687 (1979). The Board has agreed with the EEOC to permit EEOC review of Board decisions under this Regulation in order to provide its employees with the same rights and privileges provided to other employees of the Government. The Board has revised this section to provide that any findings of the Office of Review and Appeals or of the Commissioners of the EEOC on a request for review of a decision by the Board on a complaint of discrimination shall be returned to the Board for consideration.

Section 268.805 Review and Consideration

The Board has added a new paragraph (b) to this section which provides that if the Commissioners of the EEOC reopen and reconsider the findings of the Office of Review and Appeal, the findings of the Commissioners shall be returned to the Board for consideration.

Subpart I—Equal Pay

Generally

The EEOC's comment letter indicates that the Board has no jurisdiction to enforce the Equal Pay Act and that the Board has no authority to promulgate this subpart. This subpart is adopted pursuant to its authority under the Federal Reserve act to determine all matters relating to the employment and compensation of its staff. In light of the Federal Reserve Act provision, the Board believes it is required to adopt this subpart if it wants to provide its employees with the same protections offered by the Equal Pay Act to other employees of the Government. After further consultations with EEOC regarding its comment, the Board has determined to retain this subpart.

Section 268.902 Records.

A commenter recommended that paragraph (b) which requires the Board to keep business records for two years be amended to provide that the records be kept longer if they relate to pending administrative or court proceedings. The Board has amended this section to provide that business records are to be kept for at least six years. This amendment reflects the addition of § 268.904 of this subpart that requires a civil action on any complaint of denial of equal pay to be filed within six years of the matter causing the complainant to believe that he or she has been denied equal pay within the meaning of this subpart.

Section 268.903 Procedures.

Paragraph (b) of this section was amended to provide that civil actions under this subpart are to be filed pursuant to § 268.904 of this subpart even though individual complaints and class action complaints under this subpart are to be processed under Subparts C and D respectively.

Section 268.904 Right to File Civil Action For Judicial Review.

The Board has amended this subpart by the addition of this section which provides that Board employees who believe that they have been denied equal pay may file civil actions against the Board within six years of the matter causing them to believe they have been denied equal pay. This section applies the general statute of limitations for filing civil action against the United States, 12 U.S.C. 2401(a). The Equal Pay Act, through the Portal to Portal Act, provides that complainants shall file civil actions within two years, or three years in cases of willful discrimination, of the matter causing them to believe that they have been denied equal pay.

However, Federal employees who are part of the competitive civil service may petition the Comptroller General of the United States at any time up to six years to collect back pay. The Board is not subject to the Equal Pay Act, nor are its employees members of the competitive civil service. Accordingly, the Board believes that use of the general statute of limitations applicable to suits against the United States is necessary and notes that it provides Board employees with the same time limits for filing civil actions under this subpart as are applicable to Federal employees generally under the other statutes cited above.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *el seq.*) the Board certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. The regulation focuses primarily of Board personnel and management policies and practices.

List of Subject in 12 CFR Part 268

Civil right, Equal employment opportunity, Buildings and facilities, Handicapped, Federal programs and activities, Administration.

Pursuant to its authority under section 10(4) and 11(*l*) of the Federal Reserve Act, 12 U.S.C. 244 and 248(*l*), the Board has amended 12 CFR Part 268, Equal Opportunity Regulation by revising it as set forth below:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

Subpart A—General Provisions

Sec.

Subpart B—Administration

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap.

Subpart D—Class Complaints of Discrimination

Authority: Secs. 10(4) and 11(*l*) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(*l*)).

Subpart A—General Provisions

§ 268.101 Authority, purpose, and scope.

(a) *Authority.* This regulation (Code of Federal Regulations, Title 12, Part 268) is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of sections 10(4) and 11(*l*) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(*l*)).

(b) *Purpose and scope.* This regulation sets forth the Board's policy, program, and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental handicap. It also sets forth the Board's policy, program, and procedures for prohibiting discrimination on the basis of physical or mental handicap in programs and activities conducted by the Board.

§ 268.102 Board program.

The Board has established, maintains, and carries out a continuing affirmative program designed to promote equal opportunity in every aspect of the Board's personnel policies and practices in the employment, development, advancement, and treatment of employees and applicants for employment. Under the terms of its program, the Board:

(a) Provides sufficient resources to administer its equal opportunity program in a positive and effective manner and assure that the principal and operating officials responsible for carrying out the equal opportunity program meet established qualifications requirements;

(b) Seeks to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, national origin, age, or physical or mental handicap, from the Board's personnel policies and practices and working conditions;

(c) Provides the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work study programs, and other training programs so that they may perform at their highest potential and advance in accordance with their abilities;

(d) Communicates the Board's equal opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, or physical or mental handicap, and solicits their recruitment assistance on a continuing basis;

(e) Participates at the community level with other employers, schools, universities, and other public and private groups in cooperative action to improve employment opportunities;

(f) Reviews, evaluates, and controls managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provides orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal opportunity policy and program;

(g) Provides recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal opportunity;

(h) Informs its employees and applicants for employment of the Board's affirmative equal opportunity policy and program and enlists their cooperation;

(i) Provides counseling for employees and applicants for employment who believe they have been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for resolving informally the matters raised by them;

(j) Provides for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap;

(k) Has established a system for periodically evaluating the effectiveness of the Board's overall equal opportunity effort;

(l) Makes reasonable accommodations to the religious needs of employees and applicants for employment, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the Board;

(m) Utilizes to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements; and

(n) Prepares annually equal opportunity plans of action which include, but are not limited to:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) describes the qualifications, in terms of training and experience relating to equal opportunity, of the principal and operating officials concerned with administration of the Board's equal opportunity program; and

(3) describes the allocation of personnel and resources proposed by the Board to carry out its equal opportunity program.

§ 268.103 Definitions.

(a) "Age" is an inclusive term which means the age of at least forty years.

(b) "Complainant" means any party who files a claim, complaint, or request for counseling under this regulation.

(c) "Complaint of discrimination" means any claim or complaint filed under this regulation or the Board's grievance procedures alleging discrimination in employment because of race, color, national origin, religion, sex, age, or physical or mental handicap.

(d) "Grievance procedures" means the Board's Adjusting Work-related Problems Policy.

Subpart B—Administration

§ 268.201 Equal employment designations.

The Board designates an EEO Programs Officer, an EEO Officer, a Federal Women's Program Manager, a Hispanic Program Coordinator, a Handicapped Program Coordinator, and such EEO Counselors and other persons as may be necessary to assist the Board in carrying out the functions described in this Regulation.

§ 268.202 The Administrative Governor.

(a) The Administrative Governor is a member of the Board of Governors. He or she is designated by the Chairman of the Board of Governors, charged with overseeing the internal affairs of the Board and empowered to make decisions and determinations on behalf of the Board of Governors when authority to do so is delegated to him or her.

(b) The Administrative Governor is hereby delegated the authority to make determinations adjudicating complaints of discrimination pursuant to §§ 268.311, 268.412, and 268.711(k) of this Regulation. The Administrative Governor is further delegated the authority to order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c), 268.414(a), and 268.711(k) of this Regulation, as he or she may consider necessary, including such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice.

(c) The Administrative Governor may delegate to any officer or employee of the Board any of his or her duties or functions under this Regulation.

(d) The Administrative Governor may refer to the Board of Governors for determination or decision any complaint of discrimination that the Administrative Governor would otherwise decide pursuant to §§ 268.311, 268.412, and 268.711(k) of this Regulation, and may make any recommendations for any changes in programs and procedures designed to eliminate discriminatory practices or to improve the Board's programs under this Regulation, and may make any recommendations for remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities, or employees who have been found to have engaged in discriminartory practices, or with regard to any other matter which the Administrative Governor believes merits the attention of the Board of Governors.

§ 268.203 The Staff Director for Management.

(a) When so authorized by the Administrative Governor, the Staff Director for Management shall make any determinations on complaints of discrimination that would otherwise be made by the Administrative Governor under §§ 268.311 and 268.412. The Staff Director for Management shall issue letters of findings under § 268.711(g). The Staff Director For Management shall order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c), 268.414(a), and 268.711(h) as he or she may consider necessary, and including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(b) The Staff Director for Management shall review the record on any complaint under this Regulation before a determination is made by the Board of Governors or the Administrative Governor on the complaint and make such recommendations as to the determination as he or she considers desirable, including any recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(c) The Staff Director for Management may make changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal opportunity.

§ 268.204 The EEO Programs Officer.

The EEO Programs Officer shall perform the following functions:

(a) Advise the Board, the Administrative Governor, and the Staff Director for Management with respect to the preparation of plans, goals, objectives, procedures, regulations, reports, and other matters pertaining to the Board's program established under § 268.102, and administer the Board's equal opportunity program;

(b) Evaluate from time to time the sufficiency of the Board's program for equal opportunity and report thereon to the Board, the Administrative Governor, and the Staff Director For Management, with recommendations as to any improvement or correction needed, and may make recommendations regarding remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(c) Recommend changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal opportunity;

(d) Provide for counseling by an EEO Counselor, of any aggrieved employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under §§ 268.302 and 268.403 of the regulation;

(e) Publicize to Board employees and applicants for employment and post permanently on official bulletin boards:

(1) The names and office addresses and the EEO responsibilities of the Staff Director For Management, the EEO Programs Officer, the Federal Women's Program Manager, the EEO Officer, the Hispanic Program Coordinator, and the Handicapped Program Coordinator;

(2) The names and office addresses of EEO Counselors, the segments of the Board for which they are responsible, the availability of EEO Counselors to counsel an employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap; and the requirement that an employee or applicant for employment must consult the EEO Counselor as provided by §§ 268.301 and 268.402; and

(3) Time limits for contacting EEO Counselors;

(f) Provide to each employee annually (and the Division of Personnel shall provide to each applicant for employment) a copy of a notice summarizing the general purposes of this Regulation and specifying where copies of this Regulation can be obtained. The EEO Programs Officer shall ensure that copies of this Regulation are posted in permanent locations in all Board facilities. The EEO Programs Officer shall, on the request of any employee or applicant for

employment provide that employee or applicant with a copy of this Regulation;

(g) Appoint any investigative officers or complaints examiners as necessary to administer this Regulation. The EEO Programs Officer is authorized to request the loan of any investigative officers or complaints examiners from any other agency as necessary to administer this Regulation. The EEO Programs Officer, with the concurrence of the Staff Director For Management, may authorize appropriate reimbursement to such agencies for the services of such investigative officers and complaints examiners;

(h) Provide for the receipt and investigation of individual complaints of discrimination, subject to §§ 268.301 through 268.312; and

(i) Provide for the acceptance and processing and/or rejection of class action complaints in accordance with Subpart D of this regulation.

§ 268.205 Federal Women's Program Manager.

The Federal Women's Program Manager shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of women.

§ 268.206 Hispanic Program Coordinator.

The Hispanic Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of Hispanics.

§ 268.207 Handicapped Program Coordinator.

The Handicapped Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to; the employment and advancement of handicapped persons.

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap

§ 268.301 Precomplaint processing.

(a) An aggrieved person who believes he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, shall consult with an EEO Counselor to try and resolve the matter. The EEO Counselor shall make whatever inquiry he or she believes is necessary into the matter and seek a solution to the matter on an informal basis. The EEO Counselor shall advise the aggrieved person of the complaint procedure under this subpart, counsel him or her concerning the issues in the matter, keep a record of the counseling activities so as to brief the EEO Officer on those activities, and when advised that a formal complaint of discrimination has been filed by an aggrieved person, shall submit a written report to the EEO Officer with a copy to the aggrieved person summarizing the EEO Counselor's actions and advice to the aggrieved person concerning the issues in the matter. The EEO Counselor shall, insofar as is practicable, conduct the final interview of the aggrieved person not later than 21 calendar days after the date on which the matter was called to the EEO Counselor's attention by the aggrieved person. If, within 21 calendar days, the matter has not been resolved to the satisfaction of the aggrieved person, that person shall be immediately informed in writing, at the time of the final interview, of his or her right to file a complaint of discrimination and of his or her right to representation, including legal counsel. The notice shall inform the aggrieved person of his or her right to file a discrimination complaint at any time up to 15 calendar days after receipt of the said notice, identify to the aggrieved person the officials with whom such complaint may be filed, and advise the aggrieved person that he or she must inform the Board immediately if he or she retains counsel or any other representative in connection with the complaint.

(b) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint.

(c) The EEO Counselor shall not reveal the identity of any aggrieved person who consults with the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has accepted a complaint of discrimination from the aggrieved person.

(d) The EEO Counselor shall have the full cooperation of all employees in the performance of his or her duties under this section.

(e) The EEO Counselor shall be free from restraint, interference, coercion, discrimination or reprisal, in connection with the performance of his or her duties under this section.

§ 268.302 Filing of complaint.

(a) *Time limits.* (1) The Board shall accept a complaint for processing under this subpart only if:

(i) The complainant brought to the attention of an EEO Counselor the matter causing him or her to believe he or she had been discriminated against within 30 calendar days of the date of the matter or, if a personnel action, within 30 calendar days of its effective date; and

(ii) The complainant, or his or her authorized representative, submitted his or her written complaint to an appropriate official within 15 calendar days of the date of his or her final interview with the EEO Counselor.

(2) A complaint shall be deemed to have been filed on the date it was received, if delivered to an appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints under paragraph (b)(3) of this section.

(b) *Filing requirements.* (1) A complaint of discrimination must be submitted in writing by the complainant, or his or her authorized representative, and must be signed by the complainant.

(2) A complaint of discrimination may be submitted in person or by mail. If a complainant, or his or her authorized representative, submits the complaint by mail, use of registered mail is advised.

(3) The complaint shall be submitted to either the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator. All complaints received by the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coodinator shall be transmitted to the EEO Officer for acknowledgment of receipt in accordance with § 268.302(c)(1).

(c) *Acknowledgement of receipt of complaint.*

(1) The EEO Officer shall acknowledge receipt of the complaint to the complainant, or his or her authorized representative, in writing.

(2) The EEO Officer shall advise the complainant, or his or her authorized representative, of all administrative rights of the complainant and of complainant's right to file a civil action as set forth in § 268.316, including the

time limits imposed on the exercise of those rights.

(d) *Extensions of time.* (1) The EEO Programs Officer shall extend the time limits set forth in this section:

(i) On written request of the complainant, or his or her authorized representative, when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits; or

(ii) For other reasons considered sufficient by the EEO Programs Officer.

(2) Written requests for extension of time under this section shall be filed with the EEO Programs Officer.

§ 268.303 Right to representation.

At any stage in the presentation of a complaint under this subpart, including the counseling stage under § 268.301, the complainant shall have the right to be accompanied, represented, and advised by a representative, including legal counsel, of his or her choice. Complainant shall be advised of this right in writing by the EEO Counselor or other appropriate person responsible for matters under this regulation at the commencement of processing of any matter subject to this regulation.

§ 268.304 Presentation of the complaint.

(a) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time to present his or her complaint, if he or she is otherwise in an active duty status.

(b) If the complainant is an employee of the Board and the complainant designates another employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if he or she is otherwise in an active duty status, to present the complaint.

§ 268.305 Rejection or cancellation of the complaint.

(a) The EEO Programs Officer shall reject a complaint which was not timely filed under § 268.302(a), unless the time for filing has been extended pursuant to § 268.302(d), and shall reject those allegations in a complaint which are not within the purview of this regulation or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending at the Board or has been decided by the Board. The EEO Programs Officer may cancel a complaint for failure of the complainant to prosecute the complaint. Such action canceling a complaint may be taken only after the EEO Programs Officer has provided the complainant, or his or her authorized representative, a written request, including notice of proposed cancellation, that the complainant provide certain information or otherwise proceed with the complaint, and the complainant has failed to satisfy this request within 15 calendar days of his or her receipt of the request.

(b) The EEO Programs Officer shall transmit any decision to reject or cancel by letter to the complainant, or his or her authorized representative. The decision letter shall inform the complainant of his or her right to have the decision of the EEO Programs Officer submitted to the Equal Employment Opportunity Commission for review as described in Subpart H and of his or her right to file a civil action as described in § 218.316 of this subpart, and of the time limits applicable thereto.

§ 268.306 Investigation.

(a) The EEO Officer shall advise the EEO Programs Officer of the receipt of a complaint. The EEO Programs Officer shall provide for the prompt investigation of the complaint. The EEO Programs Officer shall appoint an investigative officer to investigate the complaint. The investigative officer, if an employee of the Board, shall occupy a position which is not, directly or indirectly, under the jurisdiction of the Director of the Division or Office of the Board in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his or her complaint as compared with the treatment of other employees or applicants for employment in the Board Division or Office in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of witnesses, and copies of or extracts from records, policy statements, or regulations of the Board—organized to show their relevance to the complaint or the general environment out of which the complaint arose.) If necessary, the investigative officer may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he or she shall not require or coerce an employee to provide this information.

(b) The investigative officer shall be authorized:

(1) To investigate all aspects of complaints of discrimination;

(2) To request all employees of the Board to cooperate with him or her in the conduct of the investigation; and

(3) To require that statements of witnesses be under oath or affirmation without a pledge of confidence.

§ 268.307 Adjustment of complaint and offer of hearing.

(a) The Board shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the EEO Officer shall furnish complainant, or his or her authorized representative, with a copy of the investigative file promptly after receiving it from the investigative officer, and shall provide an opportunity for the complainant, or his or her authorized representative, to discuss the investigative file with appropriate officials.

(b) If an adjustment of the complaint is arrived at and approved, the terms of the adjustment shall be reduced to writing and made a part of the complaint file, with a copy of the terms of the adjustment provided to the complainant. An informal adjustment of a complaint may include an award of backpay, attorney's fees and/or costs, if appropriate, or other appropriate relief. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney's fees and/or costs should be awarded or on the amount of attorney's fees and/or costs to be awarded, the issue of the award of attorney's fees and/or costs or the amount which should be awarded may be severed and shall be the subject of a final decision pursuant to § 268.311. The decision of whether to award attorney's fees and/or costs or of the amount to be awarded may be submitted for review

by the Equal Employment Opportunity Commission, pursuant to subpart H of this Regulation.

(c) If the Board does not carry out, or rescinds any action specified by the terms of the adjustment for any reason not attributable to the actions or conduct of the complainant, the EEO Officer shall, upon the complainant's written request, reinstate the complaint for further processing at the point that processing ceased because of the adjustment.

(d) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing by the EEO Officer:

(1) Of the proposed disposition of the complaint;

(2) Of the complainant's right to a hearing and decision by the Board of Governors or the Administrative Governor under § 268.311, or the Staff Director For Management if he or she is delegated the authority under § 268.202(c), if the complainant notifies the EEO Officer in writing within 15 calendar days of receipt of the notice that he or she desires a hearing; and

(3) Of the complainant's right to a decision by the Board of Governors or the Administrative Governor under § 368.311, or the Staff Director For Management if he or she is delegated the authority under § 268.202(c), without a hearing.

(e) If the complainant fails to notify the EEO Officer of his or her wishes within 15 calendar days of receipt of the notice set forth in § 268.307(d), the EEO Officer shall transmit the complaint file to the Board of Governors or the Administrative Governor, or to the Staff Director For Management if he or she has been authorized to act for the Administrative Governor pursuant to § 268.202(c), for decision under § 268.311.

§ 268.308 Hearing on the complaint.

A hearing, held pursuant to an election by the complainant as provided in § 268.307(d)(2), shall be conducted in the following manner:

(a) *Complaints examiner.* The hearing shall be held by a complaints examiner, who must be an employee of another agency, except in a case where the Board might be prevented by reason of law from divulging information concerning the matter complained of to a person who has not received a required security clearance. In that event, the EEO Programs Officer, in consultation with the Equal Employment Opportunity Commission, shall select an impartial employee of the Board to serve as a complaints examiner. In selecting a complaints examiner, the Board shall request the Equal Employment Opportunity Commission to supply the name of a complaints examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The EEO Officer shall transmit to the complaints examiner the complaint file containing all the documents described in § 268.312 that have been acquired up to that point in the processing of the complaint and including the original copy of the investigative file (which shall be considered by the complaints examiner in making his or her recommended decision on the complaint). The complaints examiner shall review the entire complaint file to determine whether further investigation is needed before scheduling the hearing. When the complaints examiner determines that further investigation is needed, he or she shall remand the complaint to the Board's EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed additional information at the hearing. The requirements of § 268.306 shall apply to any further investigation of the complaint. The complaints examiner shall schedule the hearing at a convenient time and place.

(c) *Conduct of hearing.* (1) Attendance at the hearing shall be limited to persons determined by the complaints examiner to have direct connection with the complaint.

(2) The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the complaints examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complaints examiner, the complainant, his or her authorized representative, and representatives of the Board at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) *Powers of complaints examiner.* In addition to the other powers vested in the complaints examiner by the Board in this Regulation, the complaints examiner shall be authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(e) *Witnesses at hearing.* The complaints examiner shall request the Board or any agency that is subject to the authority of an Equal Employment Opportunity Commission complaints examiner to make available as a witness at the hearing any employee(s) requested by the complainant when the complaints examiner determines that the testimony of such employee(s) is necessary. He or she may also request the appearance of any other person whose testimony he or she determines is necessary to furnish information pertinent to the complaint under consideration. The complaints examiner shall give the complainant his or her reasons for the denial of a request for the appearance of employees or other persons as witnesses and shall insert those reasons in the record of the hearing. The Board or any agency that is subject to the authority of an Equal Employment Opportunity Commission complaints examiner may make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner and it is not administratively impracticable to comply with the request for a witness. When it is administratively impracticable to comply with the request for a witness, the Board or other agency shall provide an explanation to the complaints examiner. If the complaints examiner determines that the explanation is inadequate, he or she shall so advise the Board or other agency and request it to make the employee available as a witness at the hearing. If the complaints examiner determines that the explanation is adequate, he or she shall insert it in the record of the hearing, provide a copy of the explanation to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees of the Board shall be on duty status during the time they are made available as witnesses.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, the Board shall promptly furnish a copy to the complainant. If the complainant submits a document that is accepted, he or she shall promptly make the document available to the Board's representative for reproduction.

(g) *Findings, analysis, and recommendations.* The complaints

examiner shall transmit to the EEO Programs Officer:

(1) The complaint file (including the record of the hearing);

(2) The findings and analysis of the complaints examiner with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose;

(3) The recommended decision of the complaints examiner on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose.

The complaints examiner shall notify the complainant of the date on which this was done. In addition, the complaints examiner shall transmit, by separate letter to the EEO Programs Officer, any findings and recommendations he or she considers appropriate with respect to conditions at the Board which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

§ 268.309 Relationship to other agency appellate procedure.

When an employee or applicant for employment makes a written allegation of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap, in connection with an action that would otherwise be processed under a grievance procedure or other system of the Board, the allegation of discrimination shall be processed under this Regulation.

§ 268.310 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the Board shall proceed with the complaint as specified in this Regulation without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under § 268.308. When the complaint has not been resolved within such time, the complainant may petition the Staff Director For Management for a review of the reasons for the delay.

(b) The EEO Programs Officer may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. Such action may be taken only after the EEO Programs Officer has provided the complainant, or his or her authorized representative, with a written request, including notice of the proposed cancellation, that the complainant provide certain information or otherwise proceed with the complaint, and the complainant has failed to satisfy this request within 15 calendar days of receipt by the complainant, or his or her authorized representative, of this request. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(c) When the complaints examiner has submitted a recommended decision finding discrimination and a final decision has not been issued by the Board of Governors or the Administrative Governor under § 268.311, or by the Staff Director For Management if he or she is delegated the authority to act for the Administrative Governor pursuant to § 268.202(c), within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall become a final decision binding on the Board 30 calendar days after its submission to the EEO Programs Officer. In such event, the complainant shall be notified of the decision and furnished a copy of the findings, analysis, recommended decision of the complaints examiner under § 268.308(g), and a copy of the hearing record and shall be advised that at the complainant's request the decision may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this part, of his or her right to file a civil action as described in § 268.316 of this regulation, and of the time limits applicable thereto.

§ 268.311 Decision on the complaint.

(a) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to do so under § 268.202(c), shall make the decision on the complaint. The decision on the complaint shall be made based on information in the complaint file and shall be made in a fair, impartial, and objective manner.

(b)(1) The decision on the complaint shall be in writing, shall reflect the date of issuance, and shall be transmitted to the complainant, or his or her authorized representative, either by certified mail, return receipt requested, or by any other method which establishes the date of receipt by the complainant, or his or her authorized representative.

(2) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the complaints examiner under § 268.308(g) of this subpart and a copy of the hearing record. The decision shall adopt, reject, or modify the recommended decision of the complaints examiner under § 268.308(g). If the decision is to reject or modify the recommended decision, the decision letter shall set forth the specific reasons in detail for rejection or modification.

(3) When there has been no hearing under § 268.308 and no adjustment under § 268.307, the decision letter shall set forth the findings, analysis, and decision of the Board of Governors or the Administrative Governor under paragraph (a) of this section, or of the Staff Director For Management if he or she has been delegated the authority to make the decision under § 268.202(c).

(c) The decision shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the decision maker shall:

(1) Advise the complainant, or his or her authorized representative, that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt;

(2) Require remedial action to be taken in accordance with § 268.315;

(3) Review the matter giving rise to the complaint to determine whether disciplinary action against any alleged discriminatory officials is appropriate; and

(4) Record the basis for his or her decision to take, or not to take, disciplinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for an award of attorney's fees and/or costs, the amount of those awards shall be determined under § 268.315(c). In the unusual situation in which the Board determines not to award attorney's fees and/or costs to a prevailing complainant, the decision shall set forth the specific reasons for denying the award.

(e) The decision letter shall inform the complainant that at his or her request the decision may be reviewed by the Equal Employment Opportunity Commission under Subpart H, of his or her right to file a civil action in accordance with § 268.316 of this

subpart, and of the time limits applicable thereto.

§ 268.312 Complaint file.

(a) The EEO Officer shall maintain a complaint file containing all documents pertinent to the complaint, except as provided in § 268.311(c)(4). The complaint file shall include copies of:

(1) The notice of the EEO Counselor to the complainant, or his or her authorized representative, pursuant to § 268.301(a);

(2) The written report of the EEO Counselor under § 268.301(a) to the EEO Office on whatever precomplaint counseling efforts were made with regard to the complainant's case;

(3) The complaint;

(4) The investigative file;

(5) If the complaint is withdrawn by the complainant, a written statement of the complainant, or his or her authorized representative, to that effect;

(6) If adjustment of the complaint is arrived at under § 268.307, the written record of the terms of the adjustment;

(7) If no adjustment of the complaint is arrived at under § 268.307, a copy of the letter under § 268.307(d) notifying the complainant, or his or her authorized representative, of the proposed disposition of the complaint and of complainant's right to a hearing;

(8) If the decision is made under § 268.307(e), a copy of the letter to the complainant transmitting that decision;

(9) If a hearing was held, the record of the hearing, together with the complaints examiner's findings, analysis, and recommended decision on the merits of the complaint;

(10) The recommendations of the Staff Director For Management or the EEO Programs Officer, if any, to the Board of Governors, the Administrative Governor, or the Staff Director For Management; and

(11) If the decision is made under § 268.311, a copy of the letter transmitting the decision.

(b) The complaint file shall contain no document that has not been made available to the complainant, or his or her authorized representative, including a physician designated in writing by the complainant.

§ 268.313 Joint processing and consolidation of complaints.

(a) Two or more complaints of discrimination filed by employees or applicants for employment with the Board consisting of substantially similar allegations of discrimination may, with written permission of the complainants, be consolidated by the EEO Programs Officer.

(b) Two or more individual complaints of discrimination from the same employee or applicant for employment may, at the discretion of the EEO Programs Officer, be joined for processing after notifying the complainant that the complaints will be processed jointly.

§ 268.314 Freedom from reprisal or interference.

(a) *Freedom from reprisal.* Complainants, their authorized representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage under § 268.301, or any time thereafter.

(b) *Review of allegations of reprisal.* A complainant, his or her authorized representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal for having filed a complaint or for having participated in the processing of a complaint under this subpart, may, if an employee or applicant for employment, have the allegation reviewed as an individual complaint of discrimination subject to the provisions of this subpart.

(c) *Consolidation of complaints.* When a complainant alleges that he or she has been subjected to restraint, interference, coercion, discrimination, or reprisal in connection with the filing of a prior complaint of discrimination and that prior complaint from which the allegation derives is in process at the Board at the time the allegation is made, the complainant may request the EEO Programs Officer to consolidate the allegation with the prior complaint. If the prior complaint is at the hearing stage of the complaint process under § 268.308, the complainant may request the complaints examiner to consolidate the allegation with the complaint at the hearing. The EEO Programs Officer or the complaints examiner may grant the request, *Provided*, that the request is made within 30 calendar days of occurrence of the act which forms the basis of the allegation, or within 30 calendar days of its effective date, if a personnel action. The EEO Programs Officer or the complaints examiner may also deny the request, at his or her discretion, and require that the allegation be processed in accordance with § 268.314(b).

§ 268.315 Remedial actions.

(a) *Remedial action involving an applicant.* (1) When it is determined that an applicant for employment has been discriminated against, the Board shall offer the applicant employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. The offer shall be made in writing. The applicant shall have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the Board of his or her decision within the 15-day period will be considered a declination of the offer, unless the applicant can show that circumstances beyond his or her control prevented the applicant from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant should have been hired, subject to the limitation in paragraph (a)(3) of this section. Back pay, computed in the manner set forth in paragraph (d) of this section, shall be awarded from the beginning of the retroactive period, subject to the same limitation, until the date the individual actually enters on duty. The applicant shall be deemed to have performed services for the Board during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required. If the offer is declined, the applicant shall be awarded a sum equal to the back pay he or she would have received, computed in the manner set forth in paragraph (d) of this section, from the date he or she would have been appointed until the date the offer was made subject to paragraph (a)(3) of this section. The applicant shall be informed in the offer of his or her right to this award in the event he declines the offer.

(2) When it is determined that discrimination existed at the time the applicant was considered for employment but that there is clear and convincing evidence that the applicant would not have been hired even absent the discrimination, the Board shall consider the applicant for any existing vacancy of the type and grade for which he or she was considered initially and for which he or she is qualified before consideration is given to other candidates. If the applicant is not selected, the Board shall record the reasons for nonselection. If no vacancy exists, the Board shall give the applicant priority consideration for the next vacancy for which he or she is qualified. This priority shall take precedence over all other Board employment priorities.

(3) A period of retroactivity or a period for which back pay is awarded under this paragraph may not extend from a date earlier than two years prior to the date on which the complaint was initially filed. If a finding of discrimination was not based on a complaint, the period of retroactivity or

period for which back pay is awarded under this paragraph may not extend earlier than two years prior to the date the finding of discrimination was recorded.

(b) *Remedial action involving an employee.* When it is determined that a Board employee has been discriminated against, the Board shall take remedial actions which may include, but need not be limited to, one or more of the following:

(1) Retroactive promotion, with back pay computed in the manner set forth in paragraph (d) of this section, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but, in any event shall not exceed the date the employee would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than two years prior to the date the finding of discrimination was recorded, but, in any event, shall not exceed the date he or she would have been promoted;

(2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. If the employee is not selected, the Board shall record the reasons for nonselection. This priority consideration shall take precedence over all other Board employment priorities;

(3) Cancellation of an unwarranted personnel action and restoration of the employee;

(4) Expunction from the Board's records of any reference to or any record of an unwarranted disciplinary action;

(5) Full opportunity to participate in the employee benefit denied him or her (e.g., training, preferential work assignments, overtime scheduling).

(c) *Attorney's fees or costs*— (1) *Awards of attorney's fees or costs.* The Board may award the complainant reasonable attorney's fees and/or costs incurred in the processing of complaints of discrimination or retaliation under this subpart. In a decision made under §§ 268.307, 268.310, 268.311, 268.314, or under Subpart D of this regulation, or in connection with any review by the Equal Employment Opportunity Commission pursuant to Subpart H, the Board may award reasonable attorney's fees or costs incurred in the processing of the matter.

(i) A finding of discrimination shall raise a presumption of entitlement to an award of attorney's fees.

(ii) Attorney's fees may be allowed only for the services of members of the Bar and law clerks, paralegals, or law students under supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iii) Attorney's fees shall be paid only for services performed after the filing of the complaint under § 268.302 and after the complainant has notified the Board that he or she is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Written submissions to the Board which are signed by the attorney shall be deemed to constitute notice of representation.

(2) *Amount of award.* When it is determined to award attorney's fees and/or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees, as appropriate, to the Board within 20 calendar days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services, and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees and/or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative, and a representative of the Board. Such agreement shall immediately be reduced to writing. If the complainant, the complainant's representative, and the Board's representative cannot reach an agreement on the amount of attorney's fees and costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the amount of attorney's fees and/or costs to be awarded shall be decided under § 268.311 within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(i) The amount of the attorney's fees and costs awarded shall be determined in accordance with the following standards: The time and labor required; the novelty and difficulty of the questions presented by the complaint; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship between the complainant and the attorney; and awards in similar cases.

(ii) The costs which may be awarded include:

(A) Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case unless provided by the Board;

(B) Fees and disbursements for printing and witnesses except to the extent already paid for by the Board;

(C) Fees for exemplification and copies of papers necessarily obtained for use in the case except to the extent already paid for by the Board; and

(D) Any other costs determined to be reasonable by the Board of Governors or the Administrative Governor under § 268.311, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c). Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821. However, no award may be made for a Board or Federal government employee who is in a duty status when made available as a witness.

(d) *Computation of back pay.* (1) The Board will compute for the period covered by the corrective action the pay, allowances, and differentials the complainant would have received if discrimination had not occurred.

(2) No complainant shall be granted more pay, allowances, or differentials under this paragraph than he or she would have received if discrimination had not occurred.

(3) Except as provided in paragraph (d)(4) of this section, in computing back pay under this paragraph, the Board shall not include:

(i) Any period during which the complainant was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(ii) Any period during which the complainant was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the discriminatory actions against the complainant.

(4) In computing the amount of back pay under this paragraph, the Board

shall grant, upon written request of a complainant, any sick or annual leave available to the complainant for a period of incapacitation if the complainant can establish that the period of the incapacitation was the result of illness or injury.

(5) In computing the amount of back pay under this paragraph, the Board shall deduct:

(i) Any amounts earned by a complainant from other employment during the period covered by the corrective action. The Board will include as other employment only employment engaged in by the complainant to take the place of employment from which the complainant had been separated from or did not receive because of discrimination against the complainant; and

(ii) Any erroneous payments received from the Board or other Federal government agencies as a result of the discriminatory actions against complainant, which, in the case of erroneous payments received from the Board's or other Federal government retirement systems, shall be returned to the appropriate system.

§ 268.316 Right to file a civil action.

(a) Except as provided in paragraph (c) of this section, a complainant is authorized to file a civil action against the Board in an appropriate United States District Court:

(1) Within 30 calendar days of receipt of notice of final action on the complaint under §§ 268.305(b), 268.307(b), 268.310 (b) and (c), and 268.311;

(2) After 180 calendar days from a date of filing a complaint with the Board if there has been no decision;

(3) Within 30 calendar days following receipt of notice of the final findings of the Equal Employment Opportunity Commission on a request to review the final action by the Board pursuant to Subpart H of this regulation; or

(4) After 180 calendar days from the date of filing of a request for review of a final decision of the Board by the Equal Employment Opportunity Commission if there has been no findings by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

(b) For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint, including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision is not final until the procedures are followed for determining the amount of the award as set forth in § 268.315(c) of this subpart.

(c) A complainant who filed a complaint of discrimination because of age or because of denial of equal pay shall file civil actions within the time limits set forth in § 268.505 of Subpart E of this regulation for complaints of age discrimination and in § 268.904 of Subpart I of this regulation for complaints of denial of equal pay.

§ 268.317 Notice of right.

The Board shall notify a complainant in writing of his or her right to file civil action, and of the 30-day time limit to file civil suit specified in § 268.316, or of the 6 year time limit to file civil action specified in § 268.505 in the case of discrimination because of age and in § 268.904 in the case of denial of equal pay, in any final action on a complaint under this subpart.

§ 268.318 Effect on administrative procedure.

The filing of a civil action does not terminate Board processing of a complaint or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart D—Class Complaints of Discrimination

§ 268.401 Definitions.

(a) A "class" is a group of Board employees or applicants for employment, on whose behalf it is alleged that they have been, are being, or may be adversely affected, by a Board personnel management policy of practice which the Board has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, or mental or physical handicap.

(b) A "class complaint" is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(2) There are questions of fact common to the class;

(3) The claims of the agent of the class are typical of the claims of the class; and

(4) The agent of the class, or his or her authorized representative, if any, will fairly and adequately protect the interests of the class.

(c) An "agent of the class" is a class member who acts for the class during the processing of the class complaint.

§ 268.402 Precomplaint processing.

(a) An employee or applicant for employment who wishes to be an agent and who believes he or she has been discriminated against shall consult with an EEO Counselor within 90 calendar days of the matter giving rise to the allegation of individual discrimination or within 90 calendar days of its effective date if a personnel action.

(b) The EEO Counselor shall:

(1) Advise the aggrieved person of the discrimination complaint procedures, of his or her right to representation, including legal counsel, throughout the precomplaint and complaint process, and of the right to anonymity only during the precomplaint process;

(2) Make whatever inquiry he or she believes is necessary;

(3) Make an attempt at informal resolution through discussion with appropriate officials;

(4) Counsel the aggrieved person concerning the issues involved;

(5) Inform the EEO Officer and other appropriate officials when he or she believes corrective action is necessary;

(6) Keep a record of all counseling activities; and

(7) Summarize actions and advice in writing both to the EEO Officer and the aggrieved person concerning the issues arising from the personnel management policy or practice in question.

(c) The EEO Counselor shall conduct a final interview and terminate counseling with the aggrieved person not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the EEO Counselor. During the final interview, the EEO Counselor shall inform the aggrieved person in writing that counseling is terminated, that he or she has the right to file a class complaint of discrimination with appropriate officials of the Board, of the time limits for filing a class complaint, of his or her right to representation, including legal counsel, and of his or her duty to assure that the Board is immediately informed if legal representation is obtained.

(d) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint or to encourage the person to file a complaint.

(e) The EEO Counselor shall not reveal the identity of an aggrieved person during the period of consultation, except when authorized to do so in writing by the aggrieved person.

(f) All Board employees and officers shall fully cooperate with EEO Counselors in the performance of their duties under this section. EEO Counselors shall have routine access to personnel records of the Board without unwarranted invasion of privacy.

(g) Corrective action taken as a result of counseling shall be consistent with law and the Board's regulations, rules, and instructions.

§ 268.403 Filing and presentation of a class complaint.

(a) The complaint must be submitted in writing by the agent, or his or her authorized representative, and be signed by the agent.

(b) The complaint shall set forth specifically and in detail:

(1) A description of the Board personnel management policy or practice giving rise to the complaint; and

(2) A description of the resultant personnel action or matter adversely affecting the agent.

(c) The complaint must be filed not later than 15 calendar days after the agent's receipt of the notice of final interview with an EEO Counselor pursuant to § 268.402(c).

(d) The complaint must be filed with either the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator.

(e) A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

(f) At all stages, including counseling, in the preparation and presentation of a complaint or claim, and review by the Equal Employment Opportunity Commission of a Board decision on a complaint or claim under subpart H, the agent or claimant shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing, including legal counsel, provided the choice of a representative does not involve a conflict of interest or conflict of position. The representative shall be designated in writing and the designation made a part of the class complaint file.

(g) If the agent is a Board employee in an active duty status, he or she shall have a reasonable amount of official time to prepare and present the complaint. Board employees, including attorneys, who are representing employees of the Board in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is consistent with the faithful performance of their duties.

§ 268.404 Acceptance, rejection or cancellation.

(a) Within 10 calendar days of the Board's receipt of a complaint, the EEO Officer shall forward the complaint, along with a copy of the EEO Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the the Equal Employment Opportunity Commission with a request for designation of a complaints examiner qualified to conduct the proceeding.

(b) The complaints examiner may recommend that the Board reject the complaint, or a portion thereof, for any of the following reasons:

(1) The complaint was not timely filed;

(2) The complaint consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending before the Board or which has been resolved or decided by the Board;

(3) The complaint is not within the purview of this subpart;

(4) The agent failed to consult an EEO Counselor in a timely manner;

(5) The complaint lacks specificity and detail;

(6) The complaint was not submitted in writing, or was not signed by the agent; or

(7) The complaint does not meet all of the prerequisites set forth in § 268.401(b) of this subpart.

(c) If an allegation is not included in the EEO Counselor's report, the complaints examiner shall afford the agent 15 calendar days to explain whether the matter was discussed with an EEO Counselor and if not, why he or she did not discuss the allegation with an EEO Counselor. If the explanation is not satisfactory, the complaints examiner may recommend that the Board reject the allegation. If the explanation is satisfactory, the complaints examiner may refer the allegation to the Board for further counseling of the agent.

(d) If an allegation lacks specificity an detail, the complaints examiner shall afford the agent 15 calendar days to provide specific and detailed information. The complaints examiner may recommend that the Board reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the complaints examiner must advise the agent how to proceed on an individual or class basis concerning these allegations.

(e) The complaints examiner may recommend that the Board extend the time limits for filing a complaint and for consulting with an EEO Counselor when the agent, or his or her authorized representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limits.

(f) When appropriate, the complaints examiner may recommend to the Board that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(g) The complaints examiner may recommend that the Board cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after the complaints examiner has provided the agent, or his or her authorized representative, a written request, including notice of proposed cancellation, that the agent provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within 15 calendar days of his or her receipt of the request.

(h) An agent, or his or her authorized representative, must be informed by the complaints examiner in a request under paragraph (c) or (d) of this section that his or her complaint may be rejected if the information is not provided.

(i) The complaints examiner's recommendation to the Board on whether to accept, reject, or cancel a complaint shall be transmitted in writing to the Board and the agent, or his or her authorized representative. The complaints examiner's recommendation to accept, reject, or cancel shall become the Board's decision unless the EEO Programs Officer rejects or modifies the decision within 10 calendar days of its receipt. The EEO Programs Officer shall notify the agent, or his or her authorized representative, and the complaints examiner of this or her decision to accept, reject, or cancel a complaint. The notice of a decision to reject or cancel the class complaint shall inform the agent of his or her right to proceed with an individual complaint of discrimination under Subpart C, that he or she may request that the Board's decision on the complaint be reviewed by the Equal Employment Opportunity Commission pursuant to subpart H, and of his or her right to file a civil action pursuant to § 268.415, and of the time limits applicable thereto.

§ 268.405 Notification and opting out.

(a) After acceptance of a class complaint, the Board, within 15 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) The name of the Board or organizational segment(s) thereof involved, its location, and the date of acceptance of the complaint;

(2) A description of the issues accepted as part of the class complaint;

(3) An explanation that class members may remove themselves from the class by notifying the EEO Programs Officer within 30 calendar days after issuance of the notice; and

(4) An explanation of the binding nature of the final decision on or resolution of the complaint.

§ 268.406 Avoidance of delay.

The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint without undue delay so that the complaint is processed within 180 calendar days after it was filed.

§ 268.407 Freedom from restraint, interference, correction, and reprisal.

(a) Agents, claimants, their authorized representatives, witnesses, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, EEO Investigators, EEO Counselors, and other Board officials having responsibility for the processing of discrimination complaints shall be free from restraint, interference, coercion, and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under § 268.402 or any time thereafter.

(b) A person identified in paragraph (a) of this section, if a Board employee or applicant for employment, may file a complaint of restraint, interference, coercion, or reprisal in connection with the presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with the provisions of Subpart C of this regulation.

§ 268.408 Obtaining evidence concerning the Complaint.

(a) *General.* (1) Upon the acceptance of a complaint, the EEO Programs Officer shall designate a Board representative. The Board representative shall not be an alleged discriminating official or any individual designated under Subpart B of this regulation.

(2) In representing the Board, the Board representative shall consult with officials, if any, named or identified as responsible for the alleged discrimination, and other officials or employees of the Board as necessary. In such consultations, the Board representative shall be subject to the provisions of the Board's regulations, rules, and instructions concerning privacy and access to individual personnel records and reports.

(b) *Development of evidence.* (1) The complaints examiner shall notify the agent, or his or her authorized representative, and the Board representative that a period of not more than 60 calendar days will be allowed for both parties to prepare their cases. This time period may be extended by the complaints examiner upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) In the event that mutual cooperation fails, either party may request the complaints examiner to rule on a request to develop evidence. When the complaints examiner renders his or her report of findings and recommendations on the merits of the complaint, a party's failure to comply with the complaints examiner's ruling on an evidentiary request may be taken into account.

(3) During the time period for development of evidence, the complaints examiner may, at his or her discretion, direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an investigator trained and/or certified by the Equal Employment Opportunity Commission.

(4) Both parties shall furnish the complaints examiner all materials that they wish the complaints examiner to examine and such other material as the complaints examiner may request.

§ 268.409 Opportunities for resolution of the complaint.

(a) The complaints examiner shall furnish the agent, or his or her authorized representative, and the Board representative with a copy of all materials obtained concerning the complaint and provide an opportunity for the agent, or his or her authorized representative, to discuss these materials with the Board representative and attempt resolution of the complaint.

(b) At any time after acceptance of a complaint, the complaint may be resolved by agreement of the Board and the agent to terms offered by either party.

(c) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing, and signed by the agent and the Staff Director For Management. A resolution may include a finding on ther issue of discrimination, and award of attorney's fees and/or costs, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law and the Board's regulations, rules, and instructions. A copy of the resolution shall be provided to the agent.

(d) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by the Board. A resolution shall bind all members of the class.

(e) If the Board does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, his or her authorized representative, or class members, the Board upon the agent's written request shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of the Board to reinstate the complaint may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

§ 268.410 Hearing.

On the expiration of the period allowed for preparation of the case, the complaints examiner shall set a date for a hearing. The hearing shall be conducted in accordance with § 268.308 of Subpart C of this regulation.

§ 268.411 Report of findings and recommendations.

(a) The complaints examiner shall transmit to the EEO Programs Officer:

(1) The record of the hearing;

(2) The complaints examiner's findings and analysis with regard to the complaint; and

(3) The complaints examiner's report of findings and recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.

(b) The complaints examiner shall notify the agent, or his or her authorized representative, of the date on which the report of findings and recommendations was forwarded to the EEO Programs Officer.

§ 268.412 Board decision.

(a)(1) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to do so under § 268.202(c), shall make the decision on the complaint.

(2) Within 30 calendar days of receipt of the report of findings and recommendations issued under § 268.411 of this subpart, the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c), shall issue a decision to accept, reject, or modify the findings and recommendations of the complaints examiner.

(3) The decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to make the decision under § 268.202(c), shall be in writing and shall be transmitted to the agent, or his or her authorized representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the complaints examiner.

(4) When the decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to make the decision under § 268.202(c), is to reject or modify the findings and recommendations of the complaints examiner, the decision shall contain the specific reasons in detail for the action.

(b) If the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c), has not issued a decision within 30 calendar days of receipt by the Board of the complaints examiner's report of findings and recommendations, those findings and recommendations shall become the final Board decision. The Board shall transmit the final Board decision and the record of the hearing to the agent, or his or her authorized representative, within 5 calendar days of the expiration of the 30-day period.

(c) The decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c) of Subpart C of this regulation, shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the Board shall:

(1) Advise the agent, or his or her authorized representative, that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt of the decision;

(2) Review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate; and

(2) Record the basis for its decision to take or not to take disciplinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for the award of attorney's fees and/or costs, the amount of these awards shall be determined under § 268.315(c) of Subpart C of this Regulation. When it is determined not to award attorney's fees and/or costs, the decision shall set forth the specific reasons for denying the award.

(e) The decision shall inform the agent, or his or her authorized representative, that on request of the agent the decision under this section may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this Regulation, of his or her right to file a civil action in accordance with § 268.415 of this subpart, and of the time limits applicable thereto.

(f) A final decision on a class complaint shall be binding on all members of the class and Board.

§ 268.413 Notification to class members of decision.

Class members shall be notified by the Board, through the same media employed to give notice of the existence of the class complaint, of the Board decision and corrective action, if any. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 calendar days of the transmittal of its decision to the agent.

§ 268.414 Corrective action.

(a) When discrimination is found, the Board shall eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action, including an award of attorney's fees and/or costs to the agent, in accordance with § 268.315 of Subpart C of this Regulation. Corrective action in all cases must be consistent with law and Board regulations, rules, and instructions.

(b) When discrimination is found and a class member believes that but for that discrimination, he or she would have received employment or an employment benefit, the class member may file a written claim with the EEO Programs Officer within 30 calendar days of notification by the Board of its decision.

(c) The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within not more than 135 calendar days preceding the filing of the class complaint.

(d) The EEO Programs Officer shall attempt to resolve the claim for relief within 60 calendar days after the date the claim was postmarked, or in the absence of a postmark, within 60 calendar days after the date it was received by the EEO Programs Officer, with whom claims may be filed. If the EEO Programs Officer and claimant do not agree that the claimant is a member of the class or upon the relief to which the claimant is entitled, the EEO Programs Officer shall refer the claim, with recommendations concerning it, to the complaints examiner.

(e) The complaints examiner shall notify the claimant of his or her right to a hearing on the claim and shall allow the parties to the claim an opportunity to submit evidence and representations concerning the claim. If a hearing is requested, it shall be conducted in accordance with § 268.308 of Subpart C of this Regulation. If no hearing is requested, the complaints examiner, in his or her discretion, may hold a hearing to obtain necessary evidence concerning the claim.

(f) The complaints examiner shall issue a report of findings and recommendations on the claim which shall be treated the same as a report of findings and recommendations under §§ 268.411 and 268.412.

(g) If the complaints examiner determines that the claimant is not a member of the class or that the claim was not timely filed, the complaints examiner shall recommend rejection of

the claim and give notice of his or her action to the Board, the claimant and the claimant's authorized representative. Such notice shall include advice that the claimant may request review of the claim by the Equal Employment Opportunity Commission pursuant to subpart H and of claimant's right to file a civil action in accordance with the provisions of § 268.415.

§ 268.415 Right to file a civil action for judicial review.

(a) Except as provided in paragraph (c) of this section, an agent who has filed a compliant or a claimant who has filed a claim for relief based on race, color, religion, sex, national origin, or physical or mental handicap, is authorized to file a civil action against the Board in an appropriate United States district court:

(1) Within 30 calendar days of his or her receipt of notice of final action taken by the Board;

(2) After 180 calendar days from the date he or she filed a complaint or claim with the Board if there has been no final decision on the complaint or claim.

(3) Within 30 calendar days following receipt of notice of the final findings of the Equal Employment Opportunity Commission on a request to review the final decision of the Board pursuant to Subpart H of this regulation; or

(4) After 180 calendars days from the date of filing of a request for review of a final decision of the Board by the Equal Employment Opportunity Commission if there has been no finding by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

(b) For the purposes of this Part, the decision of the Board shall be final only when the Board makes a determination on all issues in the complaint, including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in § 268.315(c) of Subpart C.

(c) An agent who filed a class complaint of discrimination because of age shall file a civil suit within the time limits set forth in § 268.505 of Subpart E of this regulation. An agent who filed a class complaint of denial of equal pay shall file a civil suit within the time limits set forth in § 268.904 of Subpart I of this regulation.

§ 268.416 Notice of right.

When the agent alleges that the Board discriminated against a class on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, or a claimant files for relief, the Board shall notify the agent or claimant in writing of his or her right to file a civil action following any final action on a complaint or claim under this subpart.

§ 268.417 Effect on administrative processing.

The filing of a civil action by an agent or claimant does not terminate Board processing of a complaint or claim or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart E—Nondiscrimination on Account of Age

§ 268.501 Policy statement.

(a) The Board shall not:

(1) Fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges or employment, because of such individual's age, except as permitted by § 268.504;

(2) Limit, segregate, or classify Board employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee or applicant because of such individual's age, except as permitted by § 268.504; or

(3) Reduce the wage rate of any employee in order to comply with this policy.

(b) The Board shall not discriminate against any employee or applicant for employment because such employee or applicant has opposed any practice forbidden under this subpart or because such employee or applicant has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or litigation under this subpart.

(c) The Board shall not print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the Board indicating any preference, limitation, specification, or discrimination, based on age, except as permitted by § 268.504.

§ 268.502 Processing of complaints.

All individual and class complaints of discrimination on the basis of age shall be filed and processed pursuant to Subparts C and D, respectively, except that civil actions shall be filed pursuant to § 268.505 of this subpart and except that § 268.315(c) providing for award of attorney's fees and/or costs shall not apply to complaints of discrimination under this subpart. A complaint may also be filed by an organization for a complainant with his or her consent.

§ 268.503 Coverage.

A person filing a complaint of discrimination on the basis of age must have been at least 40 years of age at the time the alleged discrimination occurred.

§ 268.504 Exceptions.

The Board may adopt such reasonable exemptions to the provisions of this subpart as have been established by the Equal Employment Opportunity Commission pursuant to 29 CFR 1613.501(c).

§ 268.505 Right to file civil action for judicial review.

A complainant, agent, or claimant, under this subpart is authorized to file a civil action against the Board in an appropriate United States District Court within six years of the matter causing the complainant, agent, or claimant to believe he or she has been discriminated against because of age.

§ 268.506 Effect on administrative procedure.

The filing of a civil action by an employee does not terminate Board processing of a complaint under this subpart or Equal Employment Opportunity Commission review of any such complaint pursuant to Subpart H.

Subpart F—Prohibition Against Discrimination in Employment Because of a Physical or Mental Handicap

§ 268.601 Definitions.

(a) "Handicapped person" is defined for the purposes of this subpart as one who has:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(b) "Physical or mental impairment" means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) "Major life activities" means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

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

(e) "Is regarded as having such an impairment" means:

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

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or

(3) Has none of the impairments defined in paragraph (b) of this section but is treated by an employer as having such an impairment.

(f) "Qualified handicapped person" is defined for the purposes of this subpart to mean, with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the handicapped person or others, and who, depending upon the type of appointing authority being used:

(1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question; or

(2) Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

(g) "Facility" is defined for the purposes of this subpart to mean all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

§ 268.602 General policy.

The Board gives full consideration to hiring, placement, and advancement of qualified physically or mentally handicapped persons. The Board shall be a model employer of handicapped individuals. The Board shall not discriminate against qualified physically or mentally handicapped persons.

§ 268.603 Reasonable accommodation.

(a) The Board shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped employee or applicant for employment unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its programs.

(b) Reasonable accommodation may include, but shall not be limited to:

(1) Making facilities readily accessible to and usable by handicapped persons;

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions; and

(3) Reassignment to another job position, if practicable.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operations of the Board, factors to be considered include:

(1) The overall size of the Board's program with respect to the number of employees, number and type of facilities, and size of budget;

(2) The type of Board operation including the composition and structure of the Board's work force; and

(3) The nature and the cost of the accommodation.

§ 268.604 Employment criteria.

(a) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the Board, is job-related for the position in question; and

(2) There are not available alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons.

(b) The Board shall select and administer tests concerning employment so as to insure that, when administered to an employee or applicant for employment who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the employee's or applicant's ability to perform the position or type of position in question, rather than reflecting the employee's or applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 268.605 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, the Board shall not conduct any preemployment medical examination and shall not make preemployment inquiry of an applicant for employment as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. The Board may, however, make preemployment inquiry into an applicant's ability to meet the medical qualification requirements, with or without reasonable accommodation, of the position in question (i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question).

(b) Nothing in this section shall prohibit the Board from conditioning an offer of employment on the results of a medical examination conducted coincident to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap or when the preemployment medical questionnaire used for positions which do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(c) To enable and evaluate affirmative action to hire, place, or advance handicapped individuals, the Board may invite employees and applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) Any written questionnaire used for this purpose, and any employee requesting such information, shall state clearly that the information requested is intended for use solely in conjunction with affirmative action; and

(2) Any such written questionnaire or employee requesting such information shall state clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the employee or applicant for employment to any adverse treatment, and that it will be used only in accordance with this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the employee or applicant for employment shall be kept confidential except that:

(1) Managers, selecting officials, and others involved in the selection process or responsible for affirmative action may be informed that the employee or applicant for employment is a handicapped individual eligible for affirmative action;

(2) Supervisors and managers may be informed regarding necessary accommodations;

(3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(4) Government officials investigating compliance with laws, regulations, and instructions relevant to equal opportunity and affirmative action for handicapped individuals shall be provided information upon request; and

(5) Statistics generated from information obtained may be used to manage, evaluate, and report on equal opportunity and affirmative action programs.

§ 268.606 Physical access to buildings.

The Board shall not discriminate against qualified handicapped employees or applicants for employment due to the inaccessibility of its facilities.

§ 268.607 Processing complaints.

All individual complaints of discrimination on the basis of handicap shall be processed under Subpart C. All class complaints of discrimination on the basis of handicap shall be processed under Subpart D.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart is to prohibit discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) *Application.* This subpart applies to all programs and activities conducted by the Board. Such programs and activities include:

(1) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, D.C.;

(2) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(3) Making available the Board's library facilities; and

(4) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

This subpart does not apply to Federal Reserve banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Definitions.

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

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

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

(d) "Handicapped person" means any person who has:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(e) "Physical or mental impairment" means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(f) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

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

(h) "Is regarded as having an impairment" means:

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

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

(3) Has none of the impairments defined in paragraph (h)(1) of this section but is treated by the Board as having such an impairment.

(i) "Qualified handicapped person" means:

(1) With respect to a Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can determine on the basis of a written record would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

§ 268.703 Self evaluation.

(a) The Board shall, within one year of the effective date of this section, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this subpart, and, to the extent modifications of any such policies and practices are required, the Board shall proceed to make the necessary modifications.

(b) The Board shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Board shall, for three years from the effective date of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 268.704 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the programs and activities conducted by the Board, and make such information available to them in such manner as the Board finds necessary to appraise such persons of the protections against discrimination assured them by this subpart.

§ 268.705 Prohibition against discrimination.

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

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

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

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

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

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

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

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

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

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

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

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

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

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

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

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart.

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

(d) The Board shall administer programs activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 268.706 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Board. The definitions, requirements and procedures of Subpart F of this regulation shall apply to discrimination in employment under this subpart.

§ 268.707 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.708, no qualified handicapped person shall, because the Board's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.708 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not:

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

(2) Require the Board to take any action that it can determine, based on a written record, would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing that compliance with paragraph (a) of this section would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to handicapped persons, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock,

or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Board gives priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this section with which it is not presently complying within sixty days of the effective date of this section except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this section, but in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Board shall develop, within six months of the effective date of this section, a transition plan setting forth the steps necessary to complete such changes. The Board shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

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

(2) Describe in detail the modifications that will make the facilities accessible;

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

(4) Indicate the official responsible for implementation of the plan.

§ 268.709 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board, shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons.

§ 268.710 Communications.

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

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

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

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

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

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

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

(d) This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing compliance with this section would result in such alterations or burdens. The determination that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 268.711 Compliance procedures.

(a) *Applicability.* Notwithstanding any other provision of this Regulation, this section, except as provided in paragraph (b) of this section, rather than Subparts C and D of this Regulation shall apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) *Employment Complaints.* The Board shall process complaints alleging discrimination in employment on the basis of handicap in accordance with § 268.607.

(c) *Responsible Official.* The EEO Programs Officer shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Officer.

(2) *Confidentiality.* The EEO Programs Officer shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or proceeding under this subpart.

(3) *When To file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Officer may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph, a complaint mailed to the Board shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, or the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator. Complaints should be sent to the EEO Programs Officer, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, D.C. 20551. If any Board official other than the EEO Programs Officer receives

a complaint, he or she shall forward the complaint to the EEO Programs Officer.

(e) *Acceptance of complaint.* (1) The EEO Programs Officer shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Officer shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Officer receives a complaint that is not complete, he or she shall notify the complainant, within 30 calendar days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Officer shall dismiss the complaint without prejudice.

(3) If the EEO Programs Officer receives a complaint over which the Board does not have jurisdiction, the EEO Programs Officer shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 calendar days of the receipt of a complete complant, the EEO Programs Officer shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Officer shall forward the investigative report to the Staff Director For Management.

(2) The EEO Programs Officer may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Officer to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Officer shall furnish the complainant with a copy of the investigative report promptly after receiving it from the investigator and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached, the EEO Programs Officer shall transmit the complaint file to the Staff Director For Management. The Staff Director For Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Officer, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

(1) Findings of fact and conclusions of law;

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

(3) A notice of right of the complainant to appeal the Letter of Findings to the Board of Governors or the Administrative Governor for a decision under paragraph (k) of this section; and

(4) A notice of right of the complainant to request a hearing.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Officer within 30 days of receipt from the Staff Director For Management of the Letter of Findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Officer shall transmit the notice of appeal and investigative record to the Board of Governors or the Administrative Governor, whichever is the decision maker under paragraph (k) of this section.

(3) If the complainant does not file a notice of appeal within the time prescribed in paragraph (h)(1) of this section, the EEO Programs Officer shall certify that the Letter of Findings is the final Board decision on the complaint at the expiration of that time.

(i) *Acceptance of appeal.* The EEO Programs Officer shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Officer that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the EEO Programs Officer.

(j) *Hearing.* (1) Upon a timely request for a hearing, the EEO Programs Officer shall request that the Board of Governors appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 calendar days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedures Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(i) Arrange and change the dates, times, and places of hearings and pehearing conferences and to issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her, and

(vii) Take any action permitted to the administrative law judge as authorized by this subpart or by the provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testmony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees on the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the

employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the EEO Programs Officer within 30 calendar days, after the receipt of the hearing transcripts, or within 30 calendar days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Officer.

(6) Within 15 calendar days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the recommended decision with the EEO Programs Officer. Thereafter, each party will have ten calendar days to file reply exceptions with the EEO Programs Officer.

(k) *Decision.* (1) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this paragraph. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 calendar days of the receipt by the EEO Programs Officer of the notice of appeal and investigative record pursuant to paragraph (h)(2) of this section or 60 calendar days following the end of the period for filing reply exceptions set forth in paragraph (j)(7) of this section, whichever is applicable. If the decision maker under this paragraph determines that additional information is needed from any party, the decision maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision maker shall have 60 calendar days from receipt of the additional information to render the decision on the appeal. The decision maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision maker shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The decision maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision maker Governor may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

Subpart H—Review by the Equal Employment Opportunity Commission

§ 268.801 Entitlement.

(a) A complainant, agent, or claimant may request the Equal Employment Opportunity Commission to review any final decision of the Board under §§ 268.305(b), 268.307(b), 268.310, 268.311, 268.404, 268.409(e), 268.412, and 268.414.

(b) A complainant, agent, or claimant may not request review by the Equal Opportunity Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other request for review by the Equal Employment Opportunity Commission filed by the same complainant, agent, or claimant.

§ 268.802 Filing of the request for review.

The complainant, agent, or claimant shall file his or her request for review in writing, either personally or by mail, simultaneously with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, and with the Board's EEO Programs Officer.

§ 268.803 Time limits.

(a) Except as provided in paragraph (b) of this section, a complainant, agent, or claimant may file a request for review at any time up to 20 calendar days after receipt of the Board's notice of final decision on the complaint or claim, except that the deadline shall be 15 calendar days in connection with any class complaint or claim. A request for review shall be deemed filed on the date it is postmarked, or in the absence of a postmark, on the date it is received by the Equal Employment Opportunity Commission. Any statement or brief in support of the request for review must be submitted to the Equal Employment Opportunity Commission and to the Board within 30 calendar days of filing the request for review. For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint or claim, including whether or not to award attorney's fees and/or costs. If a decision to award attorney's fees and/or costs is made, the decision shall not be final until the procedure is followed for determining the amount of such award as set forth in § 268.315(c) of Subpart C.

(b) The time limits within which a request for review must be filed will not be extended unless, based upon a written statement by the complainant, agent, or claimant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a request for review within the prescribed time limits, the Equal Employment Opportunity Commission determines that the time limit should be extended.

§ 268.804 Procedures.

The Office of Review and Appeals of the Equal Employment Opportunity Commission shall review the complaint or claim file and all relevant written representations made to the Commission. The Office may return a complaint to the Board with a request for further investigation or a hearing if it considers such action necessary. There is no right to a hearing before the Office of Review and Appeals. The Office of a Review and Appeals shall issue a written finding setting forth its reasons for its findings and shall transmit such findings for consideration by the Board. The Office of Review and Appeals shall also issue copies of its findings to the complainant, agent or claimant.

§ 268.805 Review and consideration.

(a) The Commissioners may, in their discretion, reopen and reconsider any

findings of the Office of Review and Appeals when the Board or the complainant, agent, or claimant requesting reopening or reconsideration submits written argument or evidence which tend to establish that:

(1) New and material evidence is available that was not readily available when the previous finding was issued;

(2) The previous finding involves an erroneous interpretation of law or regulation or misapplication of established policy; or

(3) The previous finding is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

(b) If the Commissioners, in their discretion, reopen and reconsider any previous findings of the Office of Review and Appeals, the Commissioners shall transmit their findings for consideration by the Board. The Commissioners shall also issue copies of their findings to the complainant, agent or claimant.

Subpart I—Equal Pay

§ 268.901 General prohibition of discrimination.

The Board shall not discriminate among employees on the basis of sex by paying wages to employees at a rate less than the rate at which it pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

(a) A seniority system;

(b) A merit system;

(c) A system which measures earnings by quantity or quality of production; or

(d) A differential based on any factor other than sex or otherwise not prohibited by this regulation.

§ 268.902 Record keeping.

(a) The Board shall preserve any records which are made in the regular course of business which relate to the payment of wages, wage rates, job evaluations, job descriptions, merits systems, seniority systems, descriptions of practices, or other matters which described or explain the basis for payment of any wage differential to employees of the opposite sex, and which may be pertinent to determination of whether such differential is based on a factor other than sex.

(b) Such records are to be kept for at least six years.

§ 268.903 Procedure.

(a) Wages withheld in violation of this subpart have the status of unpaid minimum wage or unpaid overtime compensation.

(b) Any employee who believes he or she has received unequal pay due to discrimination based on sex may seek recovery of withheld wages by filing a complaint of discrimination under Subpart C of this regulation, if a complaint of individual discrimination, or Subpart D of this regulation, if a class action, except that civil actions shall be filed pursuant to § 268.904 of this subpart.

§ 268.904 Right to file civil action for judicial review.

A complainant, agent, or claimant, under this subpart is authorized to file a civil action against the Board in an appropriate United States District Court within six years of matter causing the complainant, agent, or claimant to believe he or she has been denied equal pay.

Board of Governors of the Federal Reserve System, April 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10620 Filed 5-1-85; 8:45 am]

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Part III

Federal Emergency Management Agency

48 CFR Ch. 44
Acquisition Regulations; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

48 CFR Ch. 44

FEMA Acquisition Regulation

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will amend the Federal Emergency Management Agency Acquisition Regulation (FEMAAR). The revisions are intended to update the FEMAAR as a result of the Competition in Contracting Act of 1984, Pub. L. 98-369, of changes in the Federal Acquisition Regulations (FAR), and to more fully comply with the directive of FAR to exclude matters from agency regulations which are covered in FAR. A detailed listing of the proposed changes is given below under the section entitled **SUPPLEMENTARY INFORMATION.** Due to the above made changes, the FEMAAR, as amended, is printed in full text.

DATE: Written comments are due not later than June 3, 1985.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Joseph A. Pegnato, Chief, Policy and Evaluation Division, Office of Acquisition Management, Federal Emergency Management Agency, 500 C Street SW, Washington, D.C. 20472, Telephone (202) 646-3743.

SUPPLEMENTARY INFORMATION:

Background

Since the initial issuance of the Federal Acquisition Regulation (FAR), six Federal Acquisition Circulars (FAC) have been issued. Due to regulatory and statutory changes, as implemented in FAC-1 through FAC-6, and upon further agency review of the interim FEMAAR as published in 49 FR 12646, March 29, 1984, it is proposed that the FEMAAR be amended as set forth below. The changes that have been made in the material brought forward from the interim FEMAAR can be categorized correctly as required by statute and regulation, editorial, made in the interest clarity, brevity, and consistency. Other portions of the interim FEMAAR have been made unnecessary by material written into the FAR and by incorporation into agency internal procedures. As a consequence, the public comment period has been limited to thirty days.

The parts affected by the proposed revision are as follows: Table of Content changes. Section 4401.601 General, changed. Subpart 4401.7 Determinations and Findings, new subpart. Section 4401.707-70, new section. Section 4402.100, Definitions, changed. Section 4405.206, Synopsis of subcontract opportunities, changed. Section 4405.502 Authority, changed. Subchapter B—Competition and Acquisition Planning, title change. Part 4406 Competition Requirements, new part. Subpart 4406.5 Competition Advocate, new subpart. Section 4406.501 Requirement, new section. Section 4409.406-3 Procedures, changed. Section 4409.407-3 Procedures, changed. Part 4414—Sealed Bidding, title change. Subpart 4414.2—Solicitation of Bids, subpart deleted. Section 4414.407 Award, section deleted. Section 4414.407-8 protests against award, section deleted. Subpart 4415.1—General Requirements for Negotiation, subpart deleted. Subpart 4415.3 Determinations and Findings to Justify Negotiation, subpart deleted. Section 4415.406-5 Part IV—Representations and Instruction, deleted. Section 4415.413-72 Disposition of unsuccessful proposals, changed. Subpart 4415.6—Source Selection, subpart deleted. Section 4415.1003 Negotiated procurement protests, deleted. Part 4417—Special Contracting Methods, Part added. Subpart 4417.70 General, subpart added. Section 4417.7001 Preference for local contractors, section moved and changed from 4415.105-70, which was deleted. Section 4452.215-70 Preference for local contractors in Presidentially declared major disasters and emergencies, renumbered to be 4452.217-70.

In addition to the information collections in the FAR which have been approved by the Office of Management and Budget, FEMA information collection requirements under Part 4452 have been approved by OMB under Control Numbers 3067.0016 and 3067-0018.

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this proposed rule must remember that lack of coverage of a particular topic in the proposed FEMAAR, as amended, means that the Agency accepts the FAR coverage of the topic without need for further regulatory implementation.

Procedural Requirements

Review Under Executive Order 12291

Procurement rules are normally exempt from review under Executive Order 12291, entitled "Federal Regulation," based on a determination that they generally relate only to the management of an agency function and do not have any major economic impact. The Office of Management and Budget (OMB), has decided, however, that agency implementations of the Competition in Contracting Act of 1984, Pub. L. 98-369, warrant review. Accordingly, this proposed rule has been submitted for review in accordance with Executive Order 12291 and OMB Circular 85-6.

Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. FEMA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

National Environmental Policy Act

As this rule deals with administrative matters, it is categorically excluded from FEMA regulation 44 CFR Part 10 providing for preparation of environmental documents.

List of Subjects in 48 CFR Ch. 44

Government procurement.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is proposed to be amended by revising Ch. 44 as set forth below:

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

PART 4401—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ACQUISITION REGULATION SYSTEM

Sec.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4401.000 Scope of part.

This part sets forth policies and procedures concerning the Federal Emergency Management Agency Acquisition Regulation (FEMAAR) System.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

FEMAAR is a supplement to the Federal Acquisition Regulation (FAR) and is established for the codification and publication of uniform policies and procedures for acquisitions by FEMA.

4401.103 Applicability.

This regulation applies to all acquisitions within FEMA, but not to placement or administration of cooperative agreements or grants.

4401.104 Issuance.

4401.104–1 Publication and code arrangement.

(a) The FEMAAR is published in (1) the daily issue of the **Federal Register** and (2) cumulated form in the Code of Federal Regulations (CFR).

(b) The FEMAAR is issued as Chapter 44 of Title 48, CFR.

4401.104–3 Copies.

Copies of the FEMAAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Agency offices may request copies of the FEMAAR from the Policy and Evaluation Division, Office of Acquisition Management.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

Policies, procedures, and guidance of an internal nature may be issued through internal FEMA issuances such as manuals, standard operating procedures, directives or instructions.

4401.303 Codification and public participation.

If subject matter in FAR requires no implementation, the FEMAAR will not contain a corresponding part, subpart, section, or subsection number. FAR subject matter governs.

Subpart 4401.4—Deviations from the FAR

4401.403 Individual deviations.

The Director, Office of Acquisition Management, must authorize individual deviations in advance. Requests for authorization must:

(a) Cite the specific parts of the FAR or FEMAAR from which it is desired to deviate;

(b) Describe the deviation fully;

(c) Indicate the circumstances which require the deviation;

(d) Give reasons supporting the action requested; and

(e) Give reasons why the action is in the best interest of the Government.

4401.404 Class deviations.

The Director, Office of Acquisition Management, must authorize class deviations in advance.

4401.405 Deviations pertaining to treaties and executive agreements.

The Director, Office of Acquisition Management, is the central control point for all deviations including those pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

4401.601 General.

The Director, Office of Acquisition Management, is designated the head of contracting activities and FEMA's procurement executive. The Director, Office of Acquisition Management, shall establish policy throughout the agency; monitor the overall effectiveness and efficiency of the agency's contracting offices; establish controls to assure compliance with laws, regulations, and procedures; and delegate contracting officer authority. The Director, Office of Acquisition Management, shall exercise the authority delegated under 44 CFR 2.67 FEMA Organization, Functions and Delegations.

4401.603 Selection, appointment, and termination of appointment.

4401.603–2 Selection.

In the areas of experience, training, and education, the following shall be required unless contracting authority is limited to simplified purchase procedures. Waiver of any of these criteria shall be in writing:

(a) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have a minimum of two years experience performing contracting, procurement, or purchasing functions in a Government or commercial contracting office. Additionally, where a contracting officer will work in a specialized field, experience in the field shall be a criterion for the appointment.

(b) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have the equivalent of a bachelor's degree from an accredited college or institution with major studies in business administration, law, accounting, or related fields. The appointing official may waive this requirement when a candidate is otherwise qualified by virtue of extensive contract-related experience and training, business acumen, judgment, character, reputation, and ethics.

(c) An individual contracting officer or an individual appointed to a position having contracting authority shall have successfully completed training courses in both Government basic procurement and Government contract administration, each of not less than 80 class hours. Incumbents not meeting the special training requirements shall be given 24 months to meet the minimum qualification standards.

4401.603–3 Appointment.

Except for disaster-related activities and unusual circumstances as determined by the head of the contracting activity, it is policy to delegate contracting officer authority to individuals rather than to positions. The head of the contracting activity is the

appointing authority. Except where the delegation of authority specifically includes the authority for further redelegation, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include a clear statement of such authority and its responsibilities and limitations.

Subpart 4401.7—Determinations and Findings

4401.707-70 Signature authority.

The head of the contracting activity shall sign all class Determination and Findings (D&F's) not otherwise reserved to the agency head.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

This subpart describes the situations appropriate for the use of procurement contracts, grants, or cooperative agreements and provides examples of each.

4401.7001 Procurement contracts.

4401.7001-1 Situations for use.

Procurement contracts are to be used whenever the principal purpose of the instrument is acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government.

4401.7001-2 Examples.

Procurement contracts normally will be used when the principal purpose of the relationship is:

(a) Evaluation (including research if an evaluative character) of the performance of Government program, projects, or grantee activity initiated by FEMA.

(b) Projects funded by administrative funds.

(c) Technical assistance rendered on behalf of the Government to any third party including those receiving grants or cooperative agreements.

(d) Surveys, studies, and research which provide specific information desired by the Government for its direct activities or for dissemination to the public.

(e) Consulting or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(f) Planning for Government use.

(g) Conferences conducted in behalf of the Government.

(h) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(i) Design or development of items for Government use or pursuant to agency definition or specifications.

(j) Generation of management information or other data for Government use.

4401.7002 Assistance.

Assistance may take the form of either grants or cooperative agreements and include:

(a) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.

(b) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.

4401.7002-1 Grants.

Grants are to be used whenever the principal purpose of the relationship is to transfer money, property, services, or anything else of value to a recipient to accomplish a public purpose. The support of stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is not anticipated.

4401.7002-2 Cooperative agreements.

Cooperative agreements are to be used whenever the principal purpose of the relationship is the transfer of money, property, service, or anything else of value to recipients to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is anticipated.

4401.7002-3 Example of unsubstantial involvement.

Involvement is not substantial and a grant is the proper instrument when the following types of involvement are planned:

(a) Approval of recipient plans prior to award.

(b) Normal Federal stewardship such as site visits, performance reporting, financial reporting, and audits to ensure that objectives, terms, and conditions of the grants are met.

(c) Unanticipated involvement to correct deficiencies in project or financial performance from the terms of the grants.

(d) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision of the handicapped.

(e) Review of performance after completion.

(f) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-110, and A-102.

4401.7002-4 Examples of substantial involvement.

Involvement is substantial and a cooperative agreement is the proper instrument when the following types of involvement are planned:

(a) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the cooperative agreement.

(b) Agency and recipient collaboration or joint participation in the performance of the asssisted activities.

(c) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(d) General administrative requirements beyond those included in OMB Circulars A-102 and A-110.

PART 4402—DEFINITION OF WORDS AND TERMS

Subpart 4402.1-Definitions

4402.100 Definitions.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Director" means the Director of the Federal Emergency Management Agency.

"Interagency agreement" means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services, or property are provided to, or obtained from, one or more agencies, bureaus, or departments of the Federal Government. Funds are transferred between the parties as consideration for the supplies, services, or property.

"Memorandum of Understanding" means an agreement between two or more agenices, bureaus, or departments of the Federal Government or other entity. Funds are not transferred between the parties.

"Program office" means any office which generates requests for procurement action.

"Project officer" means the program office representative cognizant over the technical aspects of a given procurement action.

(40 U.S.C 486(c); Reorganization Plan No. 3 of 1978.)

PART 4403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 4403.1—Safeguards

Sec.
4403.101–2 Solicitation and acceptance of gratuities by Government personnel.
4403.101–3 Agency regulations.
4403.103 Independent pricing.
4403.103–2 Evaluating the certification.

Subpart 4403.2—Contractor Gratuities to Govenment Personnel

4403.203 Reporting suspected violations of the Gratuities clause.
4403.204 Treatment of violations.

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4403.1—Safeguards

4403.101–2 Solicitation and acceptance of gratuities by Government personnel.

Exceptions to the prohibition against soliciting or accepting gratuities are explained in 44 CFR Part 3, Subpart B.

4403.101–3 Agency regulations.

FEMA "Standards of Conduct" are published in 44 CFR Part 3. They include requirements for financial disclosure.

4403.103 Independent pricing.

4403.103–2 Evaluating the certification.

The Director, Office of Acquisition Management, is authorized to make the determination described in FAR 3.103–2(b)(2).

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.

Suspected violations shall be reported to the FEMA Office of the Inspector General. A report shall include all facts and circumstances relevant to the case.

4403.204 Treatment of violations.

Following review and any necessary investigation, the Inspector General shall make recommendations to the Director or a designee. If action is to be taken against a contractor, the contractor shall be given the opportunity for a hearing in accordance with FAR 3.204(b).

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

The Director, Office of Acquisition Management, may authorize an exception to the policy in FAR 3.601, based on facts and circumstances provided by the program office.

PART 4405—PUBLICIZING CONTRACT ACTIONS

Sec.
4405.002 Policy.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4405.001 Policy.

The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be used for this purpose. The search should include a review of data or brochures furnished by sources seeking to do business with the agency. It also should include program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider seeking other sources by publication of proposed procurements.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Unless it is not in the Government's interest, the contracting officer shall make the solicitation source list available to firms requesting it for subcontracting opportunities on contracts exceeding the small purchase threshold.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

In accordance with 44 CFR 2.72(e) authority to approve publication of paid advertisements in newspapers has been delegated to the Director, Office of Administrative Support.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 4406—COMPETITION REQUIREMENTS

Subpart 4406.5—Competition Advocate

4406.501 Requirement

The Chief, Policy and Planning Division, Office of Acquisition Management is designated FEMA's Competition Advocate.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 4408.8—Acquisition of Printing and Related Supplies

4408.802 Policy.

Contracting officers shall obtain approval from the Director, Office of Administrative Support, FEMA's central printing authority before contracting for printing.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4409—CONTRACTOR QUALIFICATIONS

Subpart 4409.4—Debarment, Suspension, and Ineligibility

Sec.
4409.404 Consolidated list of debarred, suspended, and ineligible contractors.
4409.406 Debarment.
4409.406–1 General.
4409.406–3 Procedures.
4409.407 Suspension.
4409.407–1 General.
4409.407–3 Procedures.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4409.4—Debarment, Suspension, and Ineligibility

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Office of Acquisition Management, will notify GSA, maintain records, establish procedures, and direct inquiries as required by FAR 9.404(c).

4409.406 Debarment.

4409.406–1 General.

The Executive Administrator shall be the debarring official.

4409.406–3 Procedures.

(a) Determination to debar or take other action concerning a firm or individual for a cause listed in FAR 9.406–2 shall be made by the Executive

Administrator. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Office of Acquisition Management, via the Office of General Counsel, to the Executive Administrator for appropriate action. The documented file of the case will be included in the submission.

(b) If the Executive Administrator concurs in the proposed debarment, a notice of proposal to debar shall be issued by the Executive Administrator or designee.

(c) The Executive Administrator or designee shall conduct any hearings requested in connection with debarment proceedings. The firm or individual shall have the opportunity to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, or if the firm or individual does not respond within 30 days from receipt of the written notice, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

(d) Appeals may be taken within 30 days after receipt by the firm or individual of a decision to debar. Appeals shall be filed with the Director, FEMA, who shall make a decision based on the record. The Director's decision shall be final.

4409.407 Suspension.

4409.407-1 General.

The Executive Administrator shall be the suspending official.

4409.407-3 Procedures.

(a) Any contracting officer may recommend suspension of bidders. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Office of Acquisition Management, via the Office of General Counsel, to the Executive Administrator. The Executive Administrator shall issue the notice of suspension.

(b) The Director, Office of Acquisition Management, shall develop and maintain suspension procedures.

PART 4412—CONTRACT DELIVERY OR PERFORMANCE

Subpart 4412.3—Priorities, Allocations, and Allotments

4412.303 Procedures.

Rejected rated orders of ACM orders shall be sent to the Department of Commerce through the head of the contracting activity.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 4414—SEALED BIDDING

Subpart 4414.4—Opening of Bids and Award of Contract

Sec.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received, and the date. The individual receiving the bids shall then initial under the marking.

(b) A copy of the envelope or other covering bearing the documentation of a bid that was opened by mistake shall be retained in the file.

4414.402 Opening of bids.

The contracting officer, or duly authorized representative, shall be designated as the bid opening officer.

4414.406 Mistakes in bids.

4414.406-3 Other mistakes disclosed before award.

The Director, Office of Acquisition Management, is delegated the authority to make the determinations concerning mistakes in bid other than obvious clerical errors discovered prior to award. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

PART 4415—CONTRACTING BY NEGOTIATION

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

Sec.

Subpart 4415.5—Unsolicited Proposals

Subpart 4415.8—Price Negotiation

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.413 Disclosure and use of information before award.

4415.413-2 Alternate II.

These alternate FAR procedures may be used if approved in writing by the head of the contracting activity.

4415.413-70 Policy.

It is FEMA policy to use information contained in proposals only for evaluation purposes unless information (a) is generally available to the public, (b) is already the property of the Government, (c) is already available to the Government with unrestricted use rights, or (d) is or has been made available to the Government without restriction.

4415.413-71 Release of information during the solicitation phase.

No information shall be released during the solicitation phase, except as follows: Each solicitation for a negotiated acquisition shall name an individual in the contracting office to respond to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions whether of a procedural or substantive nature shall be directed to that individual. No one else shall exchange comments with offerors or potential offerors. Questions requiring clarification of substantive portions of

the solicitation shall be answered by amendment of the solicitation. A copy of the amendment shall be sent to each recipient of the solicitation.

4415.413-72 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed as soon as practicable after contract award. The one remaining copy of each shall be retained in the official contract file. At the end of six months it may be destroyed.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use is given to the Government regardless of its success in the competition.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.

This subpart sets forth procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

4415.502 Policy.

4415.502-70 Cost sharing.

FEMA's Appropriation Act requires the contractor to cost share if a research contract results from an unsolicited proposal. This requirement may be waived only when it would not be equitable for the Government to require cost sharing. To waive, (a) the offeror must certify in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost on such projects; and (b) the contracting officer must make a written determination that there is no measurable gain to the performing organization and no mutuality of interest. This determination shall be placed in the contract file.

4415.506 Agency procedures.

(a) The Office of Acquisition Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals. Unsolicited proposals and requests for additional information regarding their preparation shall be submitted to:

Federal Emergency Management Agency, Office of Acquisition Management, Policy and Evaluation Division, 500 C Street SW, Room 728, Washington, D.C. 20472.

(b) Unsolicited proposals shall be submitted in an original and five copies at least six months in advance of the date the offeror desires to begin work so that there will be enough time to evaluate the proposal and negotiate a contract.

4415.506-1 Receipt and initial review.

The Office of Acquisition Management shall acknowledge an unsolicited proposal. Simultaneously, copies of the proposal shall be sent to the appropriate program offices for evaluation.

Subpart 4415.8—Price Negotiation

4415.803 General.

When all efforts to get a contractor to agree to a reasonable price or fee have failed, the contracting officer shall refer the matter to the head of the contracting activity.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

4415.1003 Debriefing of unsuccessful offerors.

Any unsuccessful offeror may write for a debriefing within two months after contract award. The contracting officer shall provide the debriefing.

PART 4416—TYPES OF CONTRACTS

Subpart 4416.3—Cost-Reimbursement Contracts

Sec.
4416.303 Cost-sharing contracts.

Subpart 4416.6—Time-and-Materials, Labor Hour, and Letter Contracts

4416.603 Letter contracts.
4416.603-3 Limitations.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4416.3—Cost-Reimbursement Contracts

4416.303 Cost-sharing contracts.

(a) This subsection sets forth basic guidelines governing cost-sharing contracts.

(b)(1) Cost sharing with non-Federal organizations shall be encouraged in contracts for basic or applied research in which both parties have considerable interest.

(2) Contracting officers shall assure themselves of the following in determining contract type:

(i) The research effort has more than minor relevance to the non-Federal activities of the performing organization and is not primarily a service to the Government.

(ii) The performing organization has adequate non-Federal sources of funds from which to make a cash contribution.

(iii) The performing organization is engaged primarily in production or other service activities, as opposed to research and development, and is in a favorable position to make a cost contribution.

(iv) The principal purpose of the contract is research.

(v) Payment of the full cost of the project is not necessarily in order to obtain the services of the particular organization.

(3) FEMA's Appropriation Act requires cost sharing by the contractor under research contracts resulting from unsolicited proposals. See 4415.502-70.

(c) Guidelines for determining the amount of cost sharing.

(1) For educational institutions and other not-for-profit or non-profit organizations, cost sharing may vary from 1 to 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic-year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from 1 percent or less to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. Recognize, however, that organizations predominately engaged in research and development with little other activity may not be able to derive a monetary benefit from the research under Federal agreements.

(3) A fee will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing normal fees on the research. However, if the research is expected to be of major value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated shall contain the clause in 4452.216-70.

Subpart 4416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

4416.603 Letter contracts.

4416.603-3 Limitations.

A letter contract may be used only if the head of the contracting activity executes a determination and finding that no other contract type is suitable.

PART 4417—SPECIAL CONTRACTING METHODS

Subpart 4417.70—General

4417.7001 Preference for local contractors.

(a) This subsection establishes policies relating to local contractor preference to receive contract awards resulting from competitive solicitations under a Presidentially declared major disaster or emergency operation.

(b) The geographic areas to which local contractor preference shall apply are those affected by the Presidentially declared disaster and designated in the **Federal Register** by the Associate Director, State and Local Programs and Support, or his designee. Geographical areas shall be identified by county or other political subdivision.

(c) Pursuant to the provisions of Pub. L. 93-288(k), the provisions set forth in 4452.217-70 shall be included in each competitive solicitation for disaster relief response.

(d) If the contracting officer determines it to be in the best interest of the Government, the provision set forth in 4452.217-70 need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the contracting activity.

(e) If the contracting officer makes the determination of paragraph (d) above, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus area if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Dividing large requirements into several smaller requirements.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.)

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 4419.2—Policies

4419.201 General policy.

(a) The Director, Office of Equal Opportunity, is also the Director, Office of Small and Disadvantaged Business Utilization.

(b) The Chief, Policy and Evaluation Division, Office of Acquisition Management, is the small business technical advisor.

(c) Each contracting officer is a small and disadvantaged business utilization specialist.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 4424.2—Freedom of Information Act

4424.202 Policy.

FEMA's Freedom of Information Act policy is codified at 44 CFR Part 5.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 4429—TAXES

Subpart 4429.1—General

4429.101 Resolving tax problems.

(a) The Office of General Counsel is responsible, within FEMA, for handling all tax problems. It also is responsible for asking the Department of Justice for representation or intervention in proceedings concerning taxes.

(b) The contracting officer shall request, in writing, the assistance of the Office of General Counsel in resolving a tax problem. The request shall detail the problem and include supporting information.

The Office of General Counsel shall inform the contracting officer of the disposition of the tax problem and the contracting officer will tell the contractor.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4432—CONTRACT FINANCING

Subpart 4432.4—Advance Payments

4432.402 General.

The head of the contracting activity has responsiblity and authority to make findings and determinations and to approve or disapprove contract terms.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 4435—RESEARCH AND DEVELOPMENT CONTRACTING

4435.003 Policy.

Cost-sharing policy for research and development contracts is stated in 4415.502-70.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 4436.6—Architect-Engineer Services

Sec.
4436.602-2 Evaluation boards.
4436.602-4 Selection authority.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

Subpart 4436.6—Architect-Engineer Services

4436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, permanent or ad hoc, shall have at least five voting members and one alternate. These will be Federal employees. A majority of the voting members will be from the program office.

(b) During the selection process, a board member or advisor may have, or appear to have, a conflict of interest regarding a firm in the competition. Immediately upon becoming aware of a potential conflict or an appearance of a conflict, the member or advisor shall notify the board chairperson who shall, in turn, inform the Office of General Counsel. The Office of General Counsel shall make a final determination on the conflict issue.

(c) The evaluation board is to be insulated from outside pressures. Information concerning board deliberations shall be divulged only to persons having a need-to-know.

4436.602-4 Selection authority.

(a) Heads of program offices which may require architect-engineer services are designated as selection authorities

for acquisitions of architect-engineer services.

(b) A determination shall be sent to the contracting officer listing the selected firms in order of preference.

PART 4450—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

Sec.
4450.201 Delegation of authority.
4450.202 Contract adjustment boards.

Authority: 50 U.S.C. 1431–1435; E.O. 10789; E.O. 12148.

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

4450.201 Delegation of authority.

All authority granted by 48 CFR 50.101 may be exercised by the Director of the Federal Emergency Management Agency. Such authority to approve, authorize, and direct appropriate action under this part and to make all appropriate determinations and findings which do not obligate the United States in excess of $50,000 are delegated to the Director, Office of Acquisition Management. Such authority to approve, authorize, and direct appropriate action under this part and to make all appropriate determinations and findings which may obligate the United States in excess of $50,000 are delegated to the FEMA Contract Adjustment Board. The limitations contained in 48 CFR 50.201 and 50.202 apply.

4450.202 Contract adjustment boards.

As cases arise under the Act, the Director of FEMA may appoint, as needed, a FEMA Contract Adjustment Board consisting of one senior staff member, not otherwise involved with the action under consideration, from each of the following offices:

(a) Acquisition Management, who shall act as Chairperson

(b) General Counsel

(c) Comptroller.

SUBCHAPTER H—CLAUSES AND FORMS

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 4452.2—Texts of Provisions and Clauses

Sec.
4452.217–70 Preference for Local Contractors in Presidentially Declared Major Disasters or Emergencies.
4452.227–70 Reproduction of reports.
4452.227–71 Coordination of Federal reporting requirements.
4452.227–72 Publication.
4452.239–70 Rights in technical data and computer software.
4452.239–71 Rights in Technical Data—Specific Acquisition.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4452.2—Texts of Provisions and Clauses.

4452.217–70 Preference for Local Contractors in Presidentially Declared Major Disasters or Emergencies.

Pursuant to the provisions of Pub. L. 93–288 and 4415.105–71, the following provisions shall be included in each competitive solicitation for on-site disaster relief response:

Preference for Local Contractors (APR 1984)

In awarding any contract pursuant to this solicitation, the Government shall give preference to local organizations, firms and individuals residing or doing business primarily in the geographic area identified as the disaster area.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

An offeror for which eligibility is established (local offeror) shall be permitted to meet the lowest price received from an otherwise eligible non-local offeror, provided that the proposed price from the local offeror does not exceed 130 percent of the price of the non-local offeror. The lowest priced local offeror within 130 percent of the lowest non-local offeror shall have the first chance to meet the non-local price. If the local offeror meets the lowest non-local price and is determined to be responsible, award shall be made. If the non-local offer is not met, the next lowest local offeror within 130 percent shall have the chance to meet the lowest non-local price. This process shall continue until award is made to a local offeror within 130 percent requirement or the supply of such local offerors is exhausted and award made to the lowest non-local offeror.

(End of Clause)

4452.227–70 Reproduction of reports.

Include the following clause in the contract when the product is a report, data or other written material.

Reproduction of Reports (April 1984)

Reproduction of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8½ x 11 inches or less, printed on one side only, and in one color. All copy preparation to produce camera-ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used on single-unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera-ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written material.

(End of Clause)

4452.227–71 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

Coordination of Federal reporting services (April 1984)

In the event that it is a contractual requirement to collect information from 10 or more public respondents, the provisions of 44 U.S.C. Chapter 35 (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain through the project officer the required Office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefore shall be in writing signed by the Contracting Officer.

(End of Clause)

4452.227–72 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product.

Publication (April 1984)

(a) *Definition.* For the purpose of this clause "publication" includes (1) any document containing information intended for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) *General.* The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or other such means as the Director of the Federal Emergency Management Agency shall determine.

(c) *Reports furnished the Government.* All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be

published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) *Publication by Government.* The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) *Publication by contractor or technical personnel.*

(1) Publication in whole or in part of contractor's reports furnished the Government. Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions and the conditions in paragraph (e)(4) and paragraph (f).

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) Publication, except verbatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder. The contractor or technical personnel may issue a publication concerning or based in whole or in part on the results of the research and development and studies conducted under this contract and may secure copyright therein, but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish, in such manner as he may deem to be in the public interest, the results of such research and development and studies to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

(3) General conditions if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance. If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractor's reports or publication concerning or based in whole or in part on the results of the research and development and studies hereunder shall be made without the written consent of the contracting officer.

(4) Copies of contractor and technical personnel publications to be furnished the Government. The contractor or technical personnel will furnish the contracting officer six copies of any publications which are based in whole or in part on the results of the research and development and studies conducted under this contract.

(f) *Administratively confidential information.* The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) *Inclusion of provisions in contractor's agreements.* The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study thereunder.

(End of Clause)

§ 4452.239-70 Rights in Technical Data and Computer Software.

The following clause shall be used whenever technical data or computer software is involved, unless unlimited data rights are being procured.

Rights in Data (April 1984)

(a) *Definitions.* (1) Technical data means recorded information regardless of form or characteristic of a scientific or technical nature. It may for examples document research, experimental, developmental or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Example of technical data include research and engineering data, engineering drawings and associated lists, specifications standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. Technical data does not include computer software or financial, administrative, cost or pricing, and management data or other information incidential to contract administration.

(2) Computer means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example: a device that operates on discrete data by performing arithmetic and logic process on these data, or a device that operates on analog data by performing physical processes on the data.

(3) Computer software means computer programs and computer data bases.

(4) Computer program means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysts programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) Computer data base means a collection of data in a form capable of being processed and operated on by a computer.

(6) Computer software documentation means technical data including computer listings and printouts in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) Unlimited rights means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) Limited rights means rights to use, duplicate, or disclose technical data in whole or in part, by order for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufactuer or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government except for: (i) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release of disclosure, or (ii) release to a foreign government as the interest of the United States may require, only for such information or evaluation within such Government or for emergency repair or overhaul work by or for

such Government under the conditions of (i) above.

(9) Restricted rights apply only to computer software and include, as a minimum, the right to: (i) Use computer software with the computer for which or with which it was acquired including use at any Government installation to which the computer may be transferred by the Government, (ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative, (iii) copy computer programs for safekeeping [archives] or backup purposes, (iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights, and (v) treat computer software bearing a copyright notice as a published copyrighted work, and in addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(b) *Government right.*—(1) *Unlimited rights.* The Government shall have unlimited rights in: (i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this or any other Government contract or subcontract, (ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract, (iii) computer data bases, prepared under Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain, (iv) technical data necessary to enable manufacture of end items, components, and modifications, or to enable the performance of processes, when the items, components, modifications, or processes have been, or are being developed under this or any other Government contract or subcontract in which experimental, developmental, or research work is or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense [but see (2)(ii) below], (v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software, (vi) technical data pertaining to end items, components, or processes, prepared or required to be delivered under this or any other Government contract or subcontract for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit, and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.), (vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes, (viii) technical data or computer software which is in the public domain, or has been or is normally furnished without restriction by the contractor or subcontractor, and (ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined on the basis or subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited rights.* The Government shall have limited rights in: (i) Technical data listed or described in an agreement incorporated into the schedule of this contract which the parties have agreed will be furnished with limited rights and, (ii) technical data pertaining to items, components, or processes developed at private expense, and computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (viii) and (ix); provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), that the piece of data is marked with the legend below in which is inserted:

(A) The number of the contract under which the technical data is to be delivered,

(B) The name of the contractor and any subcontractor by whom the technical data was generated, and

(C) An explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. _____
Contractor _____

Explanation of Limited Rights

Identification Method Used _____

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above contractor, be either (a) used, released, or disclosed in whole or in part outside the Government; (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software; or (c) used by a party other than the Government except for (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure; or (ii) release to a foreign government as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted rights.* The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which parties have agreed will be furnished with restricted rights provided however notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (v). Such restricted rights are of no effect unless the computer software is marked by the contractor with the following legend: RESTRICTED RIGHTS LEGEND

USE, DUPLICATION, OR DISCLOSURE IS SUBJECT TO RESTRICTIONS STATED IN Contract No. _____
With _____
(Name of Contractor)

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to any data or computer software which the contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Material covered by copyright.* (1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all technical data, except computer software documentation bearing a copyright notice and furnished in support of restricted rights computer software, and unlimited rights computer software prepared or required to be delivered under the contract now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyright matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the contractor with respect to any technical data or computer software delivered hereunder.

(d) *Removal of unauthorized markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical

data or computer software furnished hereunder if:

(1) The contractor fails to respond within 60 days to a written inquiry by the Government concerning the propriety of the markings, or

(2) The contractor's response fails to substantiate within 60 days after written notice, the propriety of limited rights markings by clear and convincing evidence or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the contractor of the action taken.

(e) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on charges for data and computer software.* The contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data or computer software on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(g) *Acquisition of data and computer software from subcontractors.* (1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract without alteration and no other clause shall be used to enlarge or diminish the Government's or the contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime contractor.

(3) The contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire technical data or computer software from their subcontractors for themselves.

(End of Clause)

4452.239-71 Rights in Technical Data—Specific Acquisition.

Use the following clause when unlimited data rights are being procured:

Rights in Data—Specific Acquisition (APR 1984)

(a) *Definition.* Technical data means recorded information regardless of form or characteristic of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost or pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others do so, all or any part of the technical data delivered by the contractor to the Government under this contract.

(c) *Material Covered by Copyright.* (1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all technical data required to be delivered under the contract now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly and in reasonable written detail, each notice or claim of copyright infringement received by the contractor with respect to any technical data delivered hereunder.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on charges for data and computer software.* The contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data or computer software on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(End of Clause)

Louis O. Giuffrida,

Director.

[FR Doc. 85-10509 Filed 5-1-85; 8:45 am]

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Federal Register

Thursday
May 2, 1985

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulations 342 and 343]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulations 342 and 343 establish the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the periods May 3–May 9, 1985, and May 10–May 16, 1985, respectively. These regulations are needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 342 (§ 908.642) becomes effective May 3, 1985, and Regulation 343 (§ 908.643) becomes effective May 10, 1985.

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

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

These regulations are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The regulations are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulations are consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on March 26, 1985. The committee met again publicly on April 23, and April 30, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified weeks. The committee reports the demand for Valencia oranges is slightly improving.

A digest of the VOAC's 1984–85 marketing policy was published in the March 29, 1985, **Federal Register** (50 FR 12515). Interested persons were afforded opportunity to submit written suggestions, views or pertinent information relating to such policy. About 80 comments were received. These comments were considered by the Department of Agriculture (USDA) in connection with the approval of the marketing policy for this program.

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

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR 908 continues to read as follows:

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

2. Section 908.642 is added to read as follows:

§ 908.642 Valencia Orange Regulation 342.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 3, 1985 through May 9, 1985, are established as follows:

(a) District 1: 228,000 cartons;

(b) District 2: 372,000 cartons;

(c) District 3: Unlimited cartons.

3. Section 908.643 is added to read as follows:

§ 908.643 Valencia Orange Regulation 343.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 10, 1985, through May 16, 1985, are established as follows:

(a) District 1: 228,000 cartons;

(b) District 2: 420,000 cartons;

(c) District 3: Unlimited cartons.

Dated: May 1, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agriculture Marketing Service.

[FR Doc. 85–10894 Filed 5–1–85; 11:55 am]

BILLING CODE 3410-02-M

federal register

Thursday
May 2, 1985

Part V

Federal Communications Commission

47 CFR Part 73

Changes in AM Technical Rules To Reflect New International Agreements; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-752; FCC 85-150]

Changes in the AM Technical Rules To Reflect New International Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends various sections of the Commission's AM technical rules to reflect the provisions of new international agreements which have been or are being negotiated. This action will make it possible for class III stations in Alaska, Hawaii, Puerto Rico and the Virgin Islands to operate with greater power and for stations throughout the United States to have greater flexibility in the choice of operating powers.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Olson, Mass Media Bureau (202) 632-6955.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order

In the matter of changes in AM technical rules to reflect new international agreements; MM Docket No. 84-752.

Adopted: March 28, 1985.

Released: April 24, 1985.

By the Commission: Commissioner Rivera issuing a statement at a later date.

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding and the responses to it filed by various broadcast licensees, organizations and consultants.[1]

2. The primary purpose of this proceeding is to consider appropriate revisions of the Commission's AM technical rules to reflect new international agreements already completed (or which are being negotiated).[2] As pointed out in the *Notice*, many AM rules were developed years ago, based on the international agreements then in effect. FCC rules and international agreements are inexorably linked in many areas, particularly with regard to the technical matters, due to the long range propagation characteristics associated with the AM broadcasting band and the attendant need for extensive international coordination.

3. The changes proposed in this proceeding fall into two major categories. The first consists of proposed changes which would substantially affect standards, definitions or approaches relating to AM allocations matters, such as the establishment of intermediate transmitting powers and the power levels to be used by stations in Alaska, Hawaii, Puerto Rico and the Virgin Islands. The second category consists of lesser changes such as the conversion of propagation curves from English units to metric units.

4. *Nominal Transmitting Power.* The first major issue is that raised by our proposal to eliminate the long standing requirement that the nominal power of stations be licensed in discrete steps. We proposed allowing the use of intermediate powers, as this requirement has tended to restrict coverage and limit a station's flexibility in achieving the most economical antenna design for its particular circumstances. The proposed rule would permit any nominal power to be specified, provided that it falls within the range of permitted powers for that class of station.

5. In addition to this substantive change, we sought comments on the procedural approach regarding applications to be filed for increased power. In this regard we inquired whether there was support for a change in the current categorization of any power increase as a major change. We also asked whether we should establish a minimum threshold for the filing of applications for power increases. These latter considerations are important given the potential administrative impact upon the Commission from the large number of applications that this rule change could engender.

6. There was general support for the proposal to eliminate the requirement to specify power in discrete steps, and nearly all commenting parties recognized the Commission's need to balance the proposed rule's benefits against the potential administrative impact that could result. However, with respect to the establishment of a minimum threshold for the filing of applications for power increases and a change in the definition of major and minor changes, there were quite divergent opinions expressed. Recommendations pertaining to a minimum threshold for the filing of applications for power increases varied from no threshold to an increase of 50% of a station's current authorized power. Although several parties have suggested that some power increases could be treated as minor changes, implementation of such an approach would produce difficulties in processing the applications to be filed. As a result, we have concluded that we should continue to categorize all power increases as major changes.

7. Based on the comments and our own experience, we have concluded that it is appropriate to eliminate the requirement that nominal power be specified only in discrete steps. As a result, stations will be able to utilize the maximum power consistent with applicable interference limitations. It is our view that no useful purpose would be served if we were to continue to limit power to arbitrary steps.

8. The definitions of nominal power in § 73.14 of the rules is being expanded to reflect the new usage to be applied to the term. As a result, nominal power will now have two meanings. For licenses granted or for applications on file as of June 3, 1985, the meaning would remain the same as previously. However, for applications filed after June 3, 1985, reference to discrete steps would no longer be applicable, and nominal power would be equal to antenna input power less any power loss through a dissipative network and for directional antennas, without consideration of adjustments specified in paragraphs (b)(1) and (b)(2) of § 73.51 of the rules.

9. Although the specified nominal power should normally fall between the minimum and maximum power levels for each class of station, nominal power below the minimum for the station class will be permitted provided that the effective field produced by the station's antenna system is no less than that which would result from minimum power and minimum antenna efficiency for the station class. For example, a class III-B station would be permitted to specify a nominal power of only 400 watts (minimum power for class is 500 watts) as long as the efficiency of the antenna system is sufficient to produce an effective field of at least 123.7 mV/m at one mile (199.1 mV/m at one kilometer)—see § 73.189(b)(2)(ii).

10. Although there is clear merit to the new approach, it cannot be implemented without taking appropriate steps to minimize its impact upon Commission resources. First, a threshold for the filing of applications for power increases is needed to avoid the filing of applications that do not provide significant improvement in coverage.

[1] Fourteen comments and two reply comments were filed; see appendix B.

[2] The Final Acts of the Regional Administrative AM Broadcasting Conference (Rio de Janiero, 1981); the Bilateral AM Broadcasting Agreement between the United States and Canada, signed in 1984, and the bilateral agreement between the United States and Mexico now under negotiation.

Also, we believe it appropriate to focus first on the applications offering the greatest benefits. With this in mind we examined the benefits which could be expected from various levels of power increases. This study indicated that provision should not be made for increases of less than 20% as they offer little public benefit. This is because they typically would yield less than a 9.5% increase in radiation and less than a 5% extension of the station's signal. Conversely, important gains can come from an increase of 50% or more which would bring at least a 22% gain in radiation and at least a 10% extension of the station's signal. We believe it is appropriate to focus first on this latter group of applications.

11. Thus, for a period of three years after adoption of the rule, applications to increase power must specify an increase of 50% or greater. An exception is being provided for applications in conflict with power increase applications on "cut-off" lists. In such cases, the application need only specify a 20% increase. After three years, other applications specifying a power increase of 20% or more will be accepted for filing. Those proposing less than a 20% increase would continue to be unacceptable for filing. Applications involving a change in site will not be subject to either of these limitations, as these applications require a full new study and thus become equivalent to the authorization of a new station. It would serve no purpose to exclude an otherwise possible power increase, however small, as part of this new authorization.

12. We believe that this procedure will spread applications out over a longer period of time and will limit the process to applications which can bring a meaningful improvement of service to the public. The 20% threshold will, in the long run, we believe, be sufficient to control the filing of applications of a "trivial" nature.

13. The Commission also proposed to establish a system for rounding off authorized operating power in a manner similar to that currently being used in the FM service (§ 73.212). El Mundo Broadcasting Corporation supported this change and suggested that transmitter powers be rounded to two significant figures as follows:

Nominal power (kW)	Rounded to nearest figure (kW)
0.25 to 0.99	0.01
1 to 9.9	0.1
10 to 50	1

We believe that these are reasonable values to which rounding should be performed, and we are adopting them. Once the new rules become effective, applicants will be required to round off the nominal powers being specified and to adjust the station RMS likewise. If rounding upward to the nearest figure would result in objectionable interference, the applicant must then round downward to the next nearest figure and adjust the RMS accordingly.

14. *Alaska, Hawaii, Puerto Rico and the Virgin Islands.* The second proposal of a substantial nature involves special relief for Puerto Rico and the Virgin Islands. In the *Notice* we specifically proposed to allow Class III stations in Puerto Rico and the Virgin Islands to increase power above the current 5 kW limit and asked whether stations in Alaska and Hawaii also should be included in such a change. Unlike areas in the conterminous U.S., use of higher power in these locations would not effectively limit otherwise possible opportunities for additional stations on the channel.

15. The responses expressed general agreement with our proposal and also supported treating Hawaii and Alaska in a similar fashion in recognition of their distance from the U.S. mainland. There was also support for treating Class IV stations in a similar manner. Here, too, it was not thought that the higher power would have a preclusive effect. One concern, however, was raised. Because of adjacent channel effects, there was doubt concerning whether Class IV stations should be permitted a maximum power of 50 kW.

16. We agree that higher power can offer significant benefits to these stations. It can enable them to extend their coverage generally, and even more importantly, it can help stations in Puerto Rico and the U.S. Virgin Islands overcome the serious interference to which they are now subjected from other countries. Therefore, we are amending the rules in order to permit a maximum power of 50 kW to be used by Class III stations in Puerto Rico, Virgin Islands, Alaska, and Hawaii. It must be emphasized, however, that any station that chooses to increase the power of its facility must fully comply with all interference protection requirements under both international agreements and FCC rules.

17. Several parties suggested increasing the maximum power ceiling for Class III stations within the conterminous United States. This suggestion, however, is outside of the scope of the instant proceeding. Nevertheless, note has been taken of it for possible consideration in future Notice that will be issued to explore further other implementation issues.

18. With regard to the matter of higher power for Class IV stations on the six Local Channels in Puerto Rico, Virgin Islands, Alaska, and Hawaii, no decision is being made at this time. While we believe that there is merit to giving further consideration to such a proposal, we also believe that additional study is required. Among other things, implementation questions arise concerning the technical allocations procedures for the Class IV service. It is our intention to explore this issue in greater detail in a future notice in this proceeding.

19. Although we are adopting rules raising the maximum power ceiling for Class III stations, it should be noted that their full implementation cannot be accomplished until the new bilateral agreement with Mexico, currently under negotiation, is completed and final disposition is made of the North American Regional Broadcasting Agreement. The existing U.S./Mexican Agreement permits Class III stations to use power up to 25 kW at locations greater than 62 miles from the border with Mexico, but NARBA restricts the maximum power of Class III stations to 5 kW. Accordingly, a note will be added to the rules reflecting this point.

20. *Groundwave Curves.* Groundwave curves for various AM frequencies are contained in a series of graphs in § 73.184 of the rules. In the *Notice* we proposed to substitute the 19 graphs which had been incorporated in the 1984 U.S./Canada AM Broadcasting Agreement (and tentatively accepted by Mexico as well) for the 20 graphs currently in the rules. The proposed graphs parallel those adopted in the Region 2 Agreement and provide the same results due to the fact that the calculated points used in plotting them are identical. Although both are in metric format, the U.S./Canadian graphs depict field strength in mV/m versus kilometers, whereas the Region 2 graphs depict field strength in dBu versus kilometers.

21. All of the commenting parties support adoption of the new groundwave graphs. However, du Treil-Rackley suggested an improvement in format. It observed that the proposed graphs contain only 2.2 log fields in the abscissa, thereby depicting only 20 kilometers (12.4 miles) on the upper scales of the graphs, even though the FCC rules require field strength measurements to be taken and analyzed to a distance of 20 miles (32 kilometers) or more. Consequently, the proposed

graphs would have required the use of both upper and lower scales and curves. Thus, to facilitate such data analysis du Treil-Rackley recommended that the groundwave graphs be replotted with 2.5 log fields in the abscissa to permit the upper scales to depict distances up to 50 kilometers (31 miles).

22. We agree with the recommendation and have replotted the groundwave graphs accordingly. Because the proposed graphs depict curves for a smaller number of conductivity values than the graphs being replaced, we are increasing the number of conductivity values depicted to equal those shown on the Region 2 curves. Additionally, as suggested in the *Notice*, the Commission separately will be releasing a printout of the computer program which was employed for calculating the points used in plotting the groundwave curves. A listing of the calculated points for the curves will also be included for use in "look-up" tables where desired. Release of the computer program for the groundwave curves will facilitate use of computer facilities by interested parties for the calculation of field strength values for dielectric constants and conductivity values than those depicted on Graphs 1 to 19. We had suggested in the Notice that release of the computer program would make it possible to delete Graph 20, which provides a graphical method for determining the dielectric constant of the ground and conductivity of the ground. However, we have concluded that Graph 20 should be retained so that parties not having access to the necessary computer facilities will still be able to conduct studies that otherwise would require use of Graph 20. In the expectation that most parties will elect to perform such studies by use of computer facilities employing the Commission's groundwave program, Graph 20 is not being converted to metric format. However, the results of studies must be converted to equivalent metric units before submission to the Commission.

23. *Skywave Propagation.* The *Notice* proposed to convert the curves in § 73.190 of the Rules to metric format and to adopt related formulas for use in calculations pertaining to skywave propagation. The comments uniformly supported this proposal and the following changes are being made: (1) The F(50) curve in the U.S./Canada Agreement (see Figure 4 of that Agreement) is being substituted for Figure 1a of § 73.190 of the Rules. Additionally, for distances greater than 4,250 kilometers, a formula is being adopted to enable field strength values to be calculated at those greater distances. In order to derive F(10) field strength values from the new F(50) curve in Figure 1a, a formula is being adopted which adjusts F(50) field strength values by 8 dB. (2) Figures 1 and 6 are being deleted. (3) Figures 2, 5, 6a, 7, 8, 9, 10, and 11 are being replotted in metric format, and (4) formulas for the three curves contained in Figure 6a are being adopted and, in the event of disagreement, computed values will govern over values obtained directly from Figure 6a.[3]

24. *Applicability of the new rules.* As we observed earlier, there will need to be a delay in implementing the increase in the power limit for Class III stations in Alaska, Hawaii, Puerto Rico and the Virgin Islands. Likewise, some of the power increases for mainland stations cannot be implemented until the second stage, beginning three years after the new rules go into effect. In addition, stations that do not file applications involving engineering changes will continue to be licensed at their old nominal power. However, in granting any application filed on or after June 3, 1985, which involves a change in the technical parameters of the station, the Commission will issue an authorization listing the nominal power as calculated by the new method. Finally, some of the new rules can be given full effect immediately. In this category are the new curves (Graphs 1–19 of § 73.184 and Figures 1a and 2 of § 73.190) which are to be used in the preparation of all future applications to be filed and also will be applied to all pending applications on file when the new rules become effective.

25. *Other Matters.* Several additional issues were raised in the comments filed in response to the instant *Notice*. For example, Cox Communications, Inc., proposed prohibiting use of the new Figure 1a for distances of less than 100 km, and the Association of Federal Communications Consulting Engineers suggested that additional equations, such as those used for bearing and distance calculations, could be included in the rules to eliminate disparities arising from different methods of calculation. Consideration has not been given to these matters at this time because they were outside the scope of the specific issues that were raised in the instant *Notice*. However, due note has been taken of them for possible inclusion in future notices that are planned for issuance in this proceeding.

[3] As a practical matter, computations using the formulas should not be carried beyond 0.1 degree.

26. Finally, it should be noted that not all of the propagation curves that are being adopted in this *Report and Order* have been completed for release at this time. We will not delay action at this time in the adoption of the rule amendments. In those cases where completion of the preparation of curves is pending, curves currently existing in the rules may continue to be applied pending release of the new metric curves. At that time, appropriate notice of the issuance of the new curves will be given and effective dates for their use established. The curves that will not be released in this report are Figures 5, 7, 8, 9, 10, and 11 of § 73.190 of the Rules.

Paperwork Reduction Act

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

Regulatory Flexibility Analysis

I. Need for and Purpose of the Rule

The *Report and Order* adopts changes to several rules relating to calculation methods to reflect usage in newly enacted and contemplated international agreements. The new rules also provide greater flexibility in the selection of station facilities to provide interference-free coverage in the most efficient manner.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

As discussed in the body of this *Report and Order*, the major issues related to conversion of propagation curves to metric format, adoption of formulas for performing certain calculations, raising the maximum power permitted in localities outside of the conterminous United States and changing rules specifying permitted operating power levels.

B. Assessment

There was general agreement with all of the changes proposed by the Commission, which were expected to be of benefit to small entities.

C. Changes Made as a Result

The Commission's decisions closely follow its proposals made in the *Notice*

and are consistent with the needs of small entities affected by the decision.

III. Significant Alternatives Considered and Rejected

The significant alternatives that were considered dealt with the establishment of a threshold for the level of power increase that could be sought and whether some power increases could be considered as minor changes. The decisions that were taken by the Commission fell within the range of recommendations that were received in comments.

28. Accordingly, it is ordered, pursuant to the authority contained in 4(i), 303 and 307(b) of the Communications Act of 1934, as amended, That Part 73 of the Commission's Rules is amended, effective June 3, 1985, as set forth in the attached Appendix.

29. Further information on this matter may be obtained by contacting Wilson A. La Follette (202) 632-5414 or Larry E. Olson (202) 632-6690.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

1. 47 CFR Part 73, § 73.14 is amended by revising the definition of *Nominal Power and Effective field: Effective field strength* to read as follows:

§ 73.14 AM broadcast definitions.

* * * * *

Effective field: Effective field strength. The root-mean-square (RMS) value of the inverse distance fields at a distance of 1 kilometer from the antenna in all directions in the horizontal plane. The term "field strength" is synonymous with the term "field intensity" as contained elsewhere in this Part.

* * * * *

Nominal power. The antenna input power less any power loss through a dissipative network and, for directional antennas, without consideration of adjustments specified in paragraphs (b)(1) and (b)(2) of § 73.51 of the rules. However, for AM broadcast applications granted or filed before June 3, 1985, nominal power is specified in a system of classifications which include the following values: 50 kW, 25 kW, 10 kW, 5 kW, 2.5 kW, 1 kW, 0.5 kW, and 0.25 kW. The specified nominal power for any station in this group of stations will be retained until action is taken on or after June 3, 1985, which involves a change in the technical facilities of the station.

* * * * *

2. 47 CFR Part 73, § 73.21 is amended by the addition of a new paragraph (b)(2) to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

* * * * *

(b) * * *

(2) Class III stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands are permitted a maximum power of 50 kW day or night. Use of such higher power is subject to amendment of the U.S./Mexican Agreement and final disposition of NARBA. Pending such amendment, the maximum power permitted stations in these localities may not exceed 5 kW in accordance with the maximum power permitted by NARBA.

* * * * *

3. 47 CFR Part 73, § 73.28 is amended by revising paragraph (c) to read as follows:

§ 73.28 Assignment of stations to channels.

* * * * *

(c) Engineering standards now in force domestically differ in some respects from those specified for international purposes. The engineering standards specified for international purposes (see § 73.1650, International Agreements) will be used to determine: (1) The extent to which interference might be caused by a proposed station in the United States to a station in another country; and (2) whether the United States should register an objection to any new or changed assignment notified by another country. The domestic standards in effect in the United States will be used to determine the extent to which interference exists or would exist from a foreign station where the value of such interference enters into a calculation of: (i) The service to be rendered by a proposed operation in the United States; or (ii) the permissible interfering signal from one station in the United States to another United States station.

4. 47 CFR Part 73 is amended by adding a new § 73.31 to the rules to read as follows:

§ 73.31 Rounding of nominal power specified on applications.

(a) An application filed with the FCC for a new station or for an increase in power of an existing station shall specify nominal power rounded to two significant figures as follows:

Nominal power (kW)	Rounded to nearest figure (kW)
0.25 to 0.99	0.01
1 to 9.9	0.1
10 to 50	1

(b) In rounding the nominal power in accordance with paragraph (a) of this section the RMS shall be adjusted accordingly. If rounding upward to the nearest figure would result in objectionable interference, the nominal power specified on the application is to be rounded downward to the next nearest figure and the RMS adjusted accordingly.

5. 47 CFR Part 73, § 73.182 is amended by redesignating the existing Note in paragraph (a)(3) as Note 1 and by adding a new Note 2 to read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(3) * * *

Note 1 * * *

Note 2. Class III stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands are permitted a maximum power of 50 kW day or night. Use of such higher power is subject to amendment of the U.S./Mexican Agreement and final disposition of NARBA. Pending such amendment, the maximum power permitted stations in these localities may not exceed 5 kW in accordance with the maximum power permitted by NARBA.

* * * * *

6. 47 CFR Part 73, § 73.182 is amended by revising paragraph (r) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(r) For the purpose of estimating the coverage and the interfering effects of stations in the absense of field strength measurements, use shall be made of Figure 8 of § 73.190, which describes the estimated effective field for one kilowatt power input of simple vertical omnidirectional antennas of various heights with ground systems of at least 120 one-quarter wave-length radials. Certain approximations, based on the the curve or other appropriate theory, may be made when other than such antennas and ground systems are employed, but in any event the effective field to be employed shall not be less than given in the following:

Class of station	Effective field (at 1 km)
I-A and I-B	362 mV/m.
I-N, II and III	282 mV/m.
IV	241 mV/m.

In case a directional antenna is employed, the interfering signal of a broadcasting station will vary in different directions, being greater than the above values in certain directions and less in others depending upon the design and adjustment of the directional antenna system. To determine the interference in any direction the measured or calculated radiated field (unabsorbed field intensity at 1 kilometer from the array) must be used in conjunction with the appropriate propagation curves. (See § 73.185 for further discussion and solution of a typical directional antenna case.)

7. 47 CFR Part 73, § 73.182 is further amended by revising the text of paragraph (s) and by removing the note to paragraph (s) as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(s) The existence or absence of objectionable groundwave interference from stations on the same or adjacent channels shall be determined by actual measurements made in accordance with the method described in § 73.186, or, in the absence of such measurements, by reference to the propagation curves of § 73.184. The existence or absence of objectionable interference due to skywave propagation shall be determined by reference to the appropriate formulas set forth in § 73.190 and the appropriate propagation curves in Figure 1a, 1b or Figure 2 of § 73.190.

[Note is deleted]

8. 47 CFR Part 73, § 73.182 is further amended by revising paragraph (t) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(t) *Computation of Skywave Field Strength Values:* (1) *Fifty Percent Skywave Field Strength Values (Clear Channel)* In computing the fifty percent skywave field strength values of a Class I-A or I-B clear channel station, use shall be made of Figure 1a of § 73.190 entitled "Skywave Field Strength" for 50 percent of the time. In computing the fifty percent skywave field strength values of a Class I-N station (in Alaska), use shall be made of the formula in § 73.190(c)(1) for deriving such values.

(2) *Ten Percent Skywave Field Strength Values (Clear Channel).* In computing the 10% skywave field strength for stations on clear channels on a single signal basis, the curve in Figure 1a and the formula in § 73.190(b)(2) shall be used unless one or both of the stations being considered are in Alaska: in such a case, the formula included in § 73.190(c)(2) should be used to calculate the 10% values for both stations. In computing the 10% skywave field strength for stations on clear channels on an RSS basis, the formula in § 73.190(c)(2) shall be used in computing the RSS of a station in Alaska. In computing the RSS of a station not in Alaska, the formula in § 73.190(c)(2) shall be used in computing the contribution from stations in Alaska, and the formula in § 73.190(b)(2) shall be used in computing contributions from stations not in Alaska.

(3) *Regional and Local Channels.* In computing the 10% skywave field strength values for stations on a regional channel, on an RSS basis, the formula in § 73.190(c)(2) shall be used in computing the RSS of a station in Alaska. In computing the RSS of a station not in Alaska, the formula in § 73.190(c)(2) shall be used in computing the contribution from stations in Alaska, and the appropriate curve in Figure 2 shall be used in computing contributions from stations not in Alaska. (In the case of Class IV stations on local channels, simplifying assumptions may be made, see Note in paragraph (a)(4) of this section.)

(4) *Determination of Angles of Departure.* In calculating skywave field strength for stations on all channels, the pertinent vertical angle shall be determined by use of the formulas in § 73.190(d).

* * * * *

9. 47 CFR Part 73 § 73.183 is amended by revising paragraphs (d) and (f) to read as follows:

§ 73.183 Groundwave signals.

* * * * *

(d) Example of determining interference by the graphs in § 73.184:

It is desired to find whether objectionable interference exists between a 5 kW Class III station on 990 kHz and a 1 kW Class III station on the adjacent channel of 1000 kHz. The spacing between the two stations is 165 kilometers and both stations operate nondirectionally with antenna systems which produce an effective field of 282 mV/kW at one kilometer. (See § 73.185 in case of use of directional antennas.) The conductivity at each station and of the intervening terrain is determined to be 6 mS/m. The protection to Class III stations during daytime is to the 500 uV/m (0.5 mV/m) contour. The distance to the 0.5 mV/m contour of the 1 kW station is determined by the use of the appropriate curve in § 73.184, Graph 12. Since the curve is plotted for 100 mV/m at 1 kilometer, to find the distance to the 0.5 mV/m contour of the 1 kW station, it is necessary to determine the distance to the 0.1773 mV/m contour.

$$(100 \times 0.5/282 = 0.1773)$$

Using the 6 mS/m curve, the estimated radius of the 0.5 mV/m contour is seen to be 64.5 kilometers. Subtracting this distance from the distance between the two stations leaves 100.5 kilometers. Using the same propagation curve, the signal from the 5 kW station at this distance is seen to be 0.251 mV/m. Since a protection ratio of one to one, desired to undesired signal, applies to stations separated by 10 kHz, the undesired signal could have a value up to 0.5 mV/m without causing objectionable interference. Consequently, there would be no mutually objectionable interference between the two stations. Had the undesired signal been found to be greater than 0.5 mV/m, objectionable interference would then have existed. For co-channel operation, a desired to undesired signal ratio of no less than 20 to 1 is required to avoid causing objectionable interference.

(e) * * *

(f) An example of the equivalent distance method follows:

It is desired to determine the distance to the 0.5 mV/m and 0.025 mV/m contours of a station on a frequency of 1000 kHz with an inverse distance field of 100 mV/m at one kilometer being radiated over a path having a conductivity of 10 mS/m for a distance of 20 kilometers, 5 mS/m for the next 30 kilometers and 15 mS/m thereafter. Using the appropriate curve in § 73.184, Graph 12, at a distance of 26 kilometers on the 10 mS/m curve, it is seen that the field strength is 2.86 mV/m. On the 5 mS/m curve, the equivalent distance to this field strength is seen to be 14.9 kilometers, which is 5.1 (20 − 14.9) kilometers nearer to the transmitter. Continuing on this propagation curve, the distance to a field strength of 0.5 mV/m is seen to be 36.4 kilometers. The actual length of the path travelled, however, is 41.5 (36.4 + 5.1) kilometers. Continuing on this propagation curve to the conductivity change at 44.9 (50 − 5.1) kilometers, it is seen that the field strength is 0.257 mV/m. On the 15 mS/m propagation curve, the equivalent distance to this field strength is seen to be 94 kilometers, which changes the effective path length by 49.1 (94 − 44.9) kilometers. Continuing on this propagation curve, the distance to a field strength of 0.025 mV/m is seen to be 231 kilometers. The actual length of the path travelled, however, is 187 (231 + 5.1 − 49.1) kilometers.

10. 47 CFR Part 73, § 73.184 is amended by revising paragraphs (a), (b), (d), (f) and graphs (1)–(19) to read as follows:

§ 73.184 Groundwave field strength graphs.

(a) Graphs 1 to 19 show, for each of 20 frequencies, the computed values of groundwave field strength as a function of groundwave conductivity and distance from the source of radiation. The groundwave field strength is here considered to be that part of the vertical component of the electric field which has not been reflected from the ionosphere nor from the troposphere. These 20 families of curves are plotted on log-log graph paper and each is to be used for the range of frequencies shown thereon. The curves themselves were generated by straight-line connection of the plotted computed values of groundwave field strength as a function of distance. The computed and plotted points are sufficiently numerous and closely spaced that the error introduced by straight-line interpolation is neligible. Computations are based on a dielectric constant of the ground (referred to air as unity) equal to 15 for land and 80 for sea water and for the ground conductivities (expressed in mS/m) given on the curves. The curves show the variation of the groundwave field strength with distance to be expected for transmission from a vertical antenna at the surface of a uniformly conducting spherical earth with the groundwave constants shown on the curves. The curves are for an antenna power of such efficiency and current distribution that the inverse distance (unattenuated) field is 100 mV/m at 1 kilometer. The curves are valid at distances large compared to the dimensions of the antenna for other than short vertical antennas.

(b) The inverse distance field (100 mV/m divided by the distance in kilometers) corresponds to the groundwave field intensity to be expected from an antenna with the same radiation efficiency when it is located over a perfectly conducting earth. To determine the value of the groundwave field intensity corresponding to a value of inverse distance field other than 100 mV/m at 1 kilometer, multiply the field strength as given on these graphs by the desired value of inverse distance field at 1 kilometer divided by 100; for example, to determine the groundwave field strength for a station with an inverse distance field of 2700 mV/m at 1 kilometer, simply multiply the values given on the charts by 27. The value of the inverse distance field to be used for a particular antenna depends upon the power input to the antenna, the nature of the ground in the neighborhood of the antenna, and the geometry of the antenna. For methods of calculating the interrelations between these variables and the inverse distance field, see "The Propagation of Radio Waves Over the Surface of the Earth and in the Upper Atmosphere," Part II, by Mr. K.A. Norton, Proc. I.R.E., Vol. 25, September 1937, pp. 1203–1237.

Note.—The computed values of field strength versus distance used to plot Graphs 1 to 19 are available in tabular form. Copies of these tabulations may be ordered from the FCC official copy center whose name and address may be obtained by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554, (202) 632–7000.

* * * * *

(d) Provided the value of the dielectric constant is near 15, the curves of Graphs 1 to 19 may be compared with experimental data to determine the appropriate values of the ground conductivity and of the inverse distance field intensity at 1 kilometer. This is accomplished simply by plotting the measured fields on transparent log-log graph paper similar to that used for Graphs 1 to 19 and superimposing this chart over the graph corresponding to the frequency involved. The log-log graph sheet is then shifted vertically until the best fit is obtained with one of the curves on the graph; the intersection of the inverse distance line on the graph with the 1-kilometer abscissa on the chart determines the inverse distance field strength at 1 kilometer. For other values of dielectric constant, the following procedure may be used for a determination of the dielectric constant of the ground, conductivity of the ground and the inverse distance field strength at 1 mile. Before the results of such determinations are submitted to the F.C.C., they must be converted to equivalent metric units. Graph 20 gives the relative values of groundwave field strength over a plane earth as a function of the numerical distance p and phase angle b. On graph paper with coordinates similar to those of Graph 20, plot the measured values of field strength as ordinates versus the corresponding distances from the antenna expressed in miles as abscissae. The data should be plotted only for distances greater than one wavelength (or, when this is greater, fives times the vertical height of the antenna in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna) and for distances less than $50/(f\ Mhz)^{1/2}$ miles (i.e., 50 miles at 1 Mhz). Then, using a light box, place the sheet with the data plotted on it over the sheet with the curves of Graph 20 and shift the data sheet vertically and horizontally (making sure that the vertical lines on both sheets are parallel) until the best fit with the data is obtained with one of the curves on Graph 20. When the two sheets are properly lined up, the value of the field strength corresponding to the intersection of the inverse distance line of Graph 20 with the 1 mile abscissa on the data sheet is the inverse distance field strength at 1 mile, and the values of the numerial distance at 1 mile, p_1, and of b are also determined. Knowing the values of b and p_1 (the numerical distance at 1 mile), we may substitute in the following approximate formulas to determine the appropriate values of the ground conductivity and dielectric constant.

$$\chi \approx (\pi/p_1)\cdot(R/\lambda)_1 \cos b \quad (1)$$

$(R/\lambda)_1$ = Number of wavelengths in 1 mile.

$$\sigma_{e.m.u.} = (\chi f MHz/17.9731).10^{-14} \quad (2)$$

$\sigma_{e.m.u.}$ = Conductivity of the ground expressed in electromagnetic units.

fMHz = frequency expressed in megacycles.

$e = x \tan b - 1$

ϵ = dielectric constant of the ground referred to air as unity.

First solve for x by substituting the known values of p_1, $(R/\lambda)_1$ and cos b in equation (1). Equation (2) may then be solved for σ and equation (3) for ϵ. At distances greater than 50/f MHz miles the curves of Graph 20 do not give the correct relative values of field strength since the curvature of the earth weakens the field more rapidly than these plane earth curves would indicate. Thus, no attempt should be made to fit experimental data to these curves at the larger distances.

Note.—For other values of dielectric constant, use can be made of the computer program which was employed by the FCC in calculating the points used for plotting the curves in Graphs 1 to 19. A printout of this program can be ordered from the FCC official copy center whose name and address may be obtained by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554, (202) 632–7000.

(e) * * *

(f) This paragraph consists of the following Graphs 1 to 19, and 20.

Note.—Graphs will not be published in the CFR. Copies are available by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554. Telephone: (202) 632–7000.

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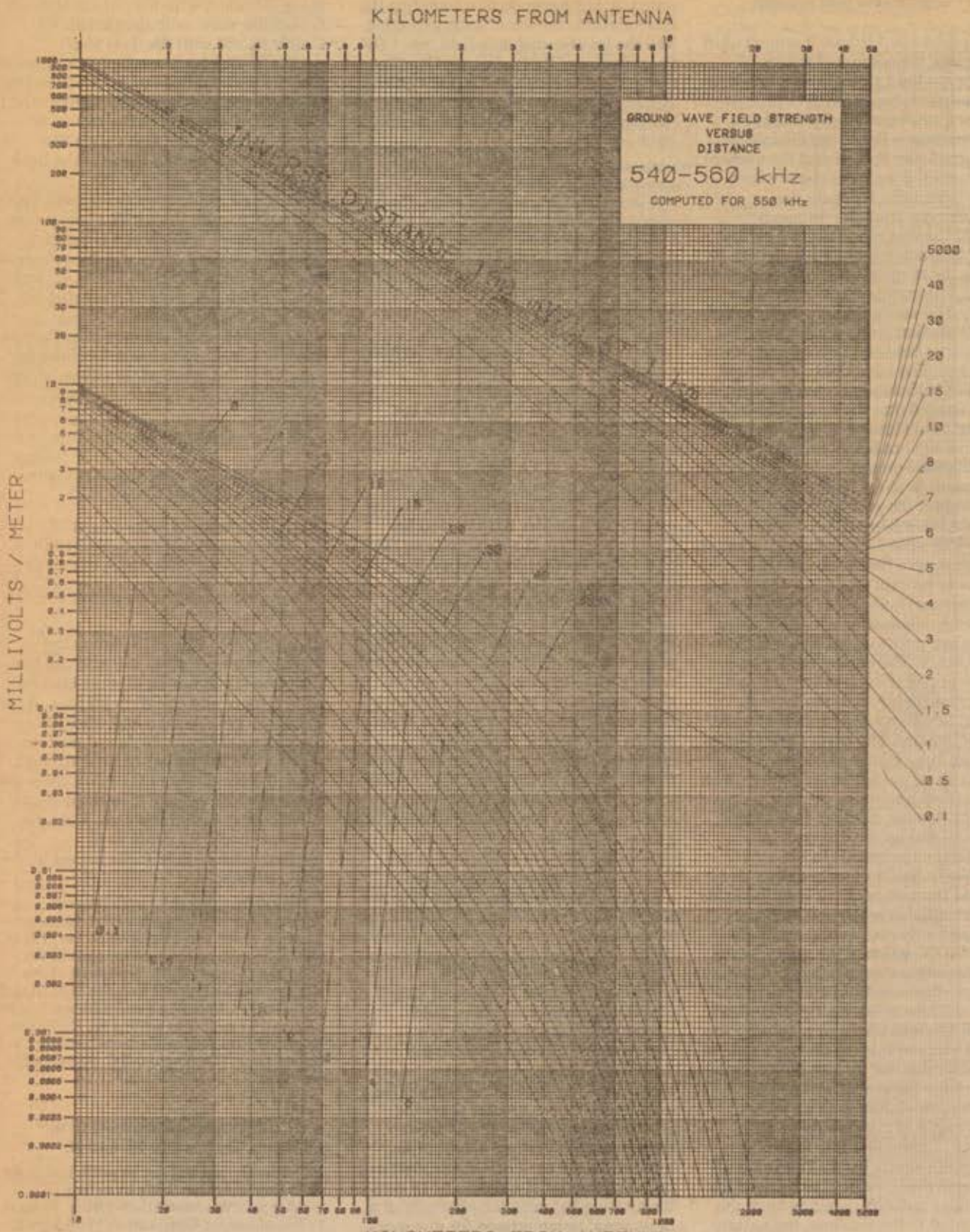
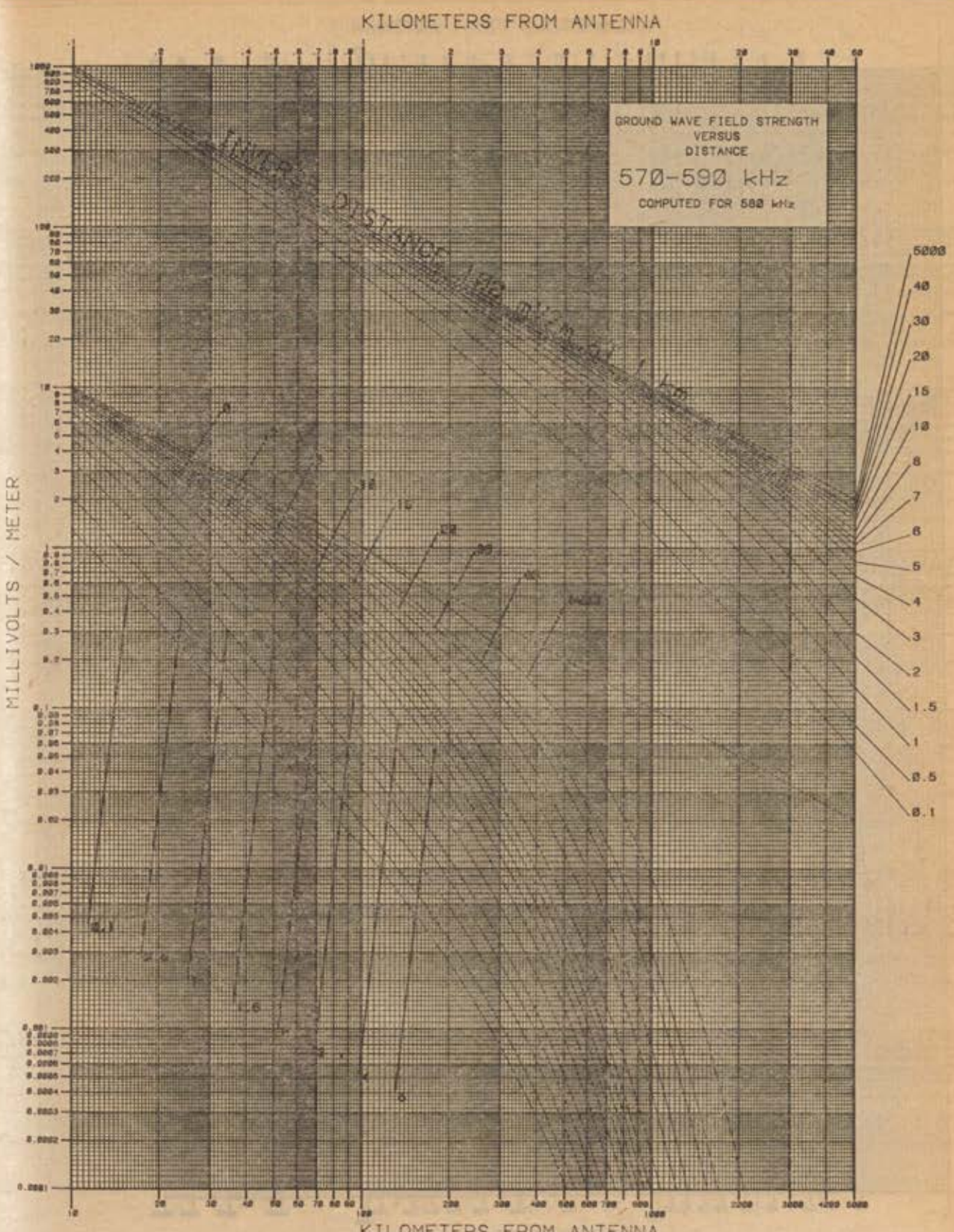


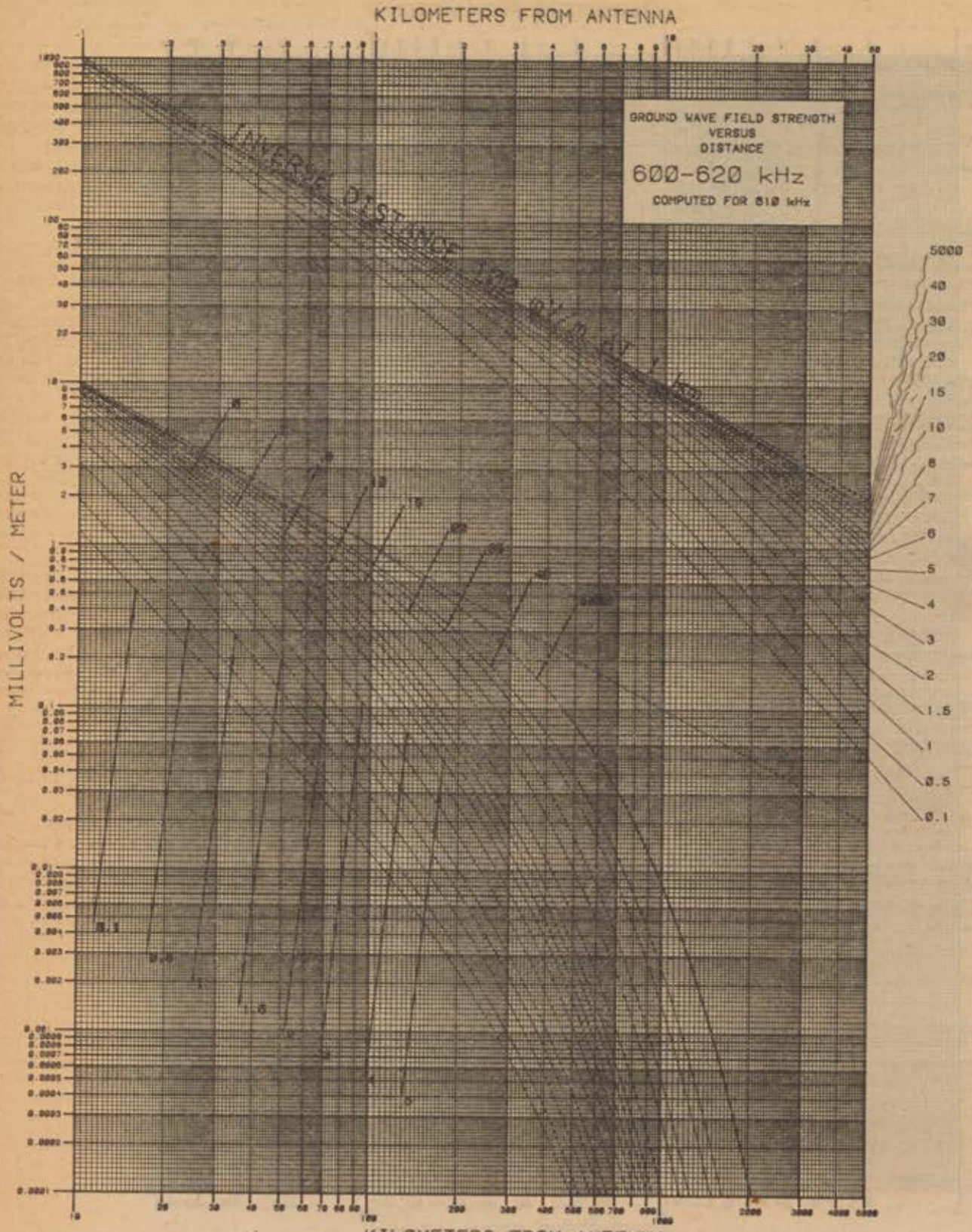
GRAPH 1

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



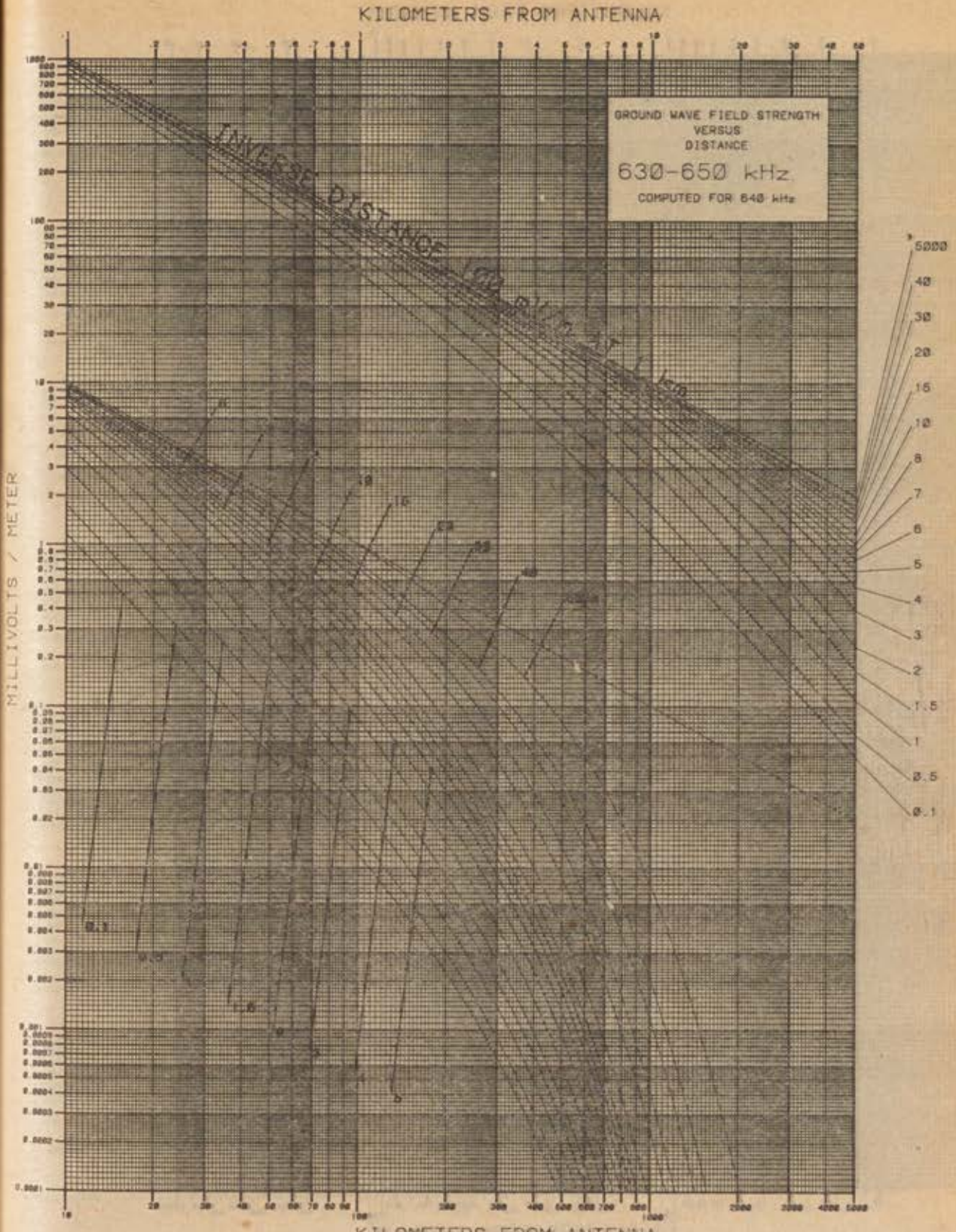
GRAPH 2

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC



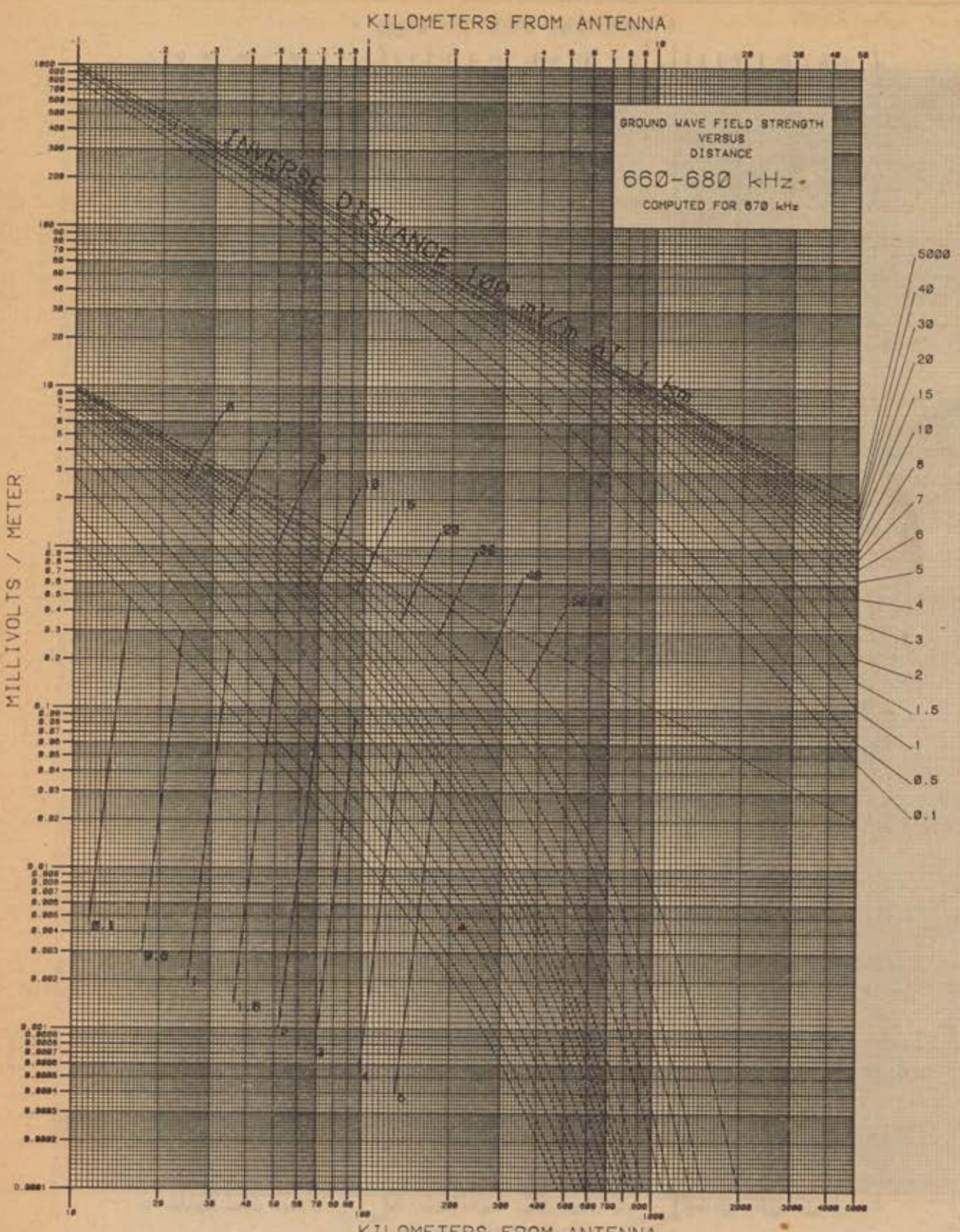
GRAPH 3

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



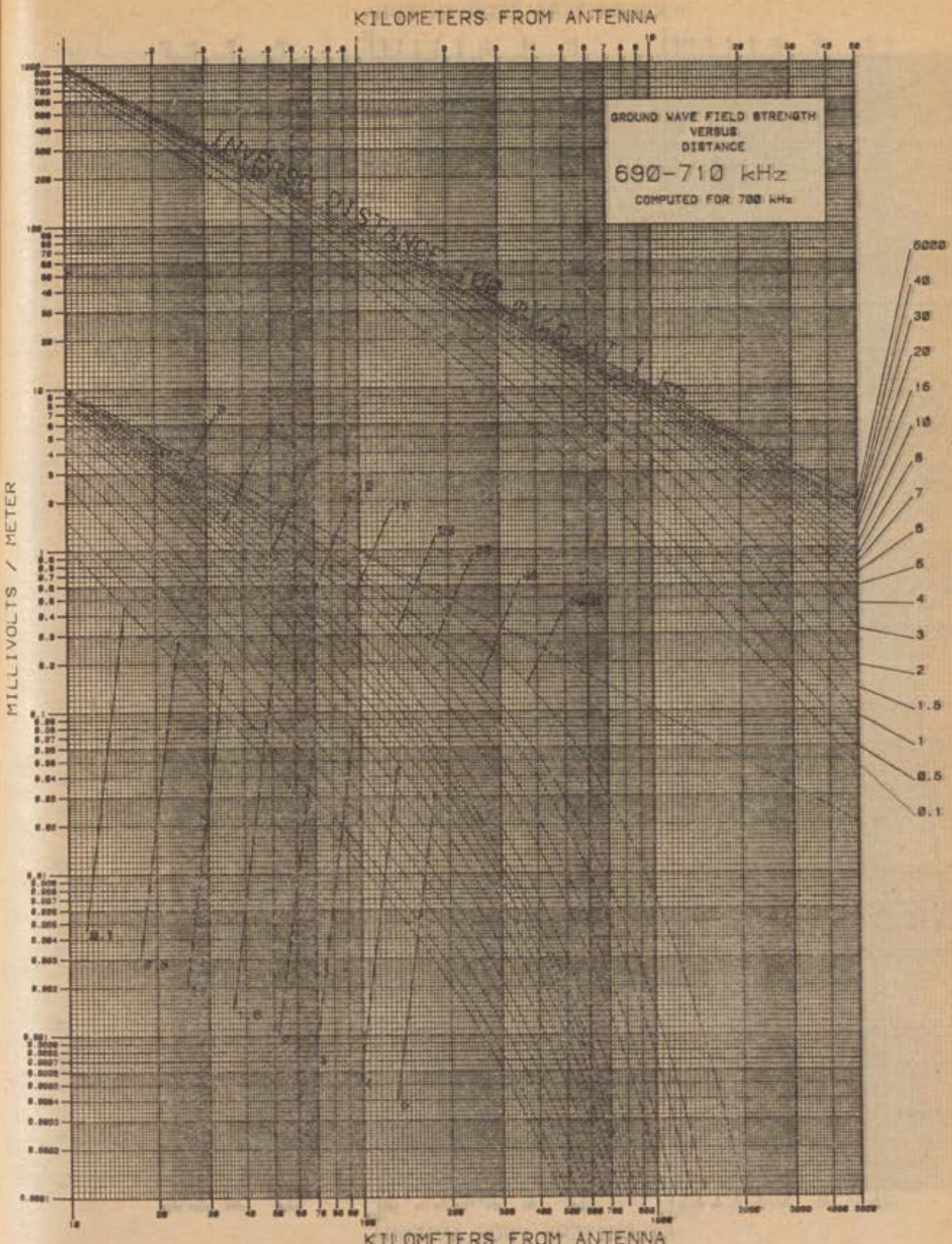
GRAPH 4

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



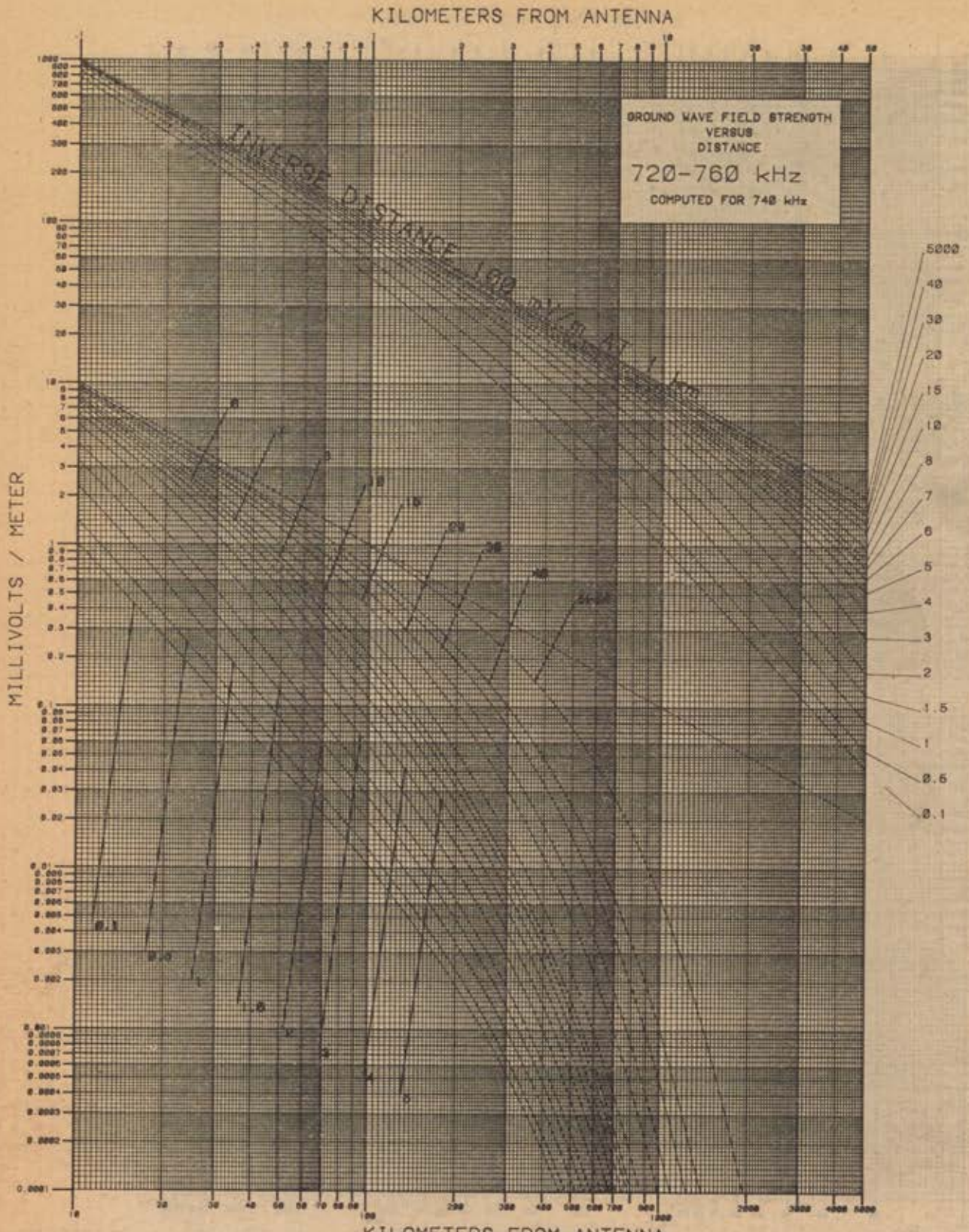
GRAPH 5

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



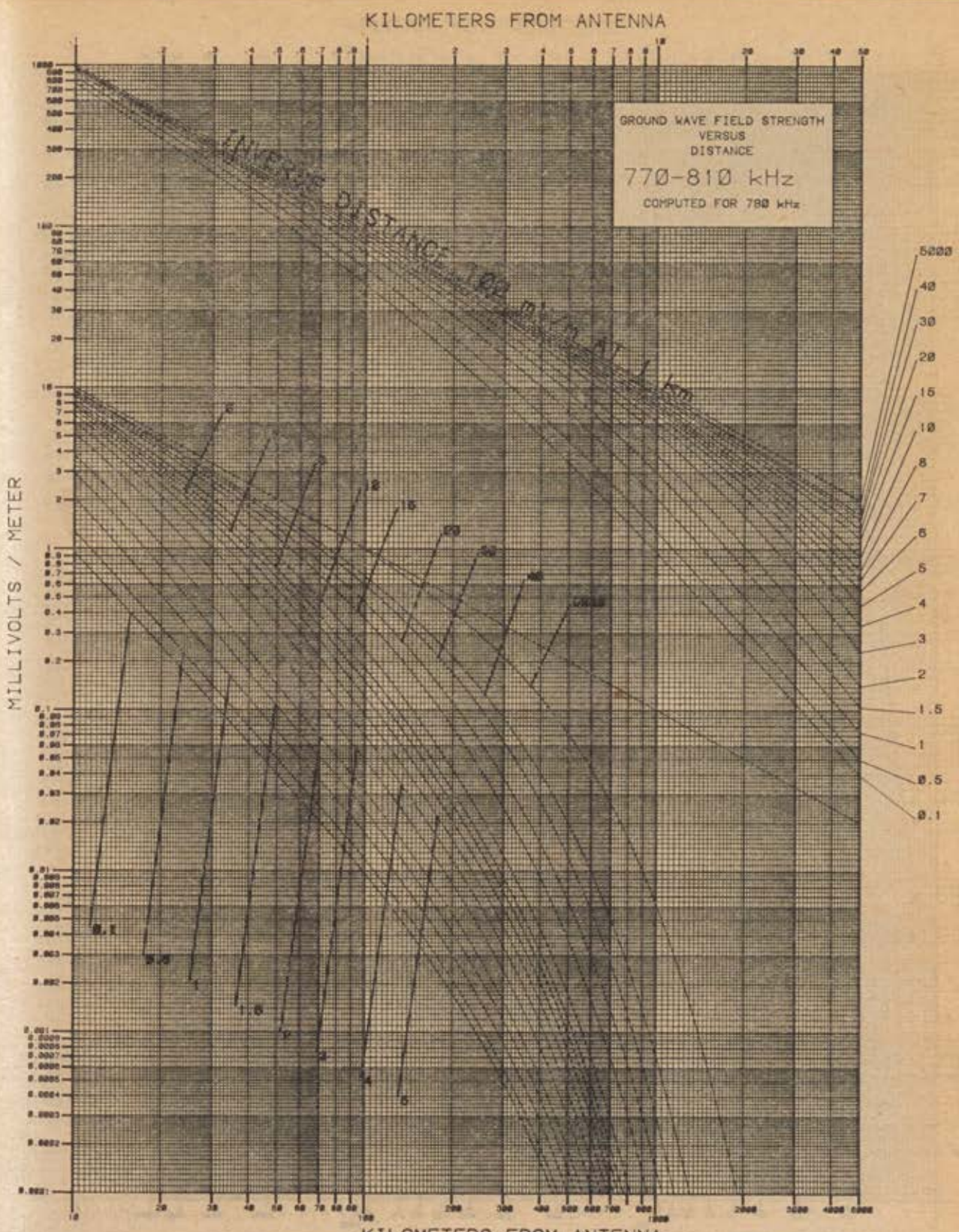
GRAPH 6

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



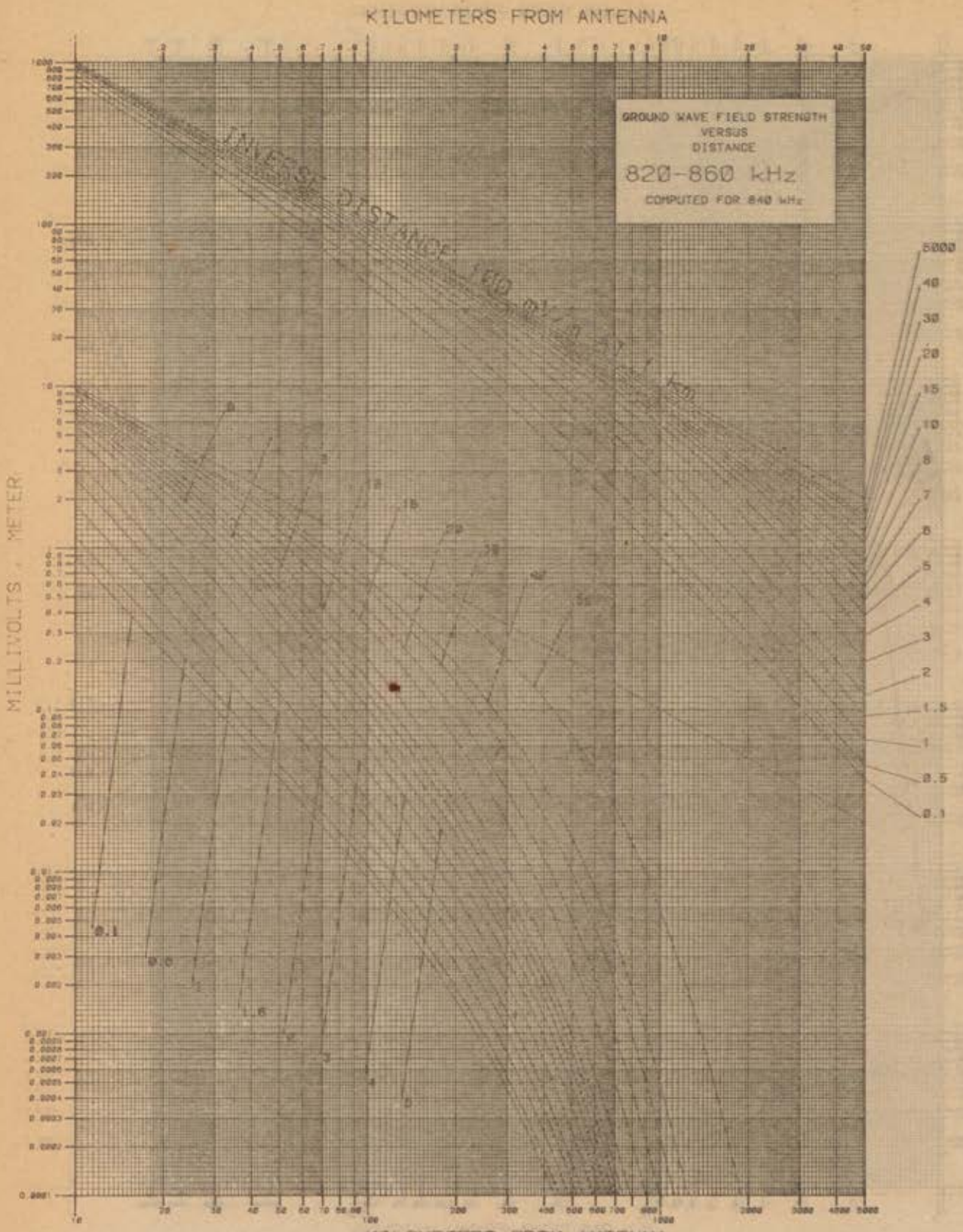
GRAPH 7

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



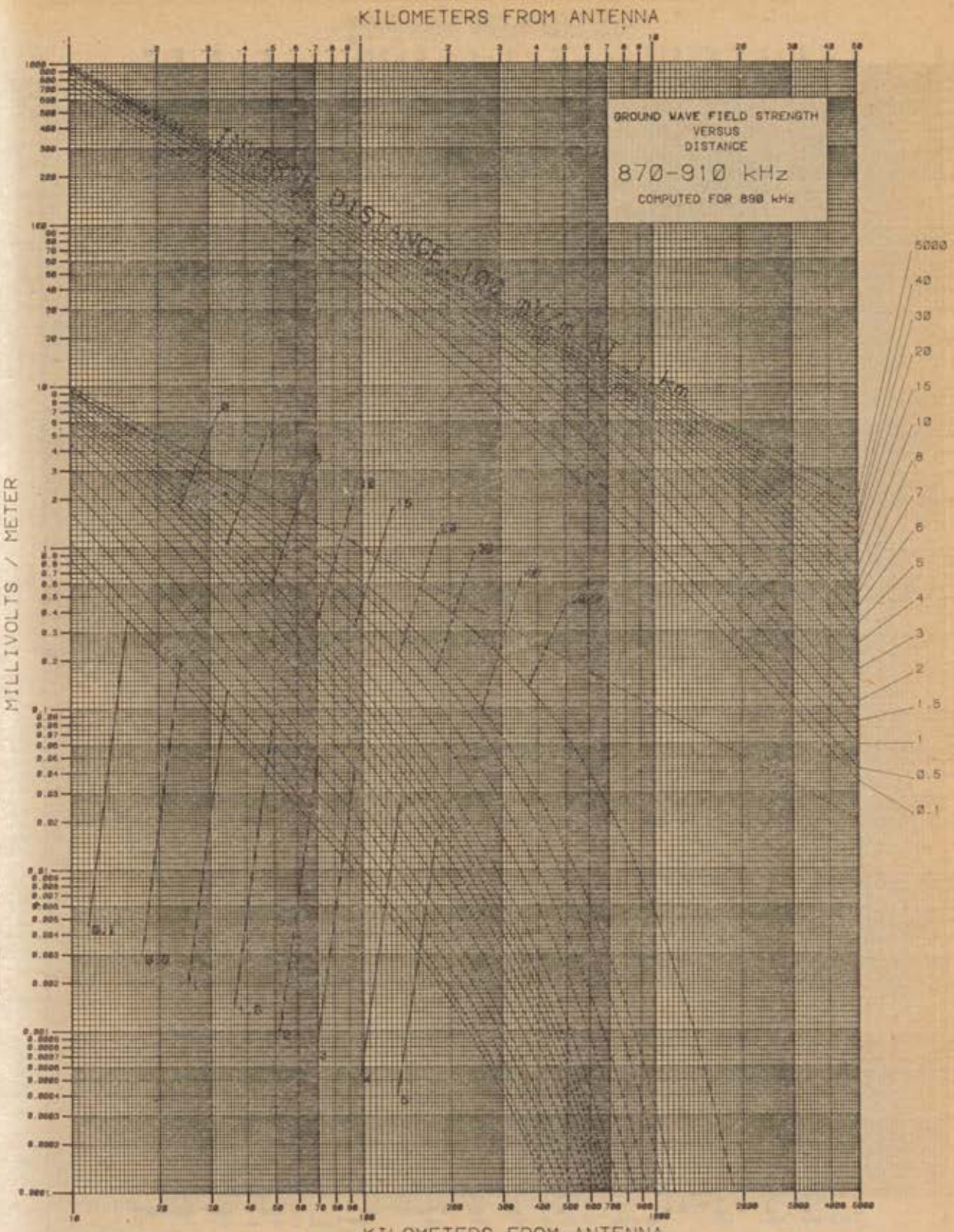
GRAPH 8

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



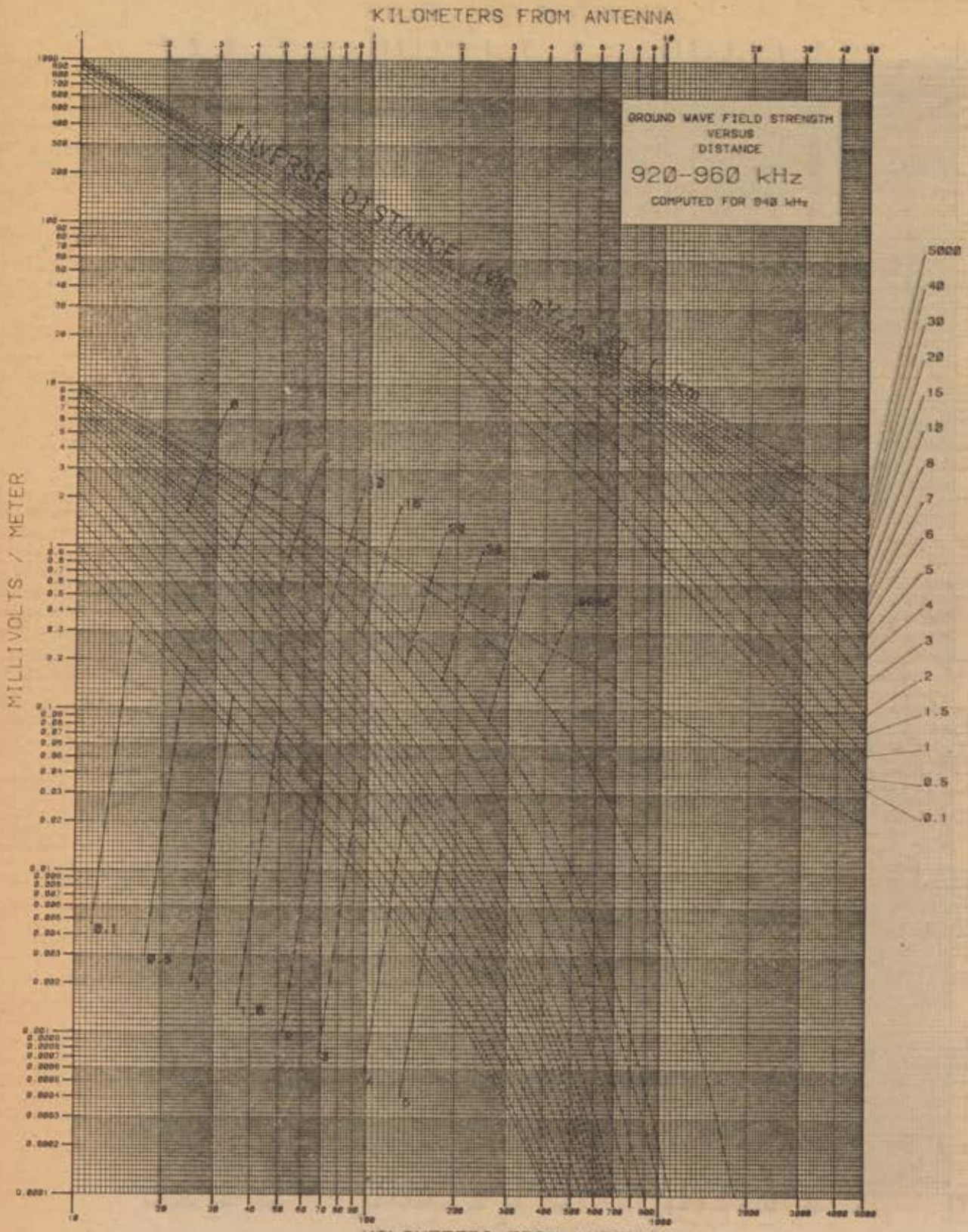
GRAPH 9

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



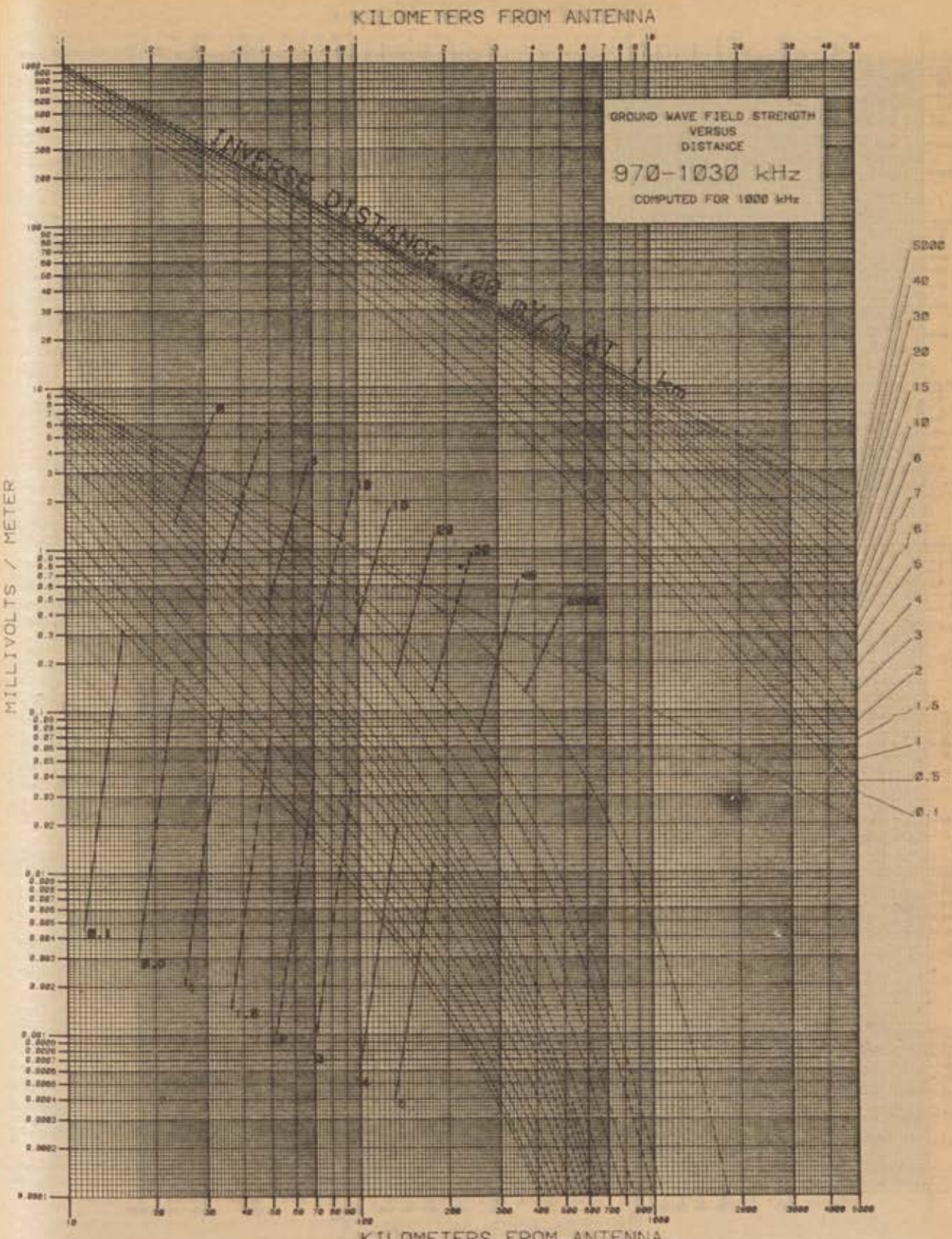
GRAPH 10

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



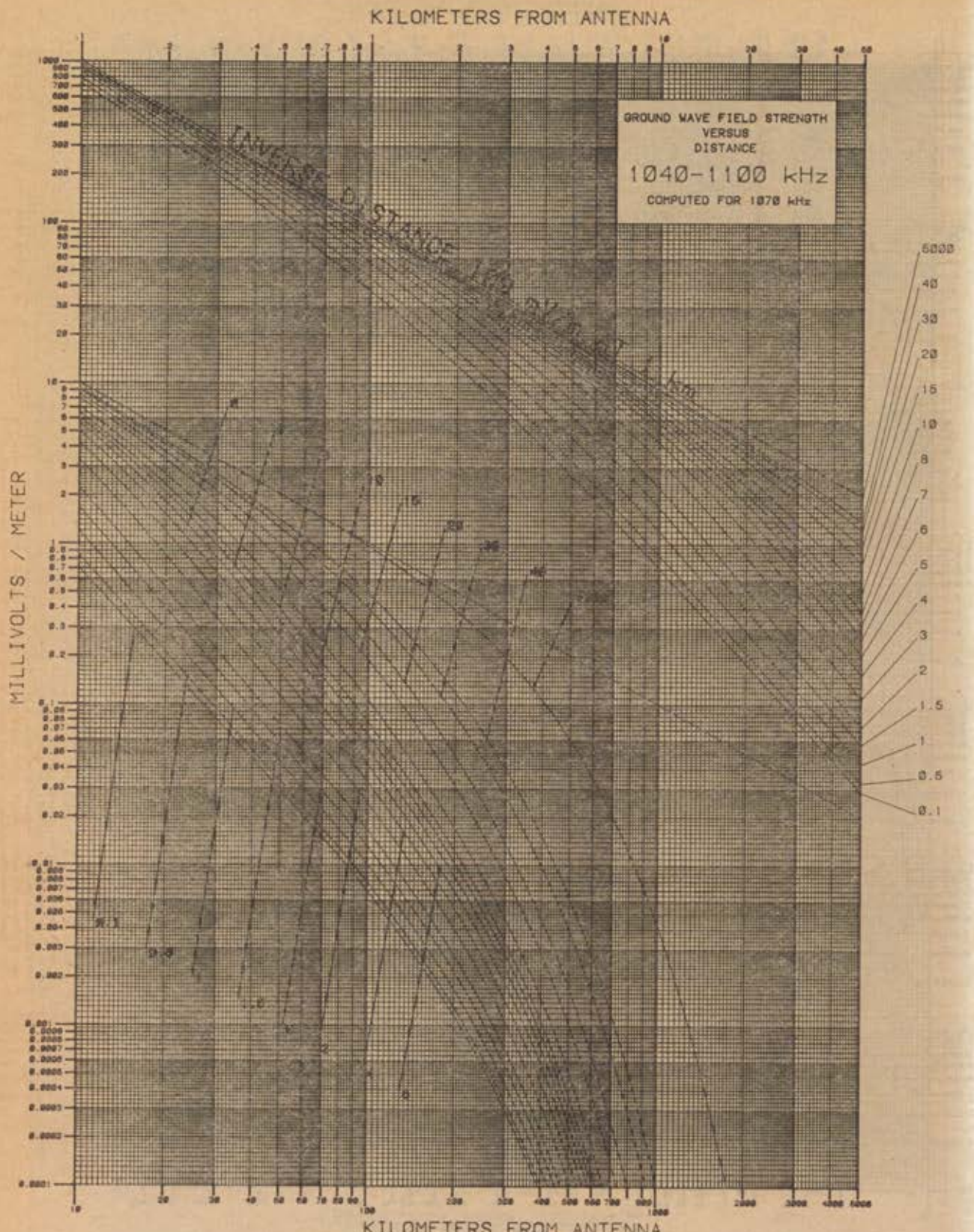
GRAPH 11

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



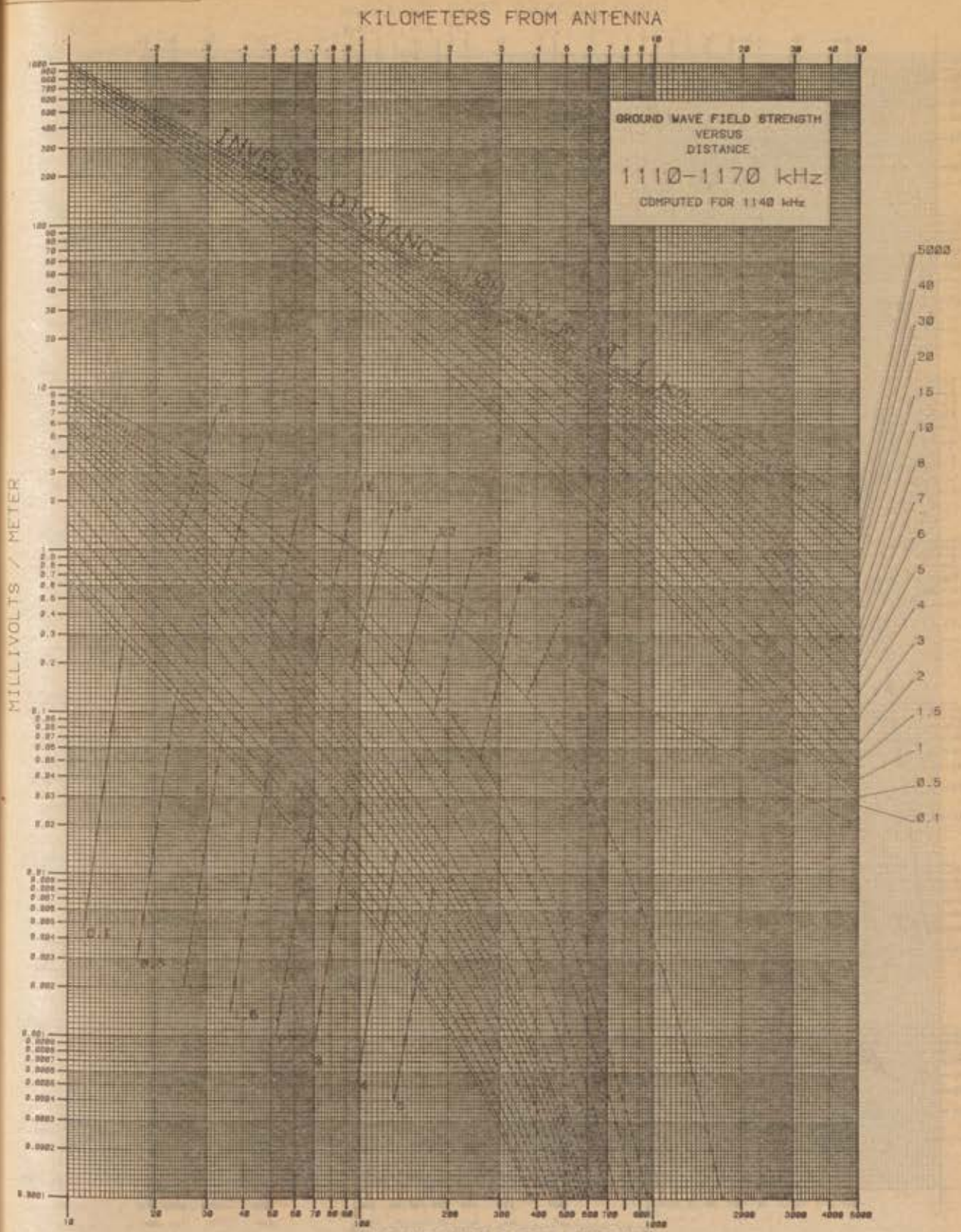
GRAPH 12

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 10. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



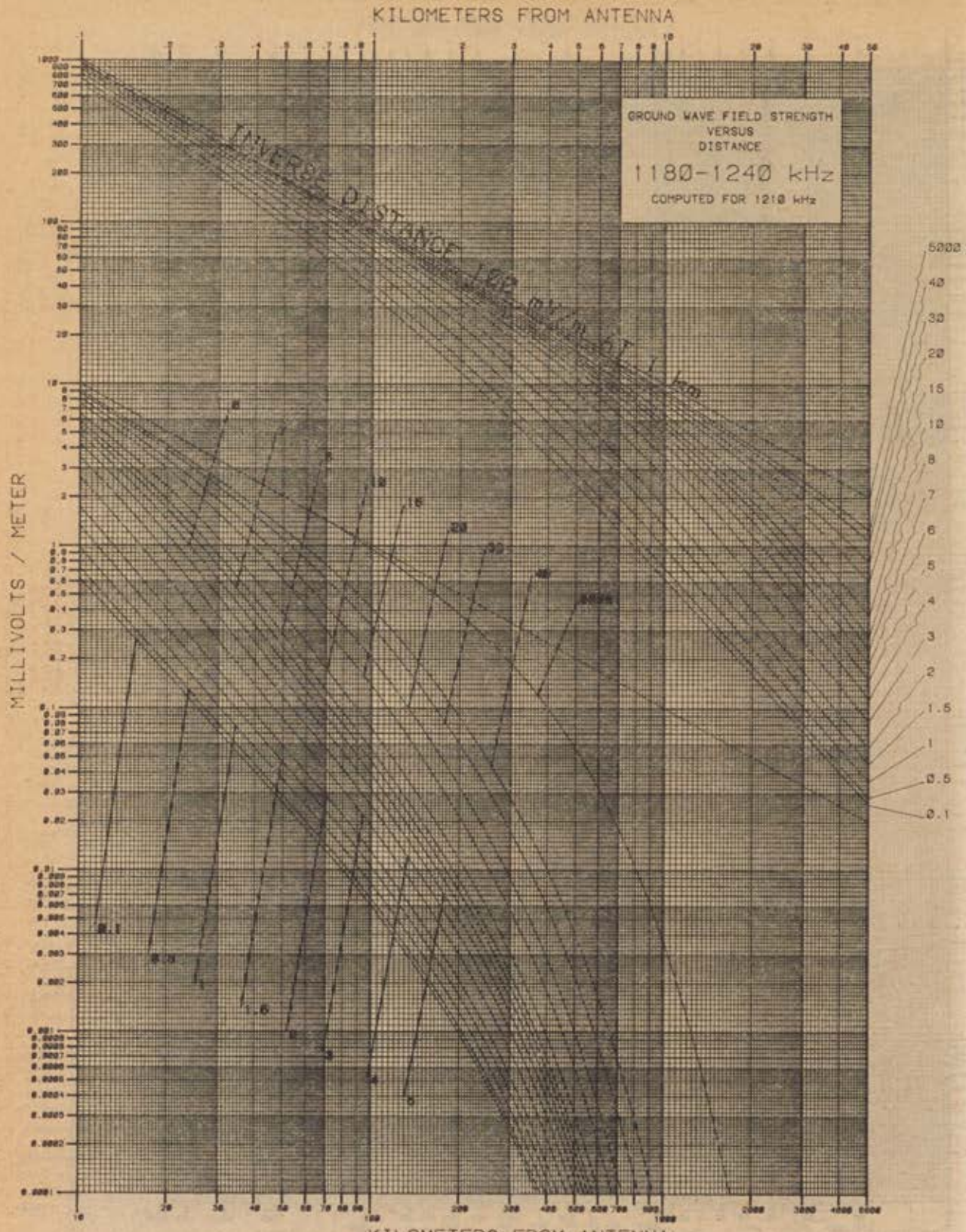
GRAPH 13

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



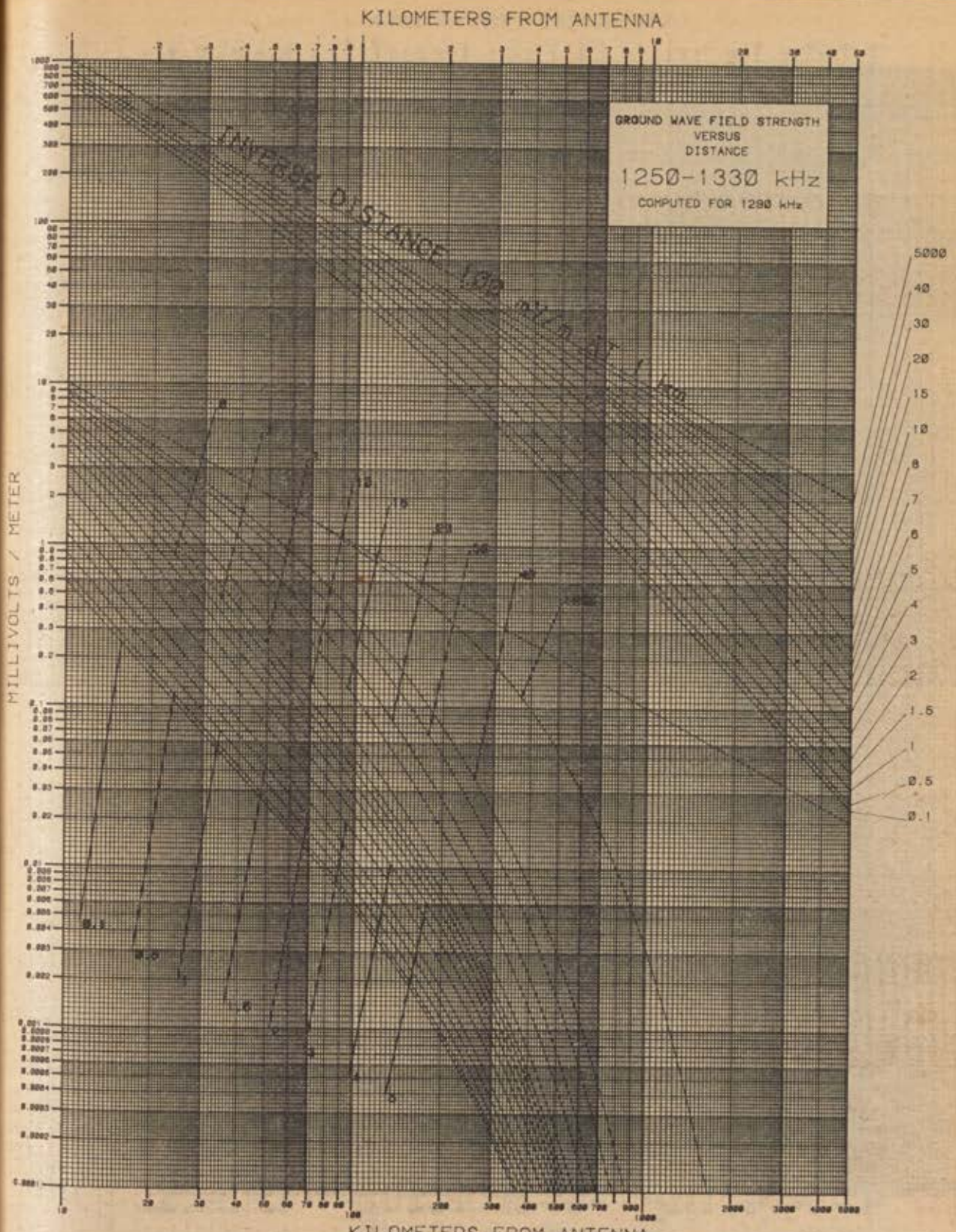
GRAPH 14

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



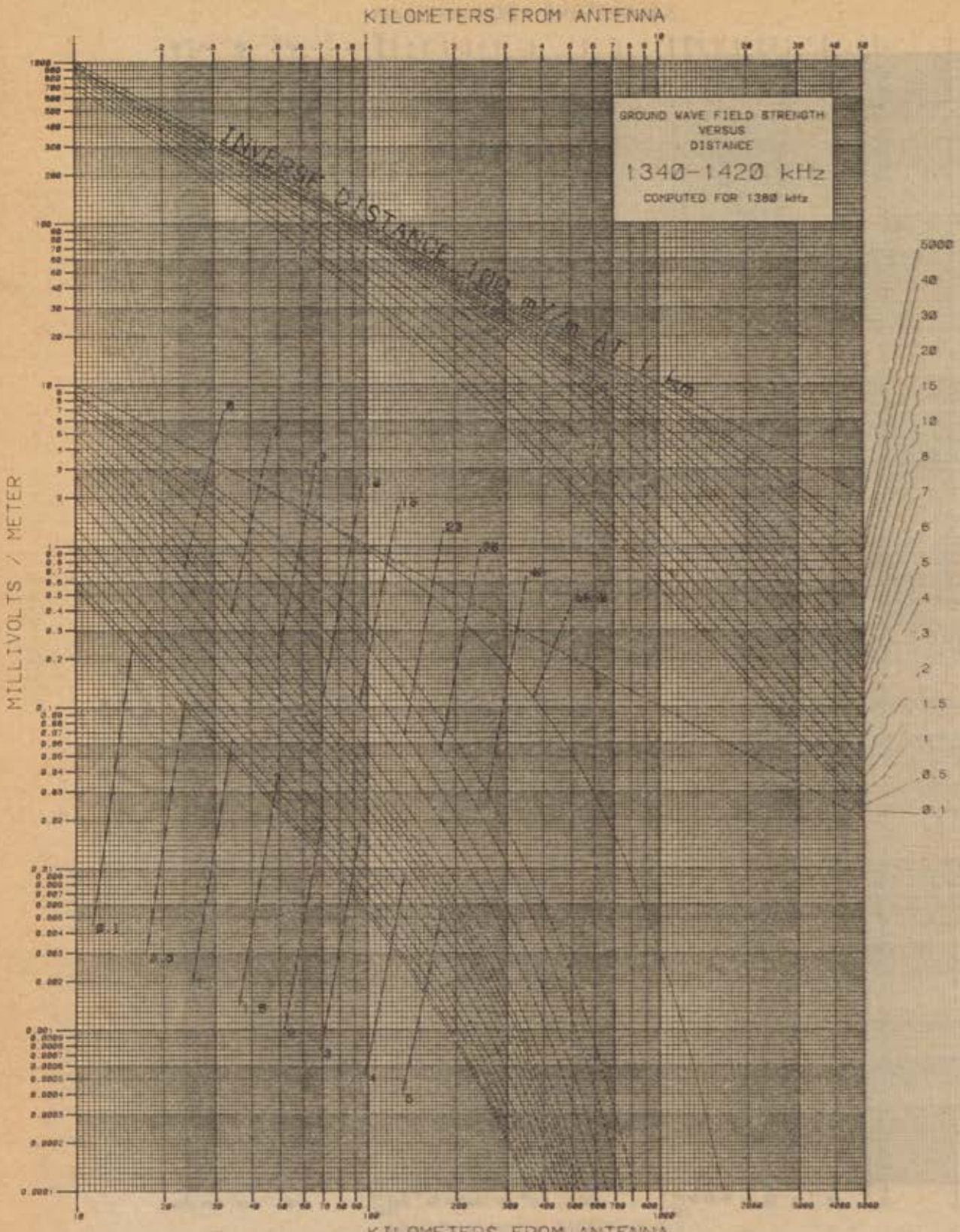
GRAPH 15

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



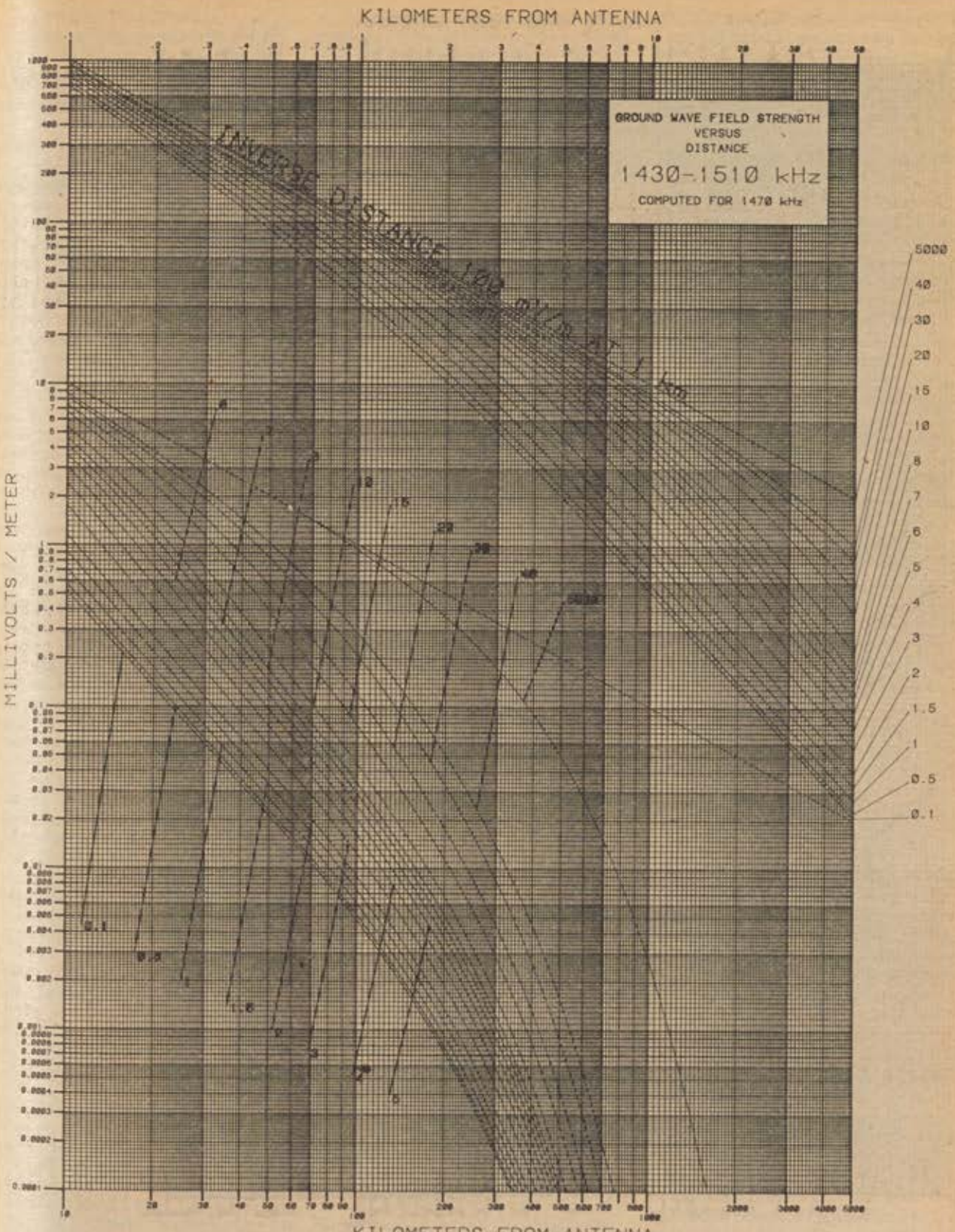
GRAPH 16

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



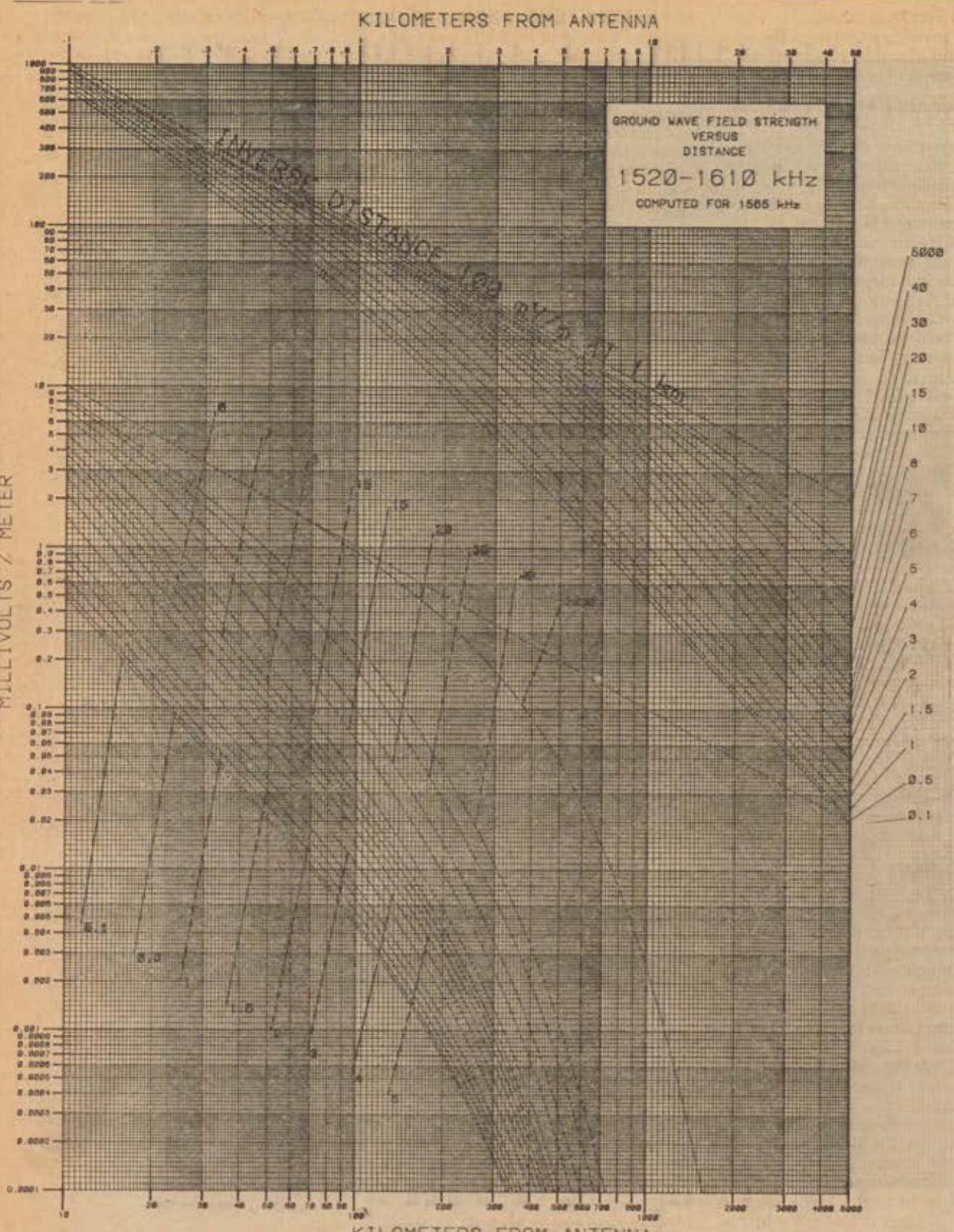
GRAPH 17

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



GRAPH 18

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



GRAPH 19

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.

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11. 47 CFR Part 73, § 73.185 is amended by revising paragraphs (b), (c), (d), (e), (f), and (i) and by removing the note to paragraph (j) to read as follows:

§ 73.185 Computation of interfering signal.

* * * * *

(b) For signals from stations operating on clear channels, skywave interference shall be determined from the appropriate formulas and Figures 1a (or 1b) and 6a contained in § 73.190.

(c) For signals from stations operating on regional and local channels, skywave interference is determined from the formulas and Figures 2 and 6a of § 73.190. (Certain simplifying assumptions may be made in the case of Class IV stations on local channels. See note to § 73.182(a)(4).

(d) The formulas in § 73.190(d) depicted in Figure 6a of § 73.190, entitled "Angles of Departure versus Transmission Range" are to be used in determining the angles in the vertical pattern of the antenna of an interfering station to be considered as pertinent to transmission by one reflection. To provide for variation in the pertinent vertical angle due to variations of ionosphere height and ionosphere scattering, the curves 4 and 5 indicate the upper and lower angles within which the radiated field is to be considered. The maximum value of field strength occurring between these angles shall be used to determine the multiplying factor to apply to the 10% skywave field intensity value determined from the formulas in § 73.190(b)(2), § 73.190(c)(2), or Figure 2 of § 73.190 as appropriate. The multiplying factor is found by dividing the maximum radiation between the pertinent angles by 100 mV/m. (Curves 4 and 5 include factors which represent the variation due to variation of the effective height of the E-layer and scattering.)

(e) Example of the use of skywave curves for stations operating on clear channels: Assume a Class II station with which interference may be expected is located at a distance of 724 kilometers from a proposed Class II station. The critical angles of radiation as determined from Figure 6a of § 73.190 are 9.6° and 16.3°. If the vertical pattern of the antenna of the proposed station, in the direction of the other station, is such that between the angles of 9.6° and 16.3° above the horizon the maximum radiation is 260 mV/m at one kilometer, the value of the 50% field, as read from Figure 1a of § 73.190, is multiplied by 2.6 to determine the interfering field intensity at the location in question. In order to obtain the value of the 10% field, this value is then increased by 8 dB. For calculations involving Class I–N stations, Figure 1b and 13dB are employed instead of Figure 1a and 8dB.

(f) For stations operating on regional and local channels, interfering skywave field intensities shall be determined in accordance with the procedure specified in (d) of this section and illustrated in (e) of this section, except that Figure 2 of § 73.190 is used in place of Figure 1a and 1b and the formulas of § 73.190. In using Figure 2 of § 73.190, one additional parameter must be considered, i.e., the variation of received field with the latitude of the path.

* * * * * *

(i) Example of the use of skywave curves for stations operating on regional and local channels: It is desired to determine the amount of interference to a Class III station at Portland, Oregon, caused by another Class III station at Los Angeles, California. The Los Angeles station is radiating a signal of 901 mV/m at 1 kilometer, in the horizontal plane, in the great circle direction of Portland, using a 0.5 wavelength antenna. The distance is 1328 kilometers. From Figure 6a of § 73.190, the upper and lower pertinent angles are 7° and 3.5° and, from Figure 5 of § 73.190, the maximum radiation within these angles is 99% of the horizontal radiation or 892 mV/m at one kilometer. The mid-point latitude of the transmission path is 39.8° N and, from Figure 2 of § 73.190, the 10% skywave field at 1328 kilometers is 0.050 mV/m for 100 mV/m radiated. Multiplying by 892/100 to adjust this value to the actual radiation gives 0.277 mV/m as to the interfering signal strength. At 20 to 1 ratio, the limitation to the Portland station is to the 5.5 mV/m contour.

(j) * * *

Note. [Deleted]

* * * * *

12. 47 CFR Part 73, § 73.186 is amended by revising paragraphs (a)(1), (a)(3) and (a)(4) to read as follows:

§ 73.186 Establishment of effective field at one kilometer.

(a) * * *

(1) Beginning as near to the antenna as possible without including the induction field and to provide for the fact that a broadcast antenna is not a point source of radiation (not less than one wave length or 5 times the vertical height in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna), measurements shall be made on eight or more radials, at intervals of approximately 0.2 kilometer up to 3 kilometers (1.87 miles) from the antenna, at intervals of approximately 1 kilometer from 3 kilometers (1.87 miles) to 10 kilometers (6.2 miles) from the antenna, at intervals of approximately 3 kilometers from 10 kilometers (6.2 miles) to 25 or 34 kilometers (15.5 miles or 20 miles) from the antenna, and a few additional measurements if needed at greater distances from the antenna. Where the antenna is rurally located and unobstructed measurements can be made, there shall be as many as 18 measurements on each radial. However, where the antenna is located in a city where unobstructed measurements are difficult to make, measurements shall be made on each radial at as many unobstructed locations as possible, even though the intervals are considerably less than stated above, particularly within 3 kilometers of the antenna. In cases where it is not possible to obtain accurate measurements at the closer distances (even out to 8 or 10 kilometers due to the character of the intervening terrain), the measurements at greater distances should be made at closer intervals. (It is suggested that "wave tilt" measurements may be made to determine and compare locations for taking field strength measurements, particularly to determine that there are no abrupt changes in ground conductivity or that reflected waves are not causing abnormal strengths.

* * * * *

(3) However, regardless of which of the methods in paragraph (a)(2) of this section is employed, the proper curve to be drawn through the points plotted shall be determined by comparison with the curves in § 73.184 as follows: Place the sheet on which the actual points have been plotted over the appropriate Graph in § 73.184, hold to the light if necessary and adjust until the curve most closely matching the points is found. This curve should then be drawn on the sheet on which the points were plotted, together with the inverse distance curve corresponding to that curve. The field at 1 kilometer for the radial concerned shall be the ordinate on the inverse distance curve at 1 kilometer.

(4) When all radials have been analyzed in accordance with paragraph (a)(3) of this section, a curve shall be plotted on polar coordinate paper from the fields obtained, which gives the inverse distance field pattern at 1 kilometer. The radius of a circle, the area of which is equal to the area bounded by this pattern, is the effective field. (See § 73.14.)

* * * * *

13. 47 CFR Part 73, § 73.189 is amended by revising paragraphs (b)(2) (i), (ii) and (iii) to read as follows:

§ 73.189 Minimum antenna heights or field strength requirements.

* * * * *

(b) * * *

(2) * * *

(i) Class IV stations, 45 meters or a minimum effective field strength of 241 mV/m for 1 kW (121 mV/m for 0.25 kW). (This height applies to a Class IV station on a local channel only. In the case of a Class IV station assigned to a regional channel, Curve A shall apply.)

(ii) Class I–N, II and III stations, a minimum effective field strength of 282 mV/m for 1 kW.

(iii) Class I–A, and I–B stations, a minimum effective field strength of 362 mV/m for 1 kW.

* * * * *

14. 47 CFR Part 73, § 73.190 is amended by revising the existing text and designating such text as paragraph (a), and by adding paragraphs (b), (c), (d) and (e) to read as follows:

§ 73.190 Engineering charts and related formulas.

(a) This section consists of the following Figures: 1a, 1b, 2, r3, 5, 6a, 7, 8, 9, 10, 11, and 13. Additionally, formulas that are directly related to graphs are included.

(b) Figure 1a depicts 50% field strength values [F(50)].

(1) For distances greater than 4250 kilometers, the following formula may be used to compute 50% field strength values:

$$F_c = \text{antilog}\left[\frac{\frac{231}{3 + d/1000} - 35.5}{20}\right] \quad \mu V/m$$

where: F = 50% skywave field strength values [F(50)]

d^c = path distance in kilometers

(2) 10% field strength values [F(10)] are derived from Figure 1a by the following formula:

F(10) = F(50) + 8 dB. dB(1mV/m)

(c) Figure 1b depicts 50% field strength values F(50) for calculations involving Alaskan stations.

(1) The following formula also may be used for computing field strength values for such applications:

$F_c = 95 - 20 \log_d - 20 ([d + 300)/1000) \frac{1}{2}$ dB(1 uV/m)

where:

F = 50% skywave filed strength values F(50) dB (1 uV/m)

d^c = path distance in kilometers

(2) 10% field strength values F(10) are derived from Figure 1b from the following formula:

F(10) = F(50) + 13 dB microvolts per meter

(d) Figure 6a depicts angles of departure versus transmission range. These angles may also be computed using the following formulas:

$$\Theta = \tan^{-1}\left[K_n \cot + \frac{d)}{444.54} \quad \frac{d}{444.54}\right] \text{ degrees}$$

Where:

d is distance in kilometers

n = 1 for 50% field strength values

n = 2 or 3 for 10% field strength values

and Where:

$K_1 = 0.00752$

$K_2 = 0.00938$

$K_3 = 0.00565$

Note.—Computations using these formulas should not be carried beyond 0.1 degree.

(e) In the event of disagreement between computed values using the formulas shown above and values obtained directly from the figures, the computed values will control.

15. 47 CFR Part 73, § 73.190 is further amended by removing Figures 1 and 6 and by adding new Figures 1a, and 2, and by revising figure 6a.

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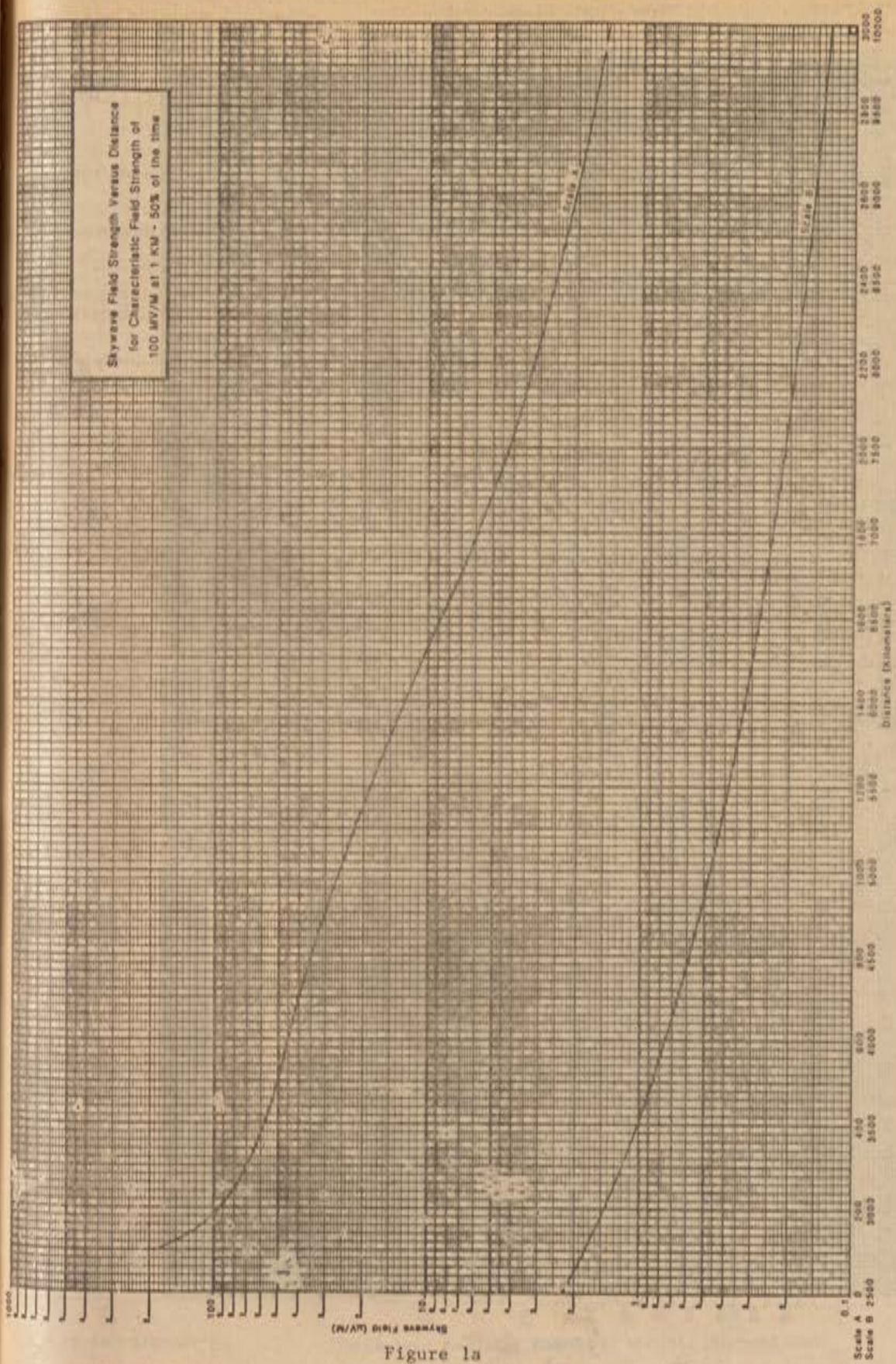

Skywave Field Strength Versus Distance
for Characteristic Field Strength of
100 MV/M at 1 KM - 50% of the time
Scale A
Scale B
Distance (kilometers)
Skywave Field (uV/M)

Figure 1a

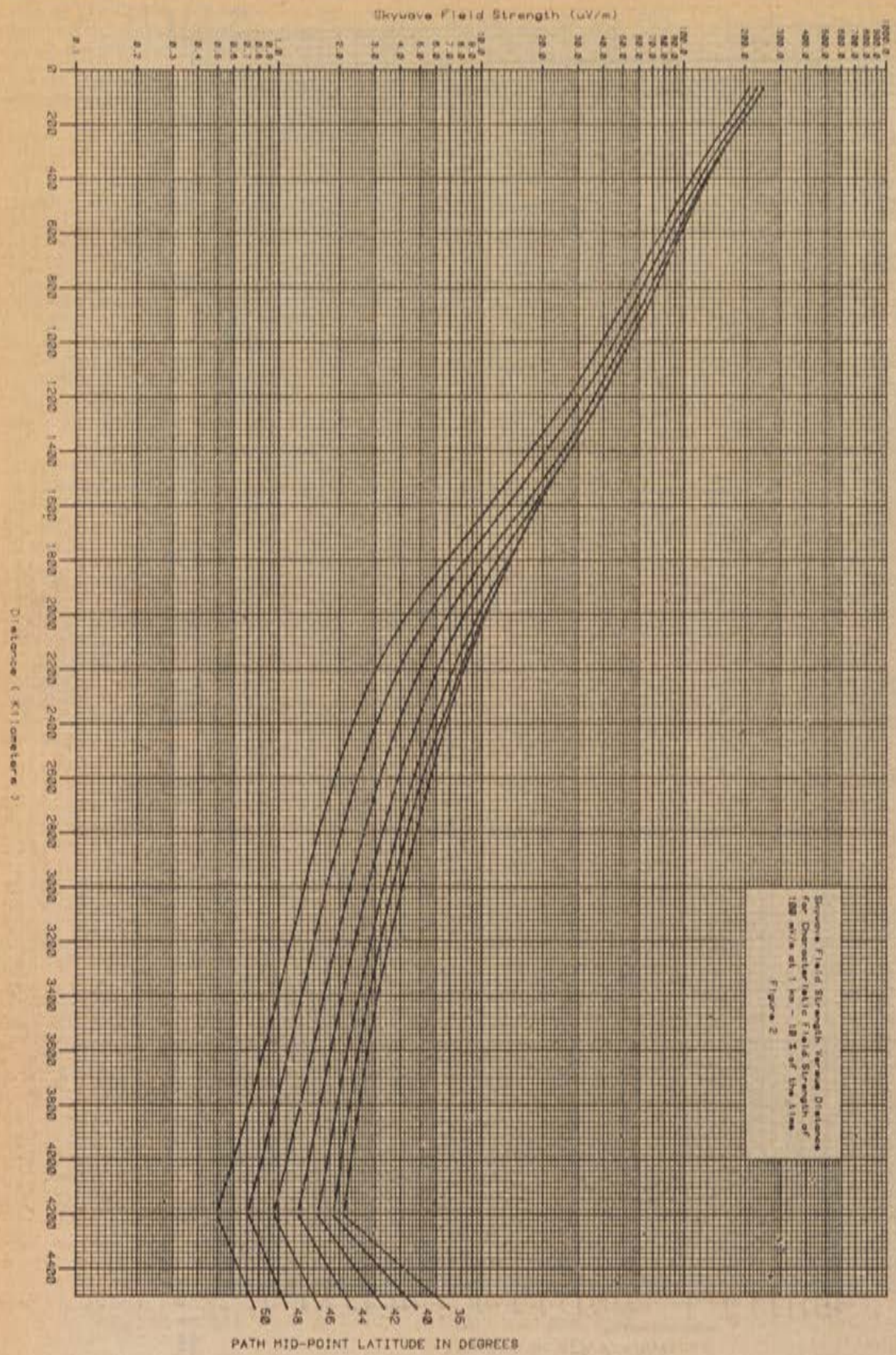
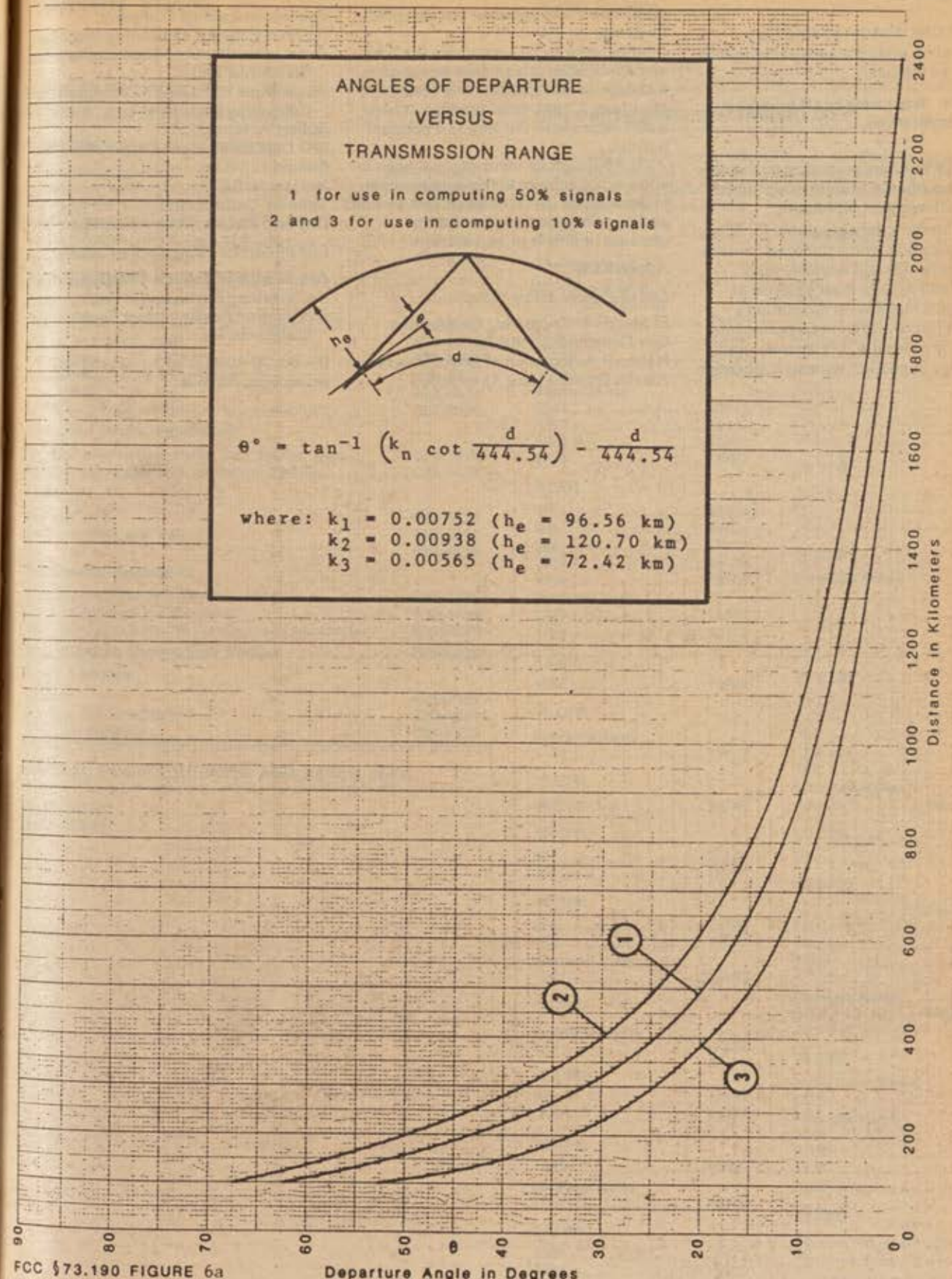

Skywave Field Strength (uV/m)
Distance (Kilometers)
PATH MID-POINT LATITUDE IN DEGREES
50
48
46
44
42
40
38

Figure 2



FCC §73.190 FIGURE 6a

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* * * * *

16. 47 CFR Part 73, § 73.3571 is amended by adding a new paragraph (d) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(d) Applications proposing to increase the power of an AM station are subject to the following requirements:

(1) In order to be acceptable for filing, any application which does not involve a change in site and which is filed before June 3, 1988, must propose at least a 50% increase in the station's nominal power. However, applications proposing at least a 20% increase and which are in conflict with an application proposing a 50% increase are acceptable for filing.

(2) In order to be acceptable for filing, any application which does not involve a change in site and which is filed on or after June 3, 1988, must propose at least a 20% increase in the station's nominal power.

(3) Applications involving a change in site are not subject to the requirements in paragraphs (d) (1) or (2) of this section and may include a request for an increase in power of any amount.

Appendix B

List of Parties Filing Comments

El Mundo Broadcasting Corporation
Cox Communications, Inc.
National Association of Broadcasters
Alaska Broadcasters Association
Press Broadcasting Company
du Treil-Rackley, Consulting Engineers
Association For Broadcast Engineering Standards, Inc.
Association of Federal Communications Consulting Engineers
Robert A. Jones, P.E.
3-D Communications Corporation
Ronald F. Schatz
Vir James, P.C.
Timothy Cutforth, P.E.
Daytime Broadcasters Association

List of Parties Filing Reply Comments

Association of Federal Communications Consulting Engineers
Association For Broadcast Engineering Standards, Inc.

[FR Doc. 85-10743 Filed 5-1-85; 8:45 am]
BILLING CODE 6712-01-M

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Thursday, May 2, 1985

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