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Tuesday
June 18, 1985

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

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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

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

WHO: The Office of the Federal Register.

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

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

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

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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Separate Parts in This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Findings of June 14, 1985

United States-Canadian Crude Oil Transfers

On March 18, 1985, at the Quebec Summit, I joined Prime Minister Mulroney in endorsing a Trade Declaration with the objective of liberalizing energy trade, including crude oil, between the United States and Canada. Both Governments recognized the substantial benefits that would ensue from broadened crude oil transfers and exchanges between these two historic trading partners and allies. These benefits would include the increased availability of reliable energy sources, economic efficiencies, and material enhancements to the energy security of both countries. Following this Declaration, Canada declared that it would permit Canadian crude oil to be freely exported to the United States effective June 1, 1985.

Before crude oil exports to Canada can be authorized, I must make certain findings and determinations under statutes that restrict exports of crude oil. I have decided to make the necessary findings and determinations under the following statutes: Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212); section 28 of the Mineral Lands Leasing Act of 1920, as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (30 U.S.C. 185); and section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354) (crude oil transported over the Trans-Alaska Pipeline or derived from the Naval Petroleum Reserves is excluded).

I hereby find and determine that exports of crude oil under these statutes are in the U.S national interest, and I further find and determine that such U.S. crude oil exports to Canada—

- will not diminish the total quantity or quality of petroleum available to the United States;
- will not increase reliance on imported oil;
- are in accord with provisions of the Export Administration Act of 1979; and
- are consistent with the purposes of the Energy Policy and Conservation Act.

Therefore, such domestic crude oil may be exported to Canada for consumption or use therein.

These findings and determinations shall be published in the **Federal Register**. I direct the Secretary of Commerce to take all other necessary and proper action to expeditiously implement this decision.

Ronald Reagan

THE WHITE HOUSE,
June 14, 1985.

[FR Doc. 85-14782
Filed 6-17-85; 9:35 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5351 of June 14, 1985

Family Reunion Month, 1985

By the President of the United States of America

A Proclamation

Family reunions are occasions that renew the feelings of love, pride, and support that nurture our lives. There is no more joyous and poignant family reunion than the return to the family of a child who has run away from home.

The number of young people between the ages of 10 and 17 who ran away from home last year is estimated at more than one million. The heartache of such a breakdown in family relationships is incalculable. But for many thousands of families, the joy of reunion was realized with the return of a son or daughter and a resolution of the conditions that precipitated the flight of the child.

In all likelihood, the return was aided by one of the professionals and volunteers who staff runaway shelters throughout the country. Last year alone, some 200,000 young Americans and their families received counseling aimed at resolving family conflicts and pressures. Almost half the young people who sought help were returned safely to their homes.

Much remains to be done, and all of us can play a role. Volunteers are needed to help staff crisis intervention programs. Parents themselves must recognize the importance of keeping open lines of communications with their children and strive to strengthen family relationships.

Families are the cornerstone of America. All of America's families should be encouraged to continue strengthening their ties through gatherings and activities such as family reunions that involve as many members as possible.

The Congress, by House Joint Resolution 64, has designated the period between Mother's Day, May 12, and Father's Day, June 16, 1985, as "Family Reunion Month" and authorized and requested the President to issue a proclamation in observance of this period.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period between May 12 and June 16, 1985, as Family Reunion Month. I call upon all Americans to celebrate this period with appropriate ceremonies and activities and recognition of the resources available to help strengthen families.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, 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. 85-14800
Filed 6-17-85; 10:55 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5352 of June 14, 1985

Baltic Freedom Day, 1985

By the President of the United States of America

A Proclamation

This year marks the 45th anniversary of the United States non-recognition policy by which our government refuses to recognize the forcible Soviet occupation of Estonia, Latvia, and Lithuania. It has been 45 years since the dark year of 1940 when invading Soviet armies, in collusion with the Nazi regime, overran these three independent Baltic Republics.

The atrocious character of the Soviet oppression was shockingly illustrated by the imprisonment, deportation, and murder of close to 100,000 Balts during a four-day reign of terror June 14–17, 1941. The suffering of this brutal period was made even worse when Nazi forces struck back through these three states at the beginning of the Nazi-Soviet war and instituted a civil administration under control of the nefarious Gestapo. Due to Soviet and Nazi tyranny, by the end of World War II, the Baltic nations had lost twenty percent of their total population.

Today, suppression and persecution are the daily burdens of the Estonian, Latvian, and Lithuanian people. Soviet policies are specifically targeted toward the very ethnic life and historical heritage of the Baltic nations. Russification takes place under many guises: forced relocation, expanded colonization by Russian immigrants, and heavy pressure against the indigenous religious, cultural, and social traditions.

Yet despite this crushing system, the Baltic peoples courageously continue to resist amalgamation by pressing for their national, political, and religious rights. Peaceful expression of demands through the underground press, petitions to government officials, demonstrations, the activities of the Catholic Church and other religious denominations, Helsinki monitoring groups, and committees to defend the rights of religious believers command the admiration of everyone who loves and honors freedom.

Significantly, the defense of national and personal rights is led not by those who grew up during the years of independence, but by a new generation born and raised under the Soviet system. The message of these heroes, both young and old, is: "You, our free brothers and sisters, are our voice to the free world. You must not cease to inform the world of what is being inflicted upon us here behind the Iron Curtain, for it is from your efforts that we get our strength to survive."

All the people of the United States of America share the aspirations of the Baltic nations for national independence. The United States upholds their rights to determine their own national destiny, free of foreign interference. For 45 years, the United States has not recognized the forcible incorporation of the Baltic States into the Soviet Union, and it will not do so in the future.

The Congress of the United States, by Senate Joint Resolution 66, has authorized and requested the President to issue a proclamation for the observance of June 14, 1985, as "Baltic Freedom Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 14, 1985, as Baltic Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremo-

nies and to reaffirm their commitment to the principles of liberty and freedom for all oppressed people.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, 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. 85-14801
Filed 6-17-85; 10:56 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5353 of June 14, 1985

Flag Day and National Flag Week, 1985

By the President of the United States of America

A Proclamation

The history of the flag of the United States[1] presents in capsule form the history of our Nation. Although there was a great variety of colorful and interesting flags during the Colonial period, it was not until June 14, 1777, two years after the Battle of Bunker Hill, that the delegates at the Continental Congress adopted the familiar design we know today. They voted "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field representing a new constellation."

Since 1777, the flag of our Nation has been redesigned periodically to reflect the admission of new States. It has flown over our public buildings, our town squares, and many private homes. It has been carried proudly into battle, and our national anthem gives a dramatic account of the hope and inspiration it has given to many Americans. Today, it is the leading symbol of the Nation we love and an emblem recognized around the world as a sign of our unity and devotion to freedom.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and the display of the flag of the United States on all government buildings. The Congress also requested the President, by a joint resolution of June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 14, 1985, as Flag Day and the week beginning June 9, 1985, as National Flag Week, and I direct the appropriate officials of the government to display the flag on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, set aside by Congress as a time to honor America (89 Stat. 211), by having public gatherings and activities at which they can honor their country in an appropriate manner.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 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. 85-14818
Filed 6-17-85; 11:16 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Tuesday, June 18, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Revised Grade Standards for American Pima Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is reducing the number of physical grade standards for American Pima cotton from nine to six. There will also be a wider range of color included within each of the standards.

This action is being taken because the color of American Pima cotton has changed since the standards were last revised in 1970. The changing color is due to the introduction and cultivation of new varieties since that time.

The new standards are intended to provide a more meaningful and accurate description of the qualities found in the American Pima cotton crop.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: H.H. Ramey, Jr., Chief, Standards and Testing Branch, Cotton Division, AMS, USDA, Washington, D.C. 20250, (202) 447-2167.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order.

William T. Manley, Deputy Administrator, AMS, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because American Pima cotton accounts for less than one percent of the annual total U.S. cotton production, the revised standards will not have the requisite economic impact. The changes do not impose any additional costs or duties upon users of the service or any other segment of the cotton industry. Further, the standards are applied equally to all size entities by employees of the Department and are being revised to reflect current industry practices.

According to the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*), any standard or change or replacement to the standards shall become effective not less than one year after publication of a final rule establishing the changes (7 U.S.C. 56). The revised grade standards for American Pima cotton will become effective July 1, 1986.

Background

Pursuant to the authority contained in the United States Cotton Standards Act (7 U.S.C. 51), the Secretary of Agriculture has established the official cotton standards of the United States for the grades of American Pima cotton which provide a basis for the determination of value and quality for commercial purposes.

The existing official cotton standards for the grades of American Pima cotton are listed and described in the regulations at 7 CFR 28.501-28.510. There are nine physical standards represented by practical forms, and one descriptive standard for which a practical form is not made.

The first grade standards for American Pima cotton were promulgated by USDA in 1918. They have been revised several times since, mainly because of changing varietal characteristics and harvesting practices.

The last complete revision of the grade standards became effective in 1970 (34 FR 9847). The changes included permitting a wider color range within the standards from white to yellow, reducing the size of leaf particles, reducing the bark in quantity and size in the lower grades, and changing the name of the cotton from American Egyptian to American Pima.

Need for Revising Standards

Color. The Cotton Division of AMS annually conducts a Color and Trash Survey of the American Pima cotton crop. Cotton samples, randomly selected from those submitted for classification, are measured on the Nickerson-Hunter cotton colorimeter. The color readings taken from the annual surveys show that over the past several years there has been a slight but perceptible shift in the overall color of the American Pima cotton crop. The color shift has been from white to a creamy color which tends toward yellow as the color deepens.

This gradual shift in color results from a genetic characteristic of new American Pima cotton varieties developed since the current standards went into effect, and it mirrors the cultivation of these new varieties.

In 1970, Pima S-4 was the predominant variety planted. The Pima S-5 variety was introduced in 1975 and by 1980 was the only variety grown. Starting in 1981, Pima S-5 has gradually been replaced by Pima S-6. By 1984, 93 percent of the American Pima cotton harvested was Pima S-6.

The color shift generally corresponds with these varietal changes, and was especially pronounced in 1983 when the amount of Pima S-6 harvested increased to 31 percent over 9 percent in 1982. The 1984-85 color readings show that the trend continued strongly last season.

A significant amount of American Pima cotton now tends to fall outside the color range of the grade standards. Since the grade standards exist to help describe the quality of the cotton accurately, the color range of each grade standard will be widened to include more of the creamy-yellow that is a natural characteristic of the Pima S-6 variety.

Number of Standards. Nearly all the cotton in recent years has been graded into only three of the 10 grades. Grade Nos. 3, 4, and 5 included 89.3 percent of the 1982 crop, 91.1 percent of the 1983 crop, and 91.3 percent of the 1984 crop. The remaining cotton has been more evenly distributed among the other grades.

Aside from this concentration of cotton into a few grades, informed comments from the trade have been received which assert that the grade standards are too close together and not easily differentiated, especially Grade Nos. 6 through 9. As measured on the colorimeter, the color range of the nine physical American Pima standards covers a reflectance area equivalent to only 3½ Upland cotton grades.

The closeness of the grades is emphasized by the Cotton Division's measurement of color within bales of American Pima cotton purchased for use in standards work. Samples from bales in the lower grades often show a color variability of up to 3 grades within the same bale of cotton, and sometimes 4 grades.

In addition, the narrow color tolerances in the lower grades of the present standards are not justified by marketing data. The volume of cotton falling into the low grades is very small and the price differences are insignificant. This is largely attributable to the fact that the spinning performance of American Pima cotton is not easily differentiated among the lower grades.

On the basis of the above information, a reduced number of American Pima cotton grade standards will provide a more meaningful description of the range of quality found in the crop than do the current standards.

Public Meetings

AMS held a series of informal open meetings with interested members of the public to discuss the need to revise the standards and the anticipated revisions. These meetings took place in El Paso, Texas on September 10, 1984; Phoenix, Arizona on September 11, 1984; and San Antonio, Texas on January 25, 1985. All segments of the U.S. cotton industry that will be affected by changes in the standards were represented at these meetings. Comments were solicited and questions answered. All of those voicing an opinion were in favor of the revisions proposed herein.

Proposed rulemaking was published in the April 25, 1985 **Federal Register** at 50 FR 16264 and invited comments for 30 days ending May 28, 1985. One written comment endorsing the proposal was received from the Supima Association of America, an organization whose members are producers of extra-long staple cottons. No adverse comments were received.

The proposed physical standards were presented at a formal American Pima Standards Conference held by the Cotton Division, AMS, in Memphis, Tennessee, May 15, 1985. Twenty-six participants represented the interests of producers, ginners, merchants, and the textile industry. They were afforded the opportunity to inspect the proposed standards on display and to examine the supporting data. All expressed support of the proposal. This final rule does not differ from the proposed rule.

Revisions

In consideration of the foregoing, AMS will reduce the number of physical grade standards for American Pima cotton from 9 to 6. This revision involves consolidating some of the existing grades and adjusting the amount of trash in each of the revised grades. Concurrently, each of the physical grade standards will be revised to include more color. The color quadrants of the physical standards are to be extended to include more creamy yellow as determined by the colorimeter, thus encompassing a larger portion of the crop.

The revised grade standards will roughly compare to the current grade standards as follows:

Revised standards	Current standards	
	Color reading	Approximate leaf and/or bark levels
Grade 1	Grades 1 and 2	Grade 2.
Grade 2	Grade 3	Grade 3.
Grade 3	Grade 4	Grade 4.
Grade 4	Grade 5	Grade 5.
Grade 5	Grades 6 and 7	Grade 7.
Grade 6	Grades 8 and 9	Grade 9.
Grade 7	Grade 10	Grade 10.

These revisions are effected by revising § 28.507 to designate Grade No. 7 as the descriptive standard for all cotton inferior in grade to Grade No. 6. Grade Nos. 8, 9, and 10 are removed by deleting §§ 28.508, 28.509, and 28.510.

The table of symbols and code numbers for grades of American Pima cotton contained in § 28.525 is also amended to conform with the revisions to the standards.

The physical standards are represented by practical forms which are available for purchase pursuant to section 28.123 of the regulations. The fees charged for practical forms will be reviewed and changed if necessary and appropriate.

List of Subjects in 7 CFR Part 28

Cotton, Samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

PART 28—[AMENDED]

Accordingly, Subpart C, Part 28, Chapter I, Title 7 of the Code of Federal Regulations is amended as shown. The Table of Contents amended accordingly.

1. The authority citation for Part 28, Subpart C reads as follows:

Authority: Secs. 28.501 to 28.525 issued under Sec. 10, 42 Stat. 1519, 7 U.S.C. 61. Interpret or apply Sec. 6, 42 Stat. 1518, as amended; 7 U.S.C. 56.

2. In all of the following sections the date "1970" is removed and replaced with "1986":

§§ 28.501, 28.502, 28.503, 28.504, 28.505, 28.506.

3. Section 28.507 is amended by revising it to read as follows:

§ 28.507 Grade No. 7.

American Pima cotton which in grade is inferior to Grade No. 6 shall be designated as "Grade No. 7."

§§ 28.508, 28.509, 28.510 [Removed]

4. Sections 28.508, 28.509, and 28.510 are removed.

5. Paragraph (b) of § 28.525 is amended by revising it to read as follows:

§ 28.525 Symbols and code numbers.

* * * * *

(b) *Symbols and Code Numbers for Grades of American Pima Cotton.*

Full grade name	Symbol	Code No.
Grade No. 1	AP 1	01
Grade No. 2	AP 2	02
Grade No. 3	AP 3	03
Grade No. 4	AP 4	04
Grade No. 5	AP 5	05
Grade No. 6	AP 6	06
Grade No. 7	AP 7	07

* * * * *

Dated: June 13, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-14617 Filed 6-17-85; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 1207

Potato Research and Promotion Plan, Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amends the Rules and Regulations issued pursuant to the Potato Research and Promotion Plan. The Plan authorizes a national potato promotion program. The amendment titles the six subsidiary officers on the Potato Board Executive Committee vice presidents. This change brings the rules and regulations into conformance with the Bylaws as revised in March 1985.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-2036.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a

"nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Marketing Programs, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The rule merely makes changes in the titles of two of the Potato Board Executive Committee members to conform with the provisions of the Bylaws recently revised by the Board.

The Potato Board is the administrative agency established by the Potato Research and Promotion Plan (7 CFR Part 1207). The Plan is effective under the Potato Research and Promotion Act (7 U.S.C. 2611–2627).

At its public annual meeting at Denver, Colorado, on March 14–16, 1985, the Potato Board amended its Bylaws to specify that the Executive Committee of the Potato Board shall be composed of the President and six Vice Presidents, one of whom shall also serve as the Secretary and the Treasurer. Previously the Executive Committee has been composed of the President, four Vice Presidents, a Secretary and a Treasurer. This rule will amend the Rules and Regulations to conform with the recently changed Bylaws.

Findings

Notice was given in the **Federal Register** of May 6, 1985 (50 FR 19026) allowing interested persons until June 5, 1985, to file comments; and none was received. After consideration of all relevant matters, including the proposal set forth in the notice, it is hereby found that this amendment will tend to effectuate the Potato Research and Promotion Act.

It is further found that under the administrative procedure provisions in 5 U.S.C. 553, it is impractical and unnecessary to delay the effectiveness of this amendment until 30 days after publication in the **Federal Register** for the reasons that (1) No substantive change of rule is involved, and (2) this amendment merely formalizes a change already enacted in the Board's bylaws.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Potatoes.

PART 1207—POTATO RESEARCH AND PROMOTION

1. The authority citation for Part 1207 is revised to read as follows:

Authority: Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627, as amended.

2. Section 1207.507 is hereby amended by revising paragraph (a) to read as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 25 members. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the President, and six Vice Presidents, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

Dated: June 12, 1985.

William J. Doyle,

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

[FR Doc. 85–14473 Filed 6–17–85; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 313

[Docket Number 82–021F]

Electrical Method of Slaughter

AGENCY: Food and Safety Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations by permitting the use of electrical devices that induce instantaneous cardiac arrest in animals as a means of slaughter. Current regulations require that animals must die from loss of blood resulting from the bleeding operation and not from the electrical shock. This rule change is based upon scientific research published in the literature which indicates that the procedure is an effective and humane slaughter method.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Karen M. Wesson, Acting Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a "major rule" as defined under Executive Order 12291. It will not 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 geographic regions; or 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.

Because this procedure provides an optional method of humane slaughter, there will not be any new cost burdens mandated for the industry.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because this procedure provides an optional method of humane slaughter that will not require any equipment or facility changes.

Background

The Secretary of Agriculture has been charged with the responsibility of assuring that livestock slaughter is conducted in a humane manner (7 U.S.C. 1901 *et seq.*). The Secretary is further "authorized and directed to conduct, assist, and foster research, investigation, and experimentation . . ." into humane slaughter methods (7 U.S.C. 1904(a)). This rule will provide an alternative procedure for slaughter consistent with the Secretary's mandate.

Until recently, it was generally believed that the continued pumping action of the heart was essential for proper exsanguination of food animals at slaughter. For this reason, the current regulations require that food animals must die from blood loss. To accomplish this in a humane manner, the regulations further mandate that livestock be stunned, that is, rendered insensible, prior to bleeding. Several different humane slaughter stunning methods have been approved: carbon dioxide gas, gunshot or captive bolt, and electrical current (9 CFR Part 313).

The Department has reviewed data published in the scientific literature which indicates that meat from animals killed outright by an electric current compares favorably in quality with that from animals stunned and killed under the traditional methods of slaughter. By applying high voltage electricity using certain techniques, the animal's heart is instantaneously stopped and there is an immediate cessation of circulation to the brain, thus rendering the animal insensible. Such a method of slaughter, which is sometimes referred to as "deep stunning" or "electrical slaughter," has

been used effectively in New Zealand and other countries (Ref. 4, 5, 7, 12).[1]

The electrical slaughter method has proved to be efficient and effective for the smaller species such as hogs, calves, and sheep. However, there is not, at this time, sufficient data to indicate that the method would be practical for the larger species such as cattle and horses.

Although conflicting data exist concerning bleedout time when electrical slaughter is used (Ref. 7, 12), the weight of blood lost appears identical to that achieved using other stunning methods (Ref. 4, 7, 12). Additionally, the color of the meat, the amount of residual blood present, and the heme pigment concentration of the meat, which is a good indicator of hemoglobin and, therefore, the amount of retained blood in the muscle, are comparable (Ref. 12).

The traditional method of electrical stunning often results in agonal hemorrhages in the muscle and fat, commonly known as "blood splashing" and "fat speckling." The major advantage of electrical slaugther appears to be that it causes fewer hemorrhages than are commonly associated with electrical stunning.

It is not entirely clear why electrical slaughter reduces the occurrence of blood splashing and fat speckling, but the reduction may be due to the decrease in blood pressure resulting from electrical slaughter (i.e., death) in contrast to the increase in blood pressure which occurs during conventional electrical stunning (Ref. 1, 5, 7). The phenomenon of fewer blood splashes may also be related to the decreased thrashing of the animals which results when the electrical slaughter procedure is used (Ref. 5).

In addition to the amount of voltage and amperage, the placement of electrodes is an important part of electrical slaughter. The traditional method of electrical stunning involves placing two electrodes on the animal's head. With this method, however, it is not possible to kill the animal outright without greatly increasing the amount of electric current and the length of application time. This, however, adversely affects carcass quality by causing an increase in agonal hemorrhages and damage to the hide.

To overcome these limitations, various techniques for applying the electric current have been devised. The two most effective electrical slaughter methods are head-to-back and head-to-foot. In head-to-back, two electrodes are placed on the head and a third is placed on the back in the mid-thoracic region. In head-to-foot, two electrodes are placed on the head and a third on a foot or a foreleg.

Due to the placement of the third electrode, both of these methods cause the electric current to flow over a large portion of the animal's body including the area of the heart. When electric current is applied by either of these methods, immediate unconsciousness and heart stoppage occur. Both of these methods appear superior to the traditional electrical stunning technique for decreasing blood splashing. Of the two, head-to-foot results in the lower incidence of fat speckling (Ref. 7).

When the traditional electrical stunning technique is used, the range of time that stunned animals remain unconscious varies for each species (Ref. 1, 2, 3, 5, 8). Although the time ranges may vary, this humane method, when applied properly, results in death from exsanguination before the animal regains consciousness.

Some researchers believe that the electrical slaughter method is a better way of slaughter than the traditional electrical stunning method because, when correctly applied, it guarantees permanent insensibility and, therefore, eliminates the chance of animal recovery (Ref. 1, 2). The Department has concluded, however, that there is not, at this time, sufficient data to justify mandating the use of electrical slaughter instead of electrical stunning. It will, however, monitor the application of both electrical stunning and electrical slaughter to determine if such action may be indicated at a later date.

Therefore, the Department is amending section 313.30 of the Federal meat inspection regulations (9 CFR 313.30) to permit the use of electric current at a level which will cause instantaneous cardiac arrest as an alternative method of humane slaughter.

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6. Kirton, A.H., Bishop, W.H., Mullord, M.M., and Frazerhurst, L.F., "Relationships Between Time of Stunning and Time of Throat Cutting and Their Effect on Blood Pressure and Blood Splash in Lambs," *Meat Science*, 2:199–206, (1978).

7. Kirton, A.H., Frazerhurst, L.F., Woods, E.G., and Chrystall, B.B., "Effect of Electrical Stunning Method and Cardiac Arrest on Bleeding Efficiency, Residual Blood and Blood Splash in Lambs," *Meat Science*, 5:347–353, (1981).

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9. Petersen, G.V. and Wright, D.R., "Observations of Subcutaneous Hemorrhagic Speckling in Lambs," *New Zealand Veterinary Journal*, 27:166–168, (1979).

10. Warriss, P.D., "Factors Affecting the Residual Blood Content of Meat," *Meat Science*, 2:155–159, (1978).

11. Warriss, P.D., "The Residual Blood Content of Meat—A Review," *Journal of the Science of Food and Agriculture*, 28:457–461, (1977).

12. Warriss, P.D. and Wotton, S.B., "Effect of Cardiac Arrest on Exsanguination in Pigs," *Research in Veterinary Science*, 31:82–86, (1981).

Discussion of Comments

Comments on the proposed rule were solicited from interested parties in the June 27, 1984, **Federal Register** (49 FR 26240). The comment period closed on August 27, 1984. During the comment period, the Agency received 36 comments—5 from meat processors, 2 from trade associations, 1 from a university, 25 from consumers, and 3 from special interest groups.

The following are summaries of those comments and the Agency's response to each comment:

A. Meat Processors

All the comments from the meat processors were in support of the proposal. They did suggest, however, certain modifications and/or deletions of wording in four areas as addressed below:

1. *Comment:* The term "surgical anesthesia" needs to be clearly defined in simple diagnostic terms, i.e., specific reflex actions.

Response: This term is used in the current regulations and is generally understood and accepted by industry and the inspection force to mean that an animal will not feel a painful sensation. The wording in the final rule has been modified to clarify this term.

2. *Comment:* The phrase "flexible or padded material" should be deleted and

[1] See "References" section for a list of scientific materials reviewed during the preparation of this rule.

substituted with the phrase . . . "shall be of a design and construction to avoid external hemorrhages and injury."

Response: This phraseology is used in the current regulations. The Department has determined from past practices that the required material allows for adequate protection of the animals while not being unduly burdensome to the packer.

3. *Comment:* There are no standards set for examining gauges, instruments, etc., by USDA inspectors, so the statement ". . . all indicators, instruments, and measuring devices shall be available for inspection by program inspectors" should be deleted from the proposal.

Response: This language is from the current rule which has proved to be effective and unburdensome to the industry. Although the Agency has no standards for examining gauges, etc., the availability of indicators, instruments, and measuring devices has been an indirect aid to Program inspectors in determining that animals are being stunned properly and humanely.

4. *Comment:* The term "insensibility immediately" needs to be clarified into layman's language. Clarification of the term should be in terms of reflex action.

Response: The term "insensibility immediately" has been replaced in the final rule by the term "surgical anesthesia," which is more precise, and understood by the layman to mean that an animal will not feel a painful sensation.

B. Trade Associations

Comments from the trade associations included concerns with modifications and/or deletions of wording. These concerns were answered previously in the responses to the meat processors' comments. In addition, the trade associations were concerned with the possibility that this method may be mandated. This is addressed in our response.

Comment: The use of electrical slaughter has not been studied adequately for application to cattle. Cattle slaughterers are against mandating this form of slaughter at this time.

Response: The Department has concluded, that there is not, at this time, sufficient data to justify mandating the use of electrical slaughter. This rule would permit the use of electric current at a level which would cause instantaneous cardiac arrest as an *alternative* method of humane slaughter.

C. University

The university supported the proposed method stating that it has "a great deal of merit."

D. Consumers

While most of the comments from consumers were favorable, the following questions and concerns were expressed.

1. *Comment:* Could the expense involved in implementing the new method be a barrier to its widespread use?

Response: The Department does not know at this time, nor does it have the data to show, the cost of equipment being developed to handle the application of the new method. The industry has shown a great deal of interest in implementing the method and some industry members have concluded that the expense would not constitute a barrier to its use.

2. *Comment:* Electrical slaughter of hogs will cause bone breakage and carcass damage.

Response: As discussed in the proposed rule, various new techniques have been devised for applying electric current to overcome adverse effects of carcass quality. The two most effective electrical slaughter methods are head-to-back and head-to-foot placement of electrodes. Data published in the scientific literature indicates that meat from animals killed outright by an electric current compares favorably in quality with that from animals stunned and killed under the traditional methods of slaughter. Such methods have been used effectively in New Zealand and other countries.

3. *Comment:* Why change the proven procedures when the approved stunning method for cattle passes on better meat quality to the consumer?

Response: This rule will not change the approved humane slaughter methods, but will provide to industry an alternative method to the traditional methods of slaughter.

4. *Comment:* If the new method is more humane than the other methods, why is it not made a mandatory rule?

Response: The traditional methods, when correctly applied, are as humane as the new method. Some researchers do believe, however, that the new method is a better way of slaughter than traditional electrical stunning method because, when correctly applied, it guarantees heart stoppage and eliminates the chance of animal recovery before exsanguination. Although the new method may be used on the larger species, the scientific literature indicates, at this time, that the new method would be practical only for the smaller species such as hogs, calves, and sheep. The Department, however, has concluded that there is not, at this time, sufficient data to justify mandating the use of electrical slaughter in place of electrical stunning for the smaller species as a more humane method.

5. *Comment:* The animal cannot be bled as effectively if the heart is not beating.

Response: As discussed in the proposed rule, data published in the scientific literature indicates that when electrical slaughter is used, the weight of blood lost appears identical to that achieved using other stunning methods. Additionally, the color of the meat, the amount of residual blood present, and the heme pigment concentration of the meat are comparable. Supporting studies in the scientific literature are cited in the proposed rule. (See Reference List in Background Statement).

E. Special Interest Groups

All comments were in support of the new rule. One concern was expressed in regard to training of personnel.

Comment: Operators should be adequately trained and supervised in the use of equipment when using the new method.

Response: The Department agrees with the commentor, in that operators should be adequately trained and supervised in the use of electrical slaughter equipment. An error in application would still result in an adequate amount of electricity to stun the animal humanely as used in the traditional stunning method. However, the Department has determined that inadequate application of the new method by the packer would decrease the quality of the meat; therefore, it is expected that the packer will independently assure that the method is properly utilized and that his employees are properly trained.

Final Rule

FSIS has determined that the use of electrical slaughter offers a viable and human alternative to the existing methods of stunning. Producers who choose to implement electrical slaughter must comply with the requirements of the final rule as listed below.

After careful consideration of the comments received following the publication of the proposed rule in the **Federal Register** June 27, 1984, (49 FR 26240), FSIS is adopting the proposal with minor changes as discussed in the preamble.

As required by 1 CFR 18.20 (46 FR 1762, January 22, 1981), the following are the indexing terms for this regulation:

List of Subjects in 9 CFR Part 313

Humane slaughter, Electrical Stunning, Meat inspection.

PART 313—[AMENDED]

Accordingly, § 313.30 of the Federal meat inspection regulations (9 CFR 313.30) is amended to read as follows:

1. The authority citation for Part 313 continues to read as follows:

Authority: 92 Stat. 1069, 72 Stat. 862, 34 Stat. 1260, 79 Stat. 903 as amended, 81 Stat. 91, 438; 21 U.S.C. 71 *et seq.*; 601 *et seq.*; 7 U.S.C. 1901–1906.

2. In § 313.30 (9 CFR 313.30) the introductory paragraph and paragraphs (a)(1), (a)(2), (a)(4) and (b) are revised to read as follows:

§ 313.30 Electrical; stunning or slaughtering with electric current.

The slaughtering of swine, sheep, calves, cattle, and goats with the use of electric current and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the Act.

(a) *Administration of electric current, required effect; handling.* (1) The electric current shall be administered so as to produce, at a minimum, surgical anesthesia, i.e., a state where the animal feels no painful sensation. The animals shall be either stunned or killed before they are shackled, hoisted, thrown, cast, or cut. They shall be exposed to the electric current in a way that will accomplish the desired result quickly and effectively, with a minimum of excitement and discomfort.

(2) The driving or conveying of the animals to the place of application of electric current shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the place of application is essential to ensure rapid and effective insensibility. Among other things, this requires that, in driving animals to the place of application, electrical equipment be used as little as possible and with the lowest effective voltage.

* * * * *

(4) The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking, and bleeding.

(b) *Facilities and procedures; operator*—(1) *General requirements for operator.* It is necessary that the operator of electric current application equipment be skilled, attentive, and aware of his or her responsibility.

(2) *Special requirements for electric current application equipment.* The ability of electric current equipment to perform with maximum efficiency is dependent on its proper design and efficient mechanical operation. Pathways, compartments, current applicators, and all other equipment used must be designed to properly accommodate the species of animals being anesthetized. Animals shall be free from pain-producing restraining devices. Injury of animals must be prevented by the elimination of sharp projections or exposed wheels or gears. There shall be no unnecessary holes, spaces or openings where feet or legs of animals may be injured. Impellers or other devices designed to mechanically move or drive animals or otherwise keep them in motion or compartmentalized shall be constructed of flexible or padded material. Power activated gates designed for constant flow of animals shall be so fabricated that they will not cause injury. All equipment used to apply and control the electrical current shall be maintained in good repair, and all indicators, instruments, and measuring devices shall be available for inspection by Program inspectors during the operation and at other times.

(3) *Electric current.* Each animal shall be given a sufficient application of electric current to ensure surgical anesthesia throughout the bleeding operation. Suitable timing, voltage and current control devices shall be used to ensure that each animal receives the necessary electrical charge to produce immediate unconsciousness. The current shall be applied so as to avoid the production of hemorrhages or other tissue changes which could interfere with inspection procedures.

Done at Washington, D.C., on: May 21, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–14477 Filed 6–17–85; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Part 318

[Docket No. 80-054F]

Production of Dry Cured or Country Ham Not Using Prescribed Methods To Destroy Trichina

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Partial waiver of final rule.

SUMMARY: This notice announces the Food Safety and Inspection Service's (FSIS') intent to permit producers of dry cured or country ham not currently using one of the two prescribed methods for destroying trichina in pork to continue to use nonconforming methods beyond the effective date of August 6, 1985. This approach will both protect consumers and permit dry cured or country ham producers to continue production while research concerning the effectiveness of current processing techniques is undertaken.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3840.

SUPPLEMENTARY INFORMATION:

Background

Section 318.10(c)(3)(iv) of the Federal meat inspection regulations (9 CFR 318.10(c)(3)(iv) provides two methods of destroying any possible live trichina while processing dry salt cured hams, one of which may be used to manufacture country hams. These two methods have been in use for over 50 years.

A final rule prescribing a third method for destroying live trichina in dry salt cured hams and which could also be used for country hams was published on February 7, 1985 (50 FR 5226), and is effective August 6, 1985. With the development and publication of the third method, FSIS believed it had addressed *all* dry curing methods currently in use. However, FSIS has recently learned that many of the smaller dry cured or country ham producers use methods which still do not meet the requirements of either of the two prescribed methods. These producers use ambient temperatures that may not meet the time/temperature requirements; use a curing process that does not include a mid-cure re-exposure of the ham to salt (overhaul); wash the ham before the required curing time is completed; or in some way do not meet the requirements. For several years, the Agency has permitted the use of nonconforming processing methods since they were traditional, decade-old methods believed to be effective in destroying trichina. In addition, the Department has not received any reports of trichinosis occurring from ingestion of any dry cured or country hams.

Because of the inability of certain producers to meet the effective date and since there have been no reported cases of trichinosis from products not treated under the three prescribed methods, FSIS, is permitting processors of dry cured or country hams utilizing trichina treatment methods not incompliance with 9 CFR 318.10(c)(3)(iv) to continue production under the following conditions.

1. Any dry cured or country hams in processing prior to August 6, 1985, will be controlled under the two methods currently in the regulations.

2. Dry cured ham producers using processing techniques not covered by the regulations must submit a description of their processes, through their inspector, to the Processed Products Inspection Division, by August 6, 1985. A description of the process must contain:

a. The average and maximum ham weight;

b. The cure and the smoking times and temperatures, and, if used, heating times and temperatures;

c. The amount of salt used and how applied, and, if applicable, how reapplied and/or replenished;

d. If and when hams are washed.

3. Dry cured and country ham producers will be permitted to continue using their current processes until December 31, 1986, unless:

a. Upon initial review of the process, the Administrator determines that the method is not likely to prove effective; or

b. Data become available to substantiate the effectiveness or ineffectiveness of the method.

Research will be conducted between now and December 31, 1986, to find one or more additional effective processing methods. The Administrator believes that it is reasonable to permit these producers to continue using their existing methods beyond the August 6, 1985, effective date of the regulation. This approach will both protect consumers and permit dry cured or country ham producers to continue production while research concerning the effectiveness of current processing techniques is undertaken.

Done at Washington, DC, on: June 6, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-14475 Filed 6-17-85; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Parts 322 and 381

[Docket No. 84-011F]

Exempting Military Shipments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On January 11, 1985, the Food Safety and Inspection Service (FSIS) published a proposed rule to exempt United States military shipments of meat and poultry products intended for export from the export stamp requirement. In addition, the proposed rule would add the two exemptions currently provided in the meat inspection regulations to the poultry products inspection regulations. FSIS solicited comments on the proposed rule. No comments were received. FSIS has determined that the proposed rule should be made a final rule. This action is necessary because presently the Federal meat inspection regulations contain only two limited exemptions to its requirement that the outside container of meat and meat products intended for export must be marked with an official export stamp bearing the number of the export certificate. The poultry products inspection regulations do not mandate the issuance of export certificates, but provide for their issuance upon request. If issued, the export container must be stamped with the export certificate number. The poultry products inspection regulations do not provide for any exemptions for omitting the export stamp when export certificates are issued. FSIS is, therefore, also adding the two exemptions currently provided in the meat inspection regulations to the poultry products inspection regulations.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Mikita, Acting Director, Export Coordination Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-9051.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. It will not 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 geographic regions; or 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. The final regulation only codifies existing Agency practices.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The final regulation only codified existing Agency practices.

Background

On January 11, 1985, FSIS published in the **Federal Register** (50 FR 1540) a proposed rule to exempt United States military shipments of meat and poultry products intended for export from the export stamp requirement. The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) requires that meat and meat products intended for export be accompanied by a certificate issued by an authorized inspector indicating that the products are sound and wholesome, unless the Secretary waives the requirements of such certificate (21 U.S.C. 617). Further, the Federal meat inspection regulations require that the outside containers of products intended for export be marked with an official export stamp bearing the number of the export certificate (9 CFR 322.1(a)). The Federal meat inspection regulations provide two exemptions to this export stamp requirement—product intended for ship stores and small quantities of product consigned to an individual exclusively for personal use and not for sale or distribution.

While the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) does not require that a certificate accompany poultry and poultry products intended for export, most exporters and importing countries do require some form of certification indicating the product's wholesomeness. The poultry products inspection regulations require that the outside containers of products covered by an export certificate be marked with a stamp bearing the number of the export certificate (9 CFR 381.105(a)). The poultry products inspection regulations do not currently provide for any exemptions from this export stamp requirement.

The Department of Defense (DOD) assembles shipments of meat and poultry products in military staging warehouses in the United States. The shipments have been inspected and certified for export by USDA. The

shipments are disassembled and reassembled in the warehouses to meet the specific needs of military bases located outside of the United States. DOD military veterinary officers recertify the reassembled shipments for export by using information obtained from the export certificates and identify the outside containers with special symbols, including contract number and specifications. As a matter of policy, FSIS has allowed U.S. military shipments of meat and poultry products intended for export to be exempted from the export stamp requirement. FSIS is amending the Federal meat inspection and poultry products inspection regulations to reflect this policy by adding U.S. military shipments as an exemption from the export stamp requirement. Concurrently, FSIS is amending the poultry products inspection regulations by adding the two current exemptions contained in the meat inspection regulations relating to ship stores and personal use.

Comments on the Proposed Rule

FSIS did not receive any comments in response to the proposed rule.

After careful consideration of all relevant information available to FSIS, the Administrator has determined that the proposed rule should be published as a permanent regulation as set forth below.

Final Rule

As required by 1 CFR 18.20 (46 FR 1762, January 22, 1981), the following are the indexing terms for this regulation:

List of Subjects

9 CFR Part 322

Meat inspection, Exports.

9 CFR Part 381

Poultry products inspection, Exports, Official marks, Devices and Certificates.

PART 322—[AMENDED]

1. The authority citation for Part 322 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; (21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254).

2. Section 322.1(a) (9 CFR 322.1(a)) is revised to read as follows:

§ 322.1 Manner of affixing stamps and marking products for export.

(a) The outside container (including cloth wrappings) of any inspected and passed product for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, shall be marked with an official export stamp, as shown in § 312.8 of this subchapter, bearing the number of the export certificate.

* * * * *

PART 381—[AMENDED]

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

Authority: 71 Stat. 441, 76 Stat. 110, as amended, Sec. 14 (21 U.S.C. 451 *et seq.*).

4. Section 381.105(a) (9 CFR 381.105(a)) is revised to read as follows:

§ 381.105 Export certification; marking of containers.

(a) Upon request or application by any person intending to export any poultry product, any inspector is authorized to issue an official export certificate as prescribed in § 381.107 with respect to the shipment to any foreign country of any inspected and passed poultry product, after adequate inspection of the product has been made by the inspector to determine its identity as inspected and passed and eligible for export: *Provided*, that the product is offered for inspection at an official establishment. Each shipping container covered by the export certificate, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, shall be marked with an official export stamp as shown in § 381.104 bearing the number of the export certificate. Official export certificates will be issued only upon condition that the products covered thereby shall be subject to reinspection at any place and at any time prior to exportation to determine the identity of the products and their eligibility for certification, and such certificates shall become invalid if such reinspection is refused or discloses that the products are not eligible for certification. If reinspection discloses that any poultry products covered by an export certificate are not eligible for such certification, a superseding certificate setting forth such findings shall be issued and copies shall be furnished to interested persons.

* * * * *

Done at Washington, D.C., on May 21, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-14476 Filed 6-17-85; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Charges for the Production of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The amendments are necessary in order to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at its headquarters at 1717 H Street, NW, Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the reproduction of records at the PDR have traditionally been accommodated by a copying service contractor selected by the NRC. The schedule of reproduction charges to the public established in the copying service contract is set forth in 10 CFR 9.14 of the Commission's regulations. The NRC has recently awarded a new copying service contract. The revised fee schedule reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the reproduction of records at the PDR.

Because these are amendments dealing with agency practice and procedures, the notice provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). In addition, the PDR users were notified on June 3, 1985, that the new contract was being awarded and that the new prices would go into effect on June 10, 1985. The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with agency procedures.

Regulatory Flexibility Act

5 U.S.C. 552(a)(4)(A) requires the NRC, as a Federal agency, to promulgate regulations ". . . specifying a *uniform* schedule of fees applicable to all constitutent units of such agency." (emphasis added). Therefore, no analysis of any differential impacts on small entities is necessary.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore in not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552 and 31 U.S.C. 9710. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.14, paragraphs (a)(1) and (b)(1) are revised and paragraph (f) is added to read as follows:

§ 9.14 Charges for production or records.

(a)(1) Charges for the copying of records at the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC by the copying service contractor are as follows:

(i) Five cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charges vary as follows depending on the reproduction process that is used: Xerographic process—$1.25 per square foot for large documents or engineering drawings (random size up to 24 inches in width and with variable length) reduced or full size; Photographic process—$7.00 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width up to a maximum size of 42 inches in length) full size only.

(ii) Five cents per page for microform to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charge is $1.25 per square foot or $2.60 for a reduced size print (18 x 24 inches).

(iii) Seventy-five cents per microfiche to microfiche.

(iv) One dollar per aperture card to aperture card.

* * * * *

(b) * * *

(1) Sizes up to 8½ x 14 inches made on office copying machines—$0.05 per page of copy.

* * * * *

(f) Charges for production of records in Local Public Document Rooms. Charges for the reproduction of NRC documents located in NRC Local Public Document Rooms (LPDRs) may vary according to location.

Dated at Bethesda, Maryland, this 11th day of June 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85-14635 Filed 6-17-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[85-462]

Mortgage-Backed Securities

Dated: June 10, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is adopting a statement of policy concerning the accounting for reverse repurchase agreements, dollar reverse repurchase agreements, dollar reverse repurchase agreements which are rolled forward, and the rollover of forward commitments to acquire mortgage-backed securities for all reports submitted to the Board or to the Corporation. It is the intention of the Board by adopting this statement of policy to eliminate confusion and inconsistent accounting treatment in this area. The statement of policy will be made effective as of December 31, 1984, as the Board had notified the public it was proposing to do in the proposal.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas Bloom, Professional Accounting Fellow, Office of Examinations and Supervision (202-377-6392), or James H. Underwood, Attorney, Corporate and Securities Division, Office of the General Counsel (202-377-6649), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Board Resolution No. 84-679, dated November 30, 1984, the Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loans Insurance Corporation ("FSLIC" or Corporation), proposed to adopt a statement of policy pertaining to the regulatory accounting for certain mortgage-backed security transactions. The Board's action in this area was in response to the increasing activity by insured institutions in transactions involving the sale and repurchase of mortgage-backed securities. Since the accounting standard-setting bodies have not yet fully addressed certain aspects of these transactions, there currently exists considerable confusion and controversy regarding the distinction between the accounting for reverse-repurchase agreements, dollar reverse-repurchase agreements, dollar reverse-repurchase agreements which are subsequently "rolled" or extended, and the rollover of forward commitments to purchase mortgage-backed securities. As a result, inconsistent accounting treatment is being applied to similar transactions, which is of concern to the Board. The Board therefore decided to address this issue, taking into consideration the desirability of consistent accounting treatment as well as the need to retain a potentially economically sound financial tool for the thrift industry.

The Board's staff held numerous meetings with representatives of the accounting profession, investment banking firms and other informed persons during the development of the proposed statement of policy. The purpose of these meetings was twofold: (1) To develop criteria that could be used to assess whether dollar reverse-repurchase-agreement transactions involved securities that were substantially the same; and (2) to identify criteria that could be used to ascertain speculative rather than investment intent.

The Board received 24 comment letters addressing the proposal: 16 comments were received from insured institutions, three from trade groups, two from brokerage firms, one from the Securities and Exchange Commission ("SEC"), one from an accounting firm and one from the Financial Accounting Standards Board ("FASB"). While almost all of the letters supported the Board's proposed action in this area, a number of commenters made suggestions and raised issues; these are discussed below. After consideration of

the comments, the existing accounting literature and existing practices of the thrift industry and the marketplace in general, the Board has determined to adopt the statement of policy substantially as proposed, with modifications as described.

Discussion of Comments

Establishment of Generally Accepted Accounting Principles ("GAAP") by the Board

Six commenters took exception to language in the proposed statement of policy that was interpreted as an attempt by the Board to set GAAP. The Board recognizes and acknowledges that since 1973 the FASB has been the organization in the private sector designated to establish standards of financial accounting and reporting (GAAP). It is and was the Board's intention to rely upon the private sector to establish GAAP, as evidenced by the following excerpt from the November 30, 1984 proposal:

> In arriving at this proposed policy, the Board has considered existing accounting literature, as noted above, that it believes to be relevant to the transactions at hand and existing practices of the thrift industry and the marketplace in general. The accounting for these transactions is expected to be reviewed in the near future by authoritative accounting bodies. Generally accepted accounting principles ("GAAP") may be affected by those deliberations. The necessity of a Board policy statement in this area will be reassessed at such time.

To avoid any confusion or misunderstanding regarding the scope or applicability of this statement of policy, the Board has modified the wording of § 571.16(a) (to be codified at 12 CFR 571.16(a)) to state that "[t]he accounting treatment hereafter described . . . is to be used by all insured institutions when preparing reports or financial statements primarily for filing with the Board or the Corporation."

Holding Periods

Seven commenters addressed the proposed 35-consecutive-day holding period for qualification as an investment rather than a speculative holding. The comments were generally focused upon three aspects of this proposed policy: The initial and yearly holding periods, and holding periods prior to execution of a reverse-repurchase agreement.

1. Initial Holding Period

Six commenters felt that the proposed holding period was excessive. Commenters also agreed that, due to the operation of the mortgage securities market, the 35-day requirement would generally turn out to be much longer. On the other hand, one commenter felt that 35 days were inadequate.

In proposing the 35-day criterion, the Board was seeking to establish an objective and verifiable measure that could be used to assess management's purpose in acquiring and holding the mortgage-backed security. The Board preliminarily chose the 35-day period as adequate to serve this purpose without significantly reducing management's flexibility in operating an institution. Recently, the AICPA's Statement of Position "Accounting for Dollar Repurchase—Dollar Reverse Repurchase Agreements by Seller-Borrowers" was amended by the Accounting Standards Executive Committee of the AICPA to require a reasonable holding period, such as 35 days, for qualifying these types of transactions as investments, thus ratifying the Board's initial assessment of the period as reasonable.

Accordingly, the Board has decided to adopt the 35-day holding-period policy as proposed.

2. Yearly Holding Period

The Board has received a number of comments and was the beneficiary of a discussion by FASB's Emerging Issues Task Force regarding the types of transactions that would qualify under the Board's 35-day holding-period policy for dollar reverse-repurchase-agreement transactions. The Board has incorporated in its policy the suggestion so received that the yearly 35-day holding-period criterion cannot be satisfied by funding the acquisition of the security by means of a reverse-repurchase agreement. The Board notes that this would not apply to the initial 35-day holding period for the security prior to the execution of a dollar reverse-repurchase agreement; this initial holding period may be met if the security has previously been used for a reverse-repurchase agreement.

3. Holding Period Prior to Execution of a Reverse-Repurchase Agreement

Three commenters addressed the issue of a holding period for reverse-repurchase agreements, which was not addressed in the proposal. One commenter requested clarification of a holding period, if any, that would have to be met prior to the execution of a reverse-repurchase agreement; another commenter urged a 35-day (or longer) holding period for a mortgage-backed security prior to the execution of a reverse-repurchase agreement, while a third commenter stated that there was no need for the Board to regulate reverse-repurchase-agreement transactions.

The Board does not perceive a need to change the accounting policy applicable to reverse-repurchase-agreement transactions. Accordingly, the Board *has not* extended the initial-holding-period criterion to securities that are utilized for reverse-repurchase agreements.

Criteria to Determine "Substantially the Same" Securities

Five of the commenters pointed out that the definition of "good delivery security" used in the proposed policy statement applied only to Federal Home Loan Mortgage Corporation ("FHLMC") certificates, and argued that this did not provide sufficient flexibility to permit the market definition of good delivery for each type of mortgage-backed security to control the transactions. The Board has therefore clarified proposed paragraphs 571.16(c)(4)(v) and (c)(6) to indicate that the criterion to be used in this assessment is the criterion used by the market for the specific transaction.

Proposed § 571.16(c)(4)(iii) provided that mortgage-backed securities must have the same original stated term to maturity to qualify as substantially the same. One commenter opined that this criterion was not feasible and suggested that it be changed to require that the underlying mortgages collateralizing the security have the same original term to maturity. The Board agrees with the commenter that this change would better reflect substantially the same characteristics and the criterion has been modified accordingly.

One commenter noted that the "substantially the same" criteria proposed by the Board differ from those in the Proposed AICPA Statement of Position, "Definition of 'Substantially the Same'." The Board agrees that existence of conflicting criteria in this area is undesirable, and will monitor the progress of the AICPA's proposal and comments received upon it to determine whether future changes to its policy will be appropriate.

One of the brokerage commenters suggested that the Board broaden the definition of "substantially the same" to permit classification of a GNMA I mortgage-backed security as substantially the same as a GNMA II mortgage-backed security. The Board has reviewed these types of securities and notes that while in the GNMA I program the coupon rate on the mortgages collateralizing the security is the same as the coupon rate on the security, the GNMA II program permits a fairly large variance between the coupon rate on the loans versus the interest rate on the security. For this reason, the Board has determined not to

permit these types of securities to be classified as substantially the same. As noted above, the Board will monitor development of the AICPA's Proposed Statement of Position on the definition of "substantially the same." Should AICPA reach a conclusion that these types of instruments are substantially the same, the Board may re-examine its position.

Funding Test

Eight comments addressed the Board's proposal that institutions engaging in reverse-repurchase and dollar reverse-repurchase agreements demonstrate their ability to fund all outstanding positions. Three of the commenters felt that the funding test was nebulous and that is should be eliminated, while one commenter pointed out that a demonstrated ability to fund is not required for any other transaction. Two commenters stated that, without a showing of ability to fund the reacquisition of the reverse-repurchase and dollar reverse-repurchase agreements from short-term liquid assets, the funding test would not lead to the uniform reporting of these transactions. While not commenting specifically on the pros and cons of the funding test, two respondents stated that the manner in which the Board expected institutions to demonstrate their ability to fund these transactions was not explained in the proposed policy statement.

The Board initially considered proposing that insured institutions be able to demonstrate their ability to fund outstanding reverse-repurchase and dollar reverse-repurchase agreements from short-term liquid assets. Consideration of that approach arose in connection with the Board's concern that insitutions might structure transactions in a manner that exacerbated their interest-rate-risk exposure; i.e., using the mortgage-backed security for a short-term borrowing while investing the proceeds from the borrowing in long-term assets. While continuing to be concerned about this possibiility, the Board recognized that its "Interest-Rate-Risk Management" policy statement, adopted in August 1984 [cite], directed institutions to address their exposure to interest-rate risk, and therefore concluded that the short-term-liquid-assets funding test should not be necessary.

The funding test, included in the proposed policy statement at § 571.16(d)(2)(ii), has been modified to clarify that demonstration of that ability to fund could be met in a number of ways including, but not limited to, (1) having excess liquidity, (2) open lines of credit, and (3) unused borrowing capacity (such as Federal Home Loan Bank advances).

Aggregate Limitation on Forward Commitments

Two commenters objected that the inclusion of rolled commitments to purchase mortgage-backed securities as outstanding commitments subject to the limitations of § 563.17–3 would constitute "double counting." These commenters assumed that the rolled commitments would be recorded as liabilities, and therefore argued that the transactions should not be included with outstanding forward commitments for purposes of the § 563.17–3 limitations.

In response, the Board notes that when a commitment to purchase mortgage-backed securities is rolled, the transaction is to be recorded as a sale and commitment to purchase. It therefore follows that the outstanding liability would not be recorded by the institution. The Board did not intend nor does it believe that the stated policy would either put any new limitation on forward commitments or "double-count" a transaction.

Disclosure of All Open Positions

The accounting-firm commenter and the SEC both suggested that the Board require increased disclosure of repurchase transactions. The SEC suggested that this disclosure should encompass all repurchase transactions while the accounting firm focused upon the "disclosure of the financial statement effect of marking to market open forward-commitment dollar rolls in financial statements covering the transition period provided in 12 CFR 571.16(e)."

It is the Board's view that the question of the adequacy of financial-statement disclosure of repurchase-agreement transactions should be determined by the accounting standard-setting bodies.

Prospective Application

One commenter felt that proposed § 571.16(e)(4) failed to provide sufficiently comprehensive treatment for future rollovers of forward-commitment transactions, while another commenter suggested that the Board should exempt institutions from the provisions of the policy statement if the outstanding positions were less than two percent of assets. The Board made clear its intention to apply its policy equally to all institutions, and believes that the transition period provides adequate time to insured institutions to unwind any open positions.

Recordkeeping Requirement

Three commenters perceived the recordkeeping aspects of the policy statement as unnecessary and burdensome. In addition, certain information proposed to be disclosed to the board of directors of each institution involved in these transactions was considered irrelevant by several commenters.

After considering these comments and recognizing that the only reason for including these provisions was to provide institutions with a method of documenting that their accounting practices were consistent with the Board's policy, the Board has determined not to provide a recordkeeping or reporting format and has accordingly deleted the proposed provision.

Maximum Term for a Dollar Reverse-Repurchase Agreement

The proposed statement of policy limited the maximum term of a dollar reverse-repurchase agreement and a dollar reverse-repurchase agreement that is rolled forward or extended one year prior to taking the security into portfolio. It was suggested by one commenter that the one-year time period should be shortened.

The Board did not want to unnecessarily limit management's flexibility and thus chose the one-year time period as being representative of a short-term-debt type of transaction. The Board continues to be of the view that the one-year limit is reasonable and will not unduly restrict management flexibility.

Securities Covered by the Policy

The mortgage-backed securities most commonly utilized for the transactions noted above are Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (FHLMC), and Federal National Mortgage Association (FNMA) securities. The reference to these securities is not, however, intended to restrict application of this policy to those specific securities, as it also would apply to other similar mortgage-backed securities.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the policy.* These elements have been discussed

elsewhere in the supplementary information.

2. *Small entities to which the policy would apply.* The policy applies to all insured institutions.

3. *Impact of the policy on small institutions.* To the extent that the policy affects small institutions, this has been discussed elsewhere in the supplementary information.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the policy.

5. *Alternatives to the policy.* No other alternative would provide for consistency in accounting treatment of the covered activities.

List of Subjects in 12 CFR Part 571

Savings and loan associations, Federal Savings and Loan Insurance Corporation.

Accordingly, the Board hereby amends Part 571, Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority for 12 CFR Part 571 would continue to read:

Authority: Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071.

2. Add a new § 571.16 as follows:

§ 571.16 Mortgage-backed-securities transaction.

(a) *General.* (1) The accounting treatment described in this section for:

Reverse repurchase agreements;

Dollar reverse repurchase agreements;

Dollar reverse repurchase agreements—with rollovers or extensions;

Rollovers or extensions of forward commitments to purchase mortgage-backed securities ("forward commitment dollar rolls");

is to be used by all insured institutions when preparing reports or financial statements primarily for filing with the Board or the Corporation.

(2) The accounting treatment for mortgage-backed securities transactions depends on whether the transactions are, in substance, sales and purchases of securities, financing transactions, or the rollover of forward commitments to purchase securities. When the security to be repurchased is *not* either identical to or substantially the same as the security sold, the transaction is considered to be a sale and purchase and not a financing transaction. This differentiation is critical since a sale and purchase requires recognition of gain or loss upon initiation of the transaction; a financing does not. Gain or loss shall be recognized upon rollover of forward commitments to purchase mortgage-backed securities.

(3) Repurchase agreements to maturity must be accounted for as sales and purchases and are not discussed in this statement of policy.

(4) An insured institution engaging in mortgage-backed-securities financing arrangements shall have readily available the following information regarding such transactions:

(i) Type of security and the time it has been held in portfolio before being used to enter into the sell/buy;

(ii) Detail of prices, interest costs and cash flows at each rollover;

(iii) Broker or other party to the transaction;

(iv) Expiration date of the contract;

(v) A description of the security reacquired;

(vi) Documentation of the approval of the transactions by the institution's Board of Directors.

(b) *Reverse-repurchase agreements and rollovers of these agreements.* (1) A reverse-repurchase agreement is an agreement (contract) to sell and repurchase ("sell/buy") the *identical* mortgage-backed security within a specified time at a specified price. These transactions are equivalent to borrowing funds in an amount equal to the sales price of the related mortgage-backed security. For example, if an institution wishes to borrow funds with a mortgage-backed security as collateral, it may, in lieu of direct borrowing, arrange to temporarily sell the security with an agreement to repurchase the *identical* security on a future date at a specified price. During the term of this agreement, the institution continues to receive principal and interest payments on the security.

(2) In these transactions, mortgage-backed securities are "owned" and in the institution's investment portfolio prior to the initial sell/buy. For purposes of this statement of policy, "owned" means mortgage-backed securities which are in portfolio and have been acquired by the institution for investment purposes. Mortgage-backed securities which have been formed by the pooling of mortgage loans held by the institution meet these criteria.

(3) Reverse-repurchase agreements involve identical securities, and the substance of the transaction is a borrowing. These agreements shall be accounted for as financing transactions with no current gain or loss recognition at the time of the sell/buy. When funds are borrowed under a reverse-repurchase agreement, a liability shall be established for the amount of the proceeds. The investment mortgage-backed security account shall not be relieved of the collateral mortgage-backed security. Interest cost on these agreements shall be reported as an expense and not recorded net of interest income.

(4) Rollovers and extensions of reverse-repurchase agreements shall be accounted for based on the facts and circumstances at the time of the rollover or extension. When the rollover involves the *identical* security, the transaction shall continue to be accounted for as described in paragraph (b)(1) of this section.

(c) *Dollar reverse-repurchase agreements.* (1) A dollar reverse-repurchase agreement is an agreement (contract) to sell a mortgage-backed security from an investment portfolio and subsequently repurchase a mortgage-backed security, which is of the same issuer but which is not the original mortgage-backed security, within a specified time and at a specified price. Fixed-coupon and yield-maintenance dollar agreements are the most common agreements. In a fixed-coupon agreement, the seller and purchaser agree that delivery will be made with a mortgage-backed security having the same stated coupon interest rate as the security sold. In a yield-maintenance agreement, the parties agree that delivery will be made with a security that will provide the seller a yield that is specified in the agreement. During the term of the contract, the institution transfers the security to the lender and the security is no longer registered in the institution's name. The institution receives no principal and interest payments on the security during the agreement's term. The security to be repurchased is typically on a "to be assigned" basis, meaning the pools of mortgages to secure a reacquired security have been formed but not specifically identified.

(2) For purposes of this statement of policy, under the fixed-coupon dollar reverse-repurchase agreement, the mortgage-backed security to be sold must be initially owned by the institution and held in its investment portfolio for a minimum of 35 consecutive days prior to the initiation of the sell/buy contract. Securities which have been formed by the pooling of mortgage loans that have been held by the institution for 35 days meet this 35-day holding-period criterion.

(3) Fixed-coupon dollar reverse-repurchase agreements involving

substantially the same mortgage-backed securities should be accounted for as collateralized borrowing arrangements (financings).

(4) Mortgage-backed securities are considered substantially the same only when all of the following criteria are met:

(i) The securities are collateralized by similar mortgages (e.g., single-family residential mortgages for single-family residential mortgages);

(ii) They are of the same type of fixed-coupon instrument (e.g., GNMA for GNMA, FHLMC for FHLMC, FNMA for FNMA);

(iii) The mortgages collateralizing the securities must be similar as to maturities (that is, expected remaining lives) resulting in approximately the same market yield;

(iv) The securities have identical coupon interest rates; and

(v) The aggregate principal amounts of mortgage-backed securities given up and mortgage-backed securities reacquired must be within the accepted "good delivery" standard for the type of mortgage-backed security involved.

(5) The accounting for fixed-coupon dollar reverse-repurchase agreements is the same as the accounting for reverse-repurchase agreements. When funds are borrowed under this type of agreement, a liability shall be recorded for the amount of the proceeds. The investment mortgage-backed security account shall not be relieved of the collateral mortgage-backed security. Amortization of the original premium or accretion of the original discount and interest income of the original security shall continue to be recorded even if there is an exchange of fixed-coupon mortgage-backed securities.

(6) In conformance with paragraph (c)(4)(v) of this section, the aggregate principal amounts of the mortgage-backed securities sold and reacquired must be within the accepted delivery standards for the types of mortgage-backed security involved. If the principal amount of the securities repurchased in a fixed-coupon dollar reverse-repurchase transaction is greater than that of those originally sold, the difference shall be recorded in the investment account as though a separate acquisition of additional securities had occurred. If the principal amount is less, the investment account must be relieved of the proportionate share of mortgage-backed securities that have been sold, and gains or losses adjusted for the *pro rata* share of unamortized premium (or discount).

(7) To qualify as a financing for accounting purposes, the settlement term on the fixed-coupon dollar reverse-repurchase agreement shall not exceed twelve months from the initiation date (original "sell" date).

(8) A fixed-coupon agreement that contain a right-of-substitution clause or that provides an option to the lender to deliver mortgage-backed securities priced to result in a significantly different yield shall be accounted for in the same manner as a yield-maintenance agreement (i.e., current recordation of gains and losses).

(9) If the elements comprising the "substantially the same" criterion (set forth in paragraph (c)(4)), the holding-period criterion (set forth in paragraph (c)(2)), or the term-of-agreement criterion (set forth in paragraph (c)(7)) have not all been met, transaction shall be accounted for as a sale and purchase of mortgage-backed securities rather than as a financing. Thereafter, the position shall be marked to market as a speculative transaction in each accounting period until the securities are reacquired.

(10) The accounting for fixed-coupon dollar reverse-repurchase transactions entered into prior to December 31, 1984, shall be accounted for as specified in memoranda of the Office of Examinations and Supervision as furnished from time to time. For example, a transaction entered into on November 30, 1984, with a thirteen-month term would not be subject to the holding-period criterion, the "substantially the same" criteria (except that the securities must have identical coupon rates), or the length-of-time criterion for purposes of qualifying for financing accounting (through December 31, 1985), because the transaction was initiated prior to December 31, 1984. Transactions entered into on or after December 31, 1984, shall be accounted for as provided in this statement of policy.

(11) Yield-maintenance dollar reverse-repurchase agreements do not represent transactions involving substantially identical mortgage-backed securities and, therefore, must be accounted for as sales and purchases, regardless of when initiated.

(d) *Dollar reverse-repurchase agreements with rollovers or extensions.* (1) A rollover or extension of a dollar reverse-repurchase agreement occurs when an institution decides not to accept delivery of a fixed-coupon mortgage-backed security at the repurchase date but rather decides to "roll it forward" by means of a sell/buy transaction in which the position is offset and extended for another specified period of time. Typically, to the extent the market value of the fixed-coupon security has increased or decreased in value due to interest-rate fluctuations from the original sale date to the roll date, the institution will pay or receive payment for such price fluctuations. The other characteristics of a dollar reverse-repurchase agreement which are present in its initial term (e.g., no receipt of principal and interest payments, securities not registered in the institution's name) also are present in the "roll" periods.

(2) Once the roll period commences, the rolled fixed-coupon dollar reverse-repurchase agreement shall continue to be accounted for as a financing, when the following conditions exist:

(i) Within twelve months from the date of the initial sell/buy transaction (as described in paragraph (c)(1) of this section), the institution shall fund the security (this condition is not satisfied if the security is funded via a reverse-repurchase agreement), accept delivery, close out its position, and place in its investment portfolio the fixed-coupon mortgage-backed security. To qualify as being placed in the institution's investment portfolio, the security shall be registered in the institution's name. For future dollar reverse-repurchase transactions using these reacquired securities, in order for these transactions to be accounted for as financings, the security shall remain in the institution's investment portfolio for at least 35 consecutive days. These conditions are intended to demonstrate the institution's ability to fund the purchase of the securities and intent to hold the securities for investment purposes.

(ii) At all times during the rollover or extension period(s), the institution must be able to demonstrate the ability to fund its aggregate outstanding position of reverse-repurchase agreements and dollar reverse-repurchase agreements (i.e., the individual reverse-repurchase agreements and dollar reverse-repurchase agreements must be aggregated to determine if this criterion has been satisfied). The "ability to fund" condition may be met if the institution has (*a*) sufficient liquidity, (*b*) sufficient available borrowing capacity or (*c*) sufficient open lines of credit to fund all open positions.

(3) If the conditions of paragraphs (d)(2) (i) and (ii) of this section are not met, the transaction must be accounted for as a sale and purchase of mortgage-backed securities rather than as a financing at the beginning of the month the ability to fund has not been demonstrated or at the end of the twelve-month period, whichever comes first. Thereafter, the position must be marked to market in each accounting

period until the mortgage-backed securities are reacquired.

(4) The rollover at maturity of a fixed-coupon dollar reverse-repurchase agreement into a yield-maintenance dollar reverse-repurchase agreement results in a new contract. The rollover into the yield-maintenance agreement shall be accounted for as a sale and purchase of securities and the position marked to market in each accounting period thereafter until the mortgage-backed securities are reacquired.

(5) The policy applies as of December 31, 1984, for fixed-coupon dollar reverse-repurchase agreements which have been rolled and for rolls which occur after that date in order for them to be accounted for as in financing. (For example, assume a transaction was initiated on August 1, 1984, and had been rolled forward in 30-day rollover increments to January 1, 1985. The institution, beginning on December 31, 1984, would have to demonstrate its ability to fund the delivery of the substantially identical securities. Additionally, the institution would have to take delivery of the securities on or before December 31, 1985.)

(3) *Rollover of forward commitment to purchase mortgage-backed securities ("forward-commitment dollar rolls").* (1) A forward-commitment dollar roll is initiated when an institution enters into a forward commitment to purchase mortgage-backed securities on a "to be announced" basis ("TBA") at a specified price on a specified settlement date. On or before the settlement date, the institution decides to "roll" its position forward rather than accept delivery of the securities. The rollover is accomplished by the institution "offsetting" its position and extending the commitment to purchase a TBA at a specified later date.

(2) These transactions are not initiated with mortgage-backed securities held in portfolio but rather with a forward commitment to purchase. No significant cash is exchanged at the initial settlement date. During the roll period, the securities are not registered in the institution's name and the institution does not receive principal and interest payments on the securities. In many cases the TBA securities have not been identified because the pools to secure them have not been formed but are to be created in the future. At each rollover date, the institution pays or receives cash (similar to a margin call) from the broker for the change in market value of its position since the previous rollover settlement date. Interest costs due the broker may be netted against the margin call. This "net margin call" is the amount of cash which is exchanged during the rolling of the forward commitments. When these transactions are rolled, they are considered to be speculative in nature rather than the short-term financing, in addition to other forward commitments, are subject to the limitations specified in § 563.17-3 of this Subchapter.

(3) As of December 31, 1984, open forward-commitment dollar rolls entered into on or before that date may be treated as financings unless modified during the life of the contract, in which case the provisions of § 563.17-3(d) would apply, and profit or loss recognized by the institution at the time of modification. Any extension of these transactions beyond the earlier of this settlement date or March 31, 1985, any forward-commitment dollar rolls entered into after December 31, 1984, and any open forward-commitment dollar-roll transactions with a settlement date beyond March 31, 1985, shall be marked to market as of the earlier of each roll date or the date of filing reports with the Board or the Corporation after March 31, 1985. Application of mark-to-market accounting to those forward-commitment dollar-roll positions established prior to December 31, 1984, and expiring prior to March 31, 1985, is optional but encouraged.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-14555 Filed 6-17-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ANM-23]

Billings, MT, and Boise, ID; Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published descriptions of the Billings, Montana, and Boise, Idaho, transition areas. Two airways referred to in these descriptions have been revoked. This action does not increase the size of the transition areas, but makes only editorial changes in the description.

DATES: Effective date—0901 G.m.t. September 1, 1985. Comments must be received on or before August 14, 1985.

ADDRESSES: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-23, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-23, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves editorial changes to the descriptions of the Billings, Montana, and Boise, Idaho, transition areas, and thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with the other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to §71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make editorial changes to the published descriptions of the Billings, Montana, and Boise, Idaho, transition areas. **Federal Register** Document No. 84-12141 (49 FR 19292) and **Federal Register** Document No. 84-12142 (49 FR 19293) revoked two airways contained in the descriptions of these transition areas. This action does not enlarge the size of the transition areas, but makes only editorial changes in the descriptions.

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

Since this amendment is only editorial or corrective in nature, and imposes no

additional regulatory or economic burden on any person, notice and public procedure hereon are unnecessary.

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

List of Subjects in 14 CFR Part 71

Transition Areas, Aviation Safety.

Adoption of the Amendment

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Billings, Montana—[Revised]

That airspace extending upward from 700 feet above the surface within a 18-mile radius of Billings-Logan International Airport (lat. 45° 48' 25"N/long. 108° 31' 55"W); that airspace extending upward from 1,200 feet above the surface within a 36-mile radius of Billings-Logan International Airport; that airspace extending upward from 6,700 feet MSL within a 46-mile radius of the Billings VORTAC extending from the Billings VORTAC 008° radial clockwise to the 057° radial; that airspace extending upward from 6,700 feet MSL within a 58-mile radius of the Billings VORTAC exending from the Billings VORTAC 057° radial clockwise to the southwest edge of V-19/86 excluding the portion that overlies V-2; that airspace extending upward from 10,700 feet MSL within a 58-mile radius of the Billings VORTAC extending from the southwest edge of V-19/86 clockwise to the Billings VORTAC 192° radial excluding the portions that overlie VOR Federal airways; that airspace extending upward from 8,200 feet MSL within a 46-mile radius of the Billings VORTAC extending from the Billings VORTAC 192° radial clockwise to the northwest edge of V-465 excluding the portions that overlie VOR Federal airways; that airspace extending upward from 8,700 feet MSL within a 46-mile radius of the Billings VORTAC extending from the west edge of V-465 clockwise to the south edge of V-2/86; that airspace extending upward from 7,700 feet MSL within a 58-mile radius of the Billings VORTAC extending from the south edge of V-2/86 clockwise to the southwest edge of V-247 excluding that portion of V-2/86 that has a 1,200-foot AGL floor; that airspace extending upward from 6,700 feet MSL within a 58-mile radius of the Billings VORTAC extending from the north edge of V-247 clockwise to the Billings VORTAC 008° radial excluding those portions of V-187 and V-19 that have 1,200-foot AGL floors.

Boise, Idaho—[Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 43° 56' 00"N/long. 116° 33' 00"W; to lat. 43° 51' 15"N/long. 116° 25' 00"W; thence via a 21.5-mile radius arc, centered on the Boise VORTAC, clockwise to long. 116° 14' 00"W; to lat. 43° 45' 00"N/long. 116° 14' 00"W; to lat. 43° 31' 00"N/long. 115° 52' 00"W; to lat. 43° 20' 00"N/long. 115° 58' 00"W; to lat. 43° 25' 00"N/long. 116° 25' 00"W; to lat. 43° 42' 00"N/long. 116° 57' 00"W; thence to point of beginning; that airspace extending upward from 1,200 feet above the surface within a 35-mile radius arc from Boise VORTAC extending clockwise from the west edge of V-253 to V-4, within a 40-mile radius arc of Boise VORTAC extending clockwise from the north edge of V-4 southeast Boise to V-500, that airspace 8 miles each side of the Boise VORTAC 269° radial extending from the 40-mile radius arc to 57 miles west of the VORTAC, within 8 miles northeast and 11 miles southwest of the Boise VORTAC 295° radial, extending from the 40-mile radius arc to 75 miles northwest of the VORTAC; that airspace northwest of Boise bounded on the northwest by the McCall VORTAC 223° radial, on the east by the west edge of V-253 on the southwest by V-500; that airspace southeast of Boise extending upward from 9,000 feet MSL extending from the 35-mile radius arc bounded on the north by V-500, on the east by the southwest edge of V-293, on the south by the north edge of V-330 and on the southwest by the northeast edge of V-4; that airspace northeast of Boise extending upward from 11,500 feet MSL, bounded on the northeast by the southwest edge of V-293, on the south by the north edge of V-500, on the southwest by the 35-mile radius arc and on the west by the east edge of V-253.

Issued in Seattle, Washington, on June 3, 1985.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 85-14517 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 84-ASO-25]

Establishment of Jet Route J-207

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a jet route between Miami, FL, and Raleigh-Durham, NC, to improve traffic flow along the eastern seaboard and to provide an alternate north/south coastal route when missile/space launch and recovery activities preclude the use of the primary Atlantic Routes.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

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

SUPPLEMENTARY INFORMATION:

History

On March 26, 1985, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to relieve the present heavy flow of jet traffic operating in the Wilmington, DE, Charleston, SC, and Jacksonville, FL, areas (50 FR 11896). The new J-207 will facilitate a more efficient traffic flow in the north/south coastal corridor. The route will also serve as an alternate for such north/south traffic when missile/space launch and recovery activities preclude the use of the primary Atlantic Routes. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice, except J-207 route alignment has been altered to meet flight inspection criteria. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes a jet route between Miami, FL, and Raleigh-Durham, NC, to improve traffic flow along the eastern seaboard and to provide an alternate north/south coastal route when missile/space launch and recovery activity preclude the use of the primary Atlantic Route.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

1. The authority citation for Part 75 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. Section 75.100 is amended as follows:

J-207—[New]

From Miami, FL, via INT Miami 335° and Lakeland, FL, 001° radials; INT Lakeland 001° and Savannah, GA, 201° radials; Savannah; Florence, SC; to Raleigh-Durham, NC.

Issued in Washington, D.C., on June 7, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-14519 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24669; Amdt. No. 1296]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPS. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIPAs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Index

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Issued in Washington, D.C. on May 31, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

2. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

. . . Effective August 1, 1985

Hooper Bay, AK—Hooper Bay, VOR Rwy 13, Orig.
Hooper Bay, AK—Hooper Bay, VOR Rwy 31, Orig.
Hooper Bay, AK—Hooper Bay, VOR/DME Rwy 31, Orig.
Eunice, LA—Eunice, VOR/DME-A, Amdt. 4
Bozeman, MT—Gallatin Fld., VOR Rwy 12, Amdt. 12
Bozeman, MT—Gallatin Fld., VOR/DME Rwy 12, Amdt. 1

. . . Effective July 18, 1985

Mt Vernon, IL—Mt Vernon-Outland, VOR Rwy 5, Amdt. 12
Mt Vernon, IL—Mt Vernon-Outland, VOR Rwy 23, Amdt. 12
Bardstown, KY—Samuels Field, VOR/DME Rwy 2, Orig.
Laurel, MS—Hesler-Noble Field, VOR/DME-A, Amdt. 2
Berlin, NJ—Camden County, VOR-B, Amdt. 1
New York, NY—John F Kennedy INTL, VOR-D, Amdt. 8
Wellsville, NY—Wellsville Muni Arpt, Taratine Fld, VOR-A, Amdt. 4
Grand Forks, ND—Grand Forks-Mark Andrews Intl, VOR Rwy 17R, Amdt. 3
Grand Forks, ND—Grand Forks-Mark Andrews Intl, VOR Rwy 35L, Amdt. 3
Portsmouth, OH—Greater Portsmouth Regional, VOR/DME-A, Amdt. 3
Mitchell, SD—Mitchell Muni, VOR Rwy 12, Amdt. 5
Sioux Falls, SD—Joe Foss Field, VOR or TACAN Rwy 15, Amdt. 16
Sioux Falls, SD—Joe Foss Field, VOR or TACAN Rwy 33, Amdt. 7
Lynchburg, VA—Lynchburg Muni-Preston Glenn Field, VOR Rwy 3, Amdt. 10
Richmond, VA—Richard Evelyn Byrd Intl, VOR Rwy 25, Amdt. 13
Wheeling, WV—Wheeling Ohio Co, VOR Rwy 21, Amdt. 11
Ashland, WI—John F Kennedy Memorial, VOR Rwy 31, Amdt. 4
Mosinee, WI—Central Wisconsin, VOR/DME Rwy 35, Amdt. 5
Mosinee, WI—Central Wisconsin, VOR-A, Amdt. 7

. . . Effective July 4, 1985

Kansas City, KS—Fairfax Muni, VOR Rwy 17, Amdt. 12, Cancelled
Kansas City, KS—Fairfax Muni, VOR-D, Amdt. 6, Cancelled

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

. . . Effective July 18, 1985

Marietta, GA—McCollum, LOC Rwy 27, Amdt. 1
Olean, NY—Olean Muni, LOC Rwy 22, Amdt. 3
Wellsville, NY—Wellsville Muni Arpt, Tarantine FLD, LOC Rwy 28, Amdt. 2
Grand Forks, ND—Grand Forks-Mark Andrews Intl, LOC BC Rwy 17R, Amdt. 9

. . . Effective July 4, 1985

Kansas City, KS—Fairfax Muni, LOC Rwy 35, Amdt. 1, Cancelled
Kansas City, KS—Fairfax Muni, LOC-E, Amdt. 1, Cancelled

4. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

. . . Effective August 1, 1985

Brinkley, AR—Frank Federer Memorial, NDB Rwy 20, Amdt. 2, Cancelled
Brinkley, AR—Frank Federer Memorial, NDB-A, Orig.
Lompoc, CA—Lompoc, NDB-B, Orig.
Mapleton, IA—Mapleton Muni, NDB Rwy 20, Amdt. 2
Bozeman, MT—Gallatin Field, NDB Rwy 12, Amdt. 4

. . . Effective July 18, 1985

Birmingham, AL—Birmingham Muni, NDB Rwy 5, Amdt. 27
Des Monies, IA—Des Monies Intl, NDB Rwy 30R, Amdt. 16
Fall River, MA—Fall River Muni, NDB Rwy 24, Amdt. 7
Olean, NY—Olean Muni, NDB Rwy 22, Amdt. 10
Wellsville, NY—Wellsville Muni Arpt, Tarantine FLD, NDB Rwy 28, Amdt. 5
Kinston, NC Eastern RGNL Jetport at Stallings FLD, NDB Rwy 4, Amdt. 8
Portsmouth, OH—Greater Portsmouth Regional, NDB Rwy 36, Amdt. 1
Covington, TN—Covington Muni, Rwy 1, Amdt. 2
Morrisville, VT—Morrisville-Stowe State, NDB-A, Amdt. 6, Cancelled
Newport News, VA—Patrick Henry Intl, NDB Rwy 2, Amdt. 3
Newport News, VA—Patrick Henry Intl, NDB Rwy 7, Amdt. 2

. . . Effective July 4, 1985

Ash Flat, AR—Cherokee Village, NDB Rwy 4, Orig., Cancelled
West Plains, MO—West plains Muni, NDB Rwy 14, Orig., Cancelled
West Plains, MO—West plains Muni, NDB Rwy 32, Orig., Cancelled

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

. . . Effective August 1, 1985

Bozeman, MT—Gallatin Fld, ILS Rwy 12, Amdt. 5

. . . Effective July 18, 1985

Birmingham, AL—Birmingham Muni, ILS Rwy 5, Amdt. 35
Fort Lauderdale, FL—Ft Lauderdale-Hollywood Intl, ILS Rwy 27R, Amdt. 1
Gainesville, FL—Gainesville Regional, ILS Rwy 28, Amdt. 11
Mt. Vernon, IL—Mt Vernon-Outland, ILS Rwy 23, Amdt. 7
Des Moines, IA—Des Moines Intl, ILS Rwy 30R, Amdt. 17
Salisbury, MD—Salisbury-Wicomico County Regional, ILS Rwy 32, Amdt. 4
Kinston, NC—Eastern RGNL Jetport at Stallings FLD, ILS Rwy 4, Amdt. 7
Grand Forks, ND—Grand Forks-Mark Andrews Intl, ILS Rwy 35L, Amdt. 8
State College, PA—University Park, ILS Rwy 24, Amdt. 5
Sioux Falls, SD—Joe Foss Field, ILS Rwy 21, Amdt. 6
Lynchburg, VA—Lynchburg Muni-Preston Glenn Field, ILS Rwy 3, Amdt. 11
Newport News, VA—Patrick Henry Intl, ILS Rwy 7, Amdt. 26
Green Bay, WI—Austin Straubel Field, ILS Rwy 6R, Amdt. 18

. . . Effective May 24, 1985

Bluefield, WV—Mercer County, ILS Rwy 23, Amdt. 7

6. By amending § 97.33 RNAV SIAPs identified as follows:

. . . Effective July 18, 1985

Mt Vernon, IL—Mt Vernon-Outland, RNAV Rwy 5, Amdt. 5
Quincy, IL—Quincy Muni Baldwin Field, RNAV Rwy 13, Amdt. 3
East Hampton, NY—East Hampton, RNAV Rwy 28, Orig.
Olean, NY—Olean Muni, RNAV Rwy 22, Amdt. 3
Portsmouth, OH—Greater Portsmouth Regional, RNAV Rwy 18, Amdt. 3

. . . Effective July 4, 1985

Kansas City, KS—Fairfax Muni, RNAV Rwy 17, Amdt. 6, Cancelled
Kansas City, KS—Fairfax Muni, RNAV-C, Amdt. 8, Cancelled

[FR Doc. 85-14515 Filed 6-17-85 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 240 and 249

[Release Nos. 33-6584; 34-22118; 35-23717; IC-14561; FR-21]

Technical Amendments to Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today is publishing certain technical revisions relating to various rules and forms under the Securities Act of 1933 and the Securities Exchange Act of 1934. Such revisions correct technical omissions and errors in the affected areas.

DATE: The revisions are effective June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy Walker or John W. Albert, Office of the Chief Accountant (202-272-2130), or Howard Hodges, Division of Corporation Finance, (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing technical amendments to Regulation S-X, § 210.1-01 et seq., its rules relating to the form and content of and requirements for financial statements, and to various rules and forms under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. IV 1980)] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. IV 1980)]. The following rules and forms are affected by these amendments: Rules 1-01(a), 1-02(v), 1-02(x), 2-02(d), 3-03(e), 3-17(b), 3A, 4-08, 5-02(18), 5-03(11), 5-04(c), 6A-05(a), 7-03(a)(1)(h), 9-03.7(e)(4), 9-04(5), 9-04(9), 9-04(10), 10-01(b)(2), 10-01(b)(6), 12-01 and 12-05 of Regulation S-X [17 CFR 210]; Item 302(b) of Regulation S-K [17 CFR 229]; Rule 405 of Regulation C [17 CFR 230]; Rule 12-b2 of Regulation 12B [17 CFR 240]; and Instructions to Form 11-K [17 CFR 249.311].

Synopsis

Item numbers refer to the order the items are presented in the "Text of Amendments," which is presented in the order of the parts in the Code of Federal Regulations.

The following rules are amended to correct or delete incorrect cross references.

2. Paragraph (a) of Rule 1-01 of S-X;
3. Paragraph (x) of Rule 1-02 of S-X;
4. Paragraph (d) of Rule 2-02 of S-X;
5. Paragraph (e) of Rule 3-03 of S-X;
6. Paragraph (b) of Rule 3-17 of S-X;
7. Rule 3A-01 of S-X;
8. The opening paragraph of Rule 4-08 of S-X;
10. Rule 5-03(11) of S-X;
11. Rule 5-04(c) of S-X, Schedules IV and XIII;
13. Note (1) to Rule 7-03(a)(1)(h) of S-X;
16. Rule 10-01(b)(2) of S-X;
17. Rule 10-01(b)(6) of S-X;
18. Rule 12-01 of S-X;
19. Footnote 1 of Rule 12-05 of S-X.

Item 14 corrects a typographical error in Rule 9-03.7(e)(4) of S-X.

The other items contain technical corrections as follows:

- The definitions of a significant subsidiary in subparagraph (v)(1) of Rule 1-02 of S-X, item 2; Rule 405 of Regulation C, item 23; and Rule 12b-2 of Regulation 12B, item 25; are being slightly rewritten for clarity and to be conformed to each other.
- Rule 5-02(18) of S-X, item 9; and Rules 9-04(5) and 9-04(10) of S-X, item 15, are being renamed to clarify their use.
- Rule 6A-05(a) of S-X, item 12, is being updated to reflect the Schedule I need only be filed for the most recent audited statement of financial condition and any subsequent unaudited statement of financial condition being filed, rather than for every statement of financial condition being filed.
- Item 302(b) of Regulation S-K, item 21, is being updated to reflect that several Statements of Financial Accounting Standards may require presentation on the effects of changing prices.
- Form 11-K, Instructions as to Financial Statements, item 27, is being updated to reflect the issuance of Article 6A of Regulation S-X.

Regulatory Flexibility Act

The Commission believes that the revisions are technical in nature, do not contain any new rules or material amendments to existing rules or forms, and will have no impact on the public reporting burden in the affected areas. A regulatory flexibility act certification is attached to this release.

List of Subjects in 17 CFR Parts 210, 230, 240 and 249

Accounting, Reporting and record keeping requirements, Securities.

Text of Amendments

The Commission hereby amends Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read in part as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, as amended, 81, as amended, 85, as amended, 892, as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49 Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78*l*, 78w, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, * * *.

2. By revising paragraph (a) introductory text of § 210.1-01 to read as follows:

§ 210.1-01 Applicaton of Regulation S-X (17 CFR Part 210).

(a) This part (together with the Financial Reporting Releases (Part 211 of this chapter)) sets forth the form and content of and requirements for financial statements required to be filed as a part of:

* * * * *

3. By revising paragraph (v)(1) and the last sentence of paragraph (x) (2) of § 210.1-02 to read as follows:

§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR Part 210).

* * * * *

(v) * * *

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

* * * * *

(x) * * * Indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment, or otherwise is to be excluded for purposes of paragraph (x)(2) of this section.

* * * * *

4. By revising the parenthetical text of paragraph (d) of § 210.2-02 to read as follows:

§ 210.2-02 Accountants' reports.

* * * * *

(d) * * * (See section 101 of the Codification of Financial Reporting Policies.)

§ 210.3-03 [Amended]

5. By revising in § 210.3-03(e) the reference to "Item 1 of Regulation S-K" to read "Item 101 of Regulation S-K".

§ 210.3-17 [Amended]

6. By revising in § 210.3-17(b) the reference to "§ 210.3-09(a)(1)" to read "§ 210.3-09(a)".

§ 210.3A-01 [Amended]

7. By revising the Section heading of § 210.3A-01 to read "Application of § 210.3A-01 to § 210.3A-05" and by revising in § 210.3A-01 the reference to "§ 210.3A-08" to read "§ 210.3A-05".

§ 210.4-08 [Amended]

8. By revising the references to "items (b), (c), (d), (e), (f), and (h)" in the introductory text of § 210.4-08 to read "paragraphs (b), (c), (d), (e) and (f)" and the reference to "item (i)" to read "paragraph (j)".

§ 210.5-02 [Amended]

9. By removing the phrase "*and, when appropriate, other debits*" from paragraph 18 of § 210.5-02.

§ 210.5-03 [Amended]

10. By revising in paragraph 11 of § 210.5-03 the reference to "§ 210.4-08(g)" to read "§ 210.4-08(h)".

11. By revising Schedules IV and XIII in paragraph (c) of § 210.5-04 to read as follows:

§ 210.5-04 What schedules are to be filed.

* * * * *

(c) * * *

Schedule IV—Indebtedness of and to related parties—not current. The schedule prescribed by § 210.12-05 shall be filed in support of captions 11 and 23 of each balance sheet. This schedule may be omitted if (1) neither the amount of caption 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

* * * * *

Schedule XIII—Other investments. If there are any other investments, under caption 12 of § 210.5-02 or elsewhere in a balance sheet, not required to be included in Schedule I, there shall be set forth in a separate schedule information concerning such investments corresponding to that prescribed by Schedule I. This schedule may be omitted if the total amount of such other investments does not exceed 5 percent of total assets as shown by such balance sheet.

12. By revising paragraph (a) introductory text, of § 210.6A-05 to read as follows:

§ 210.6A-05 What schedules are to be filed.

(a) Schedule I, specified below, shall be filed as of the most recent audited statement of financial condition and any subsequent unaudited statement of financial condition being filed. Schedule II shall be filed as of the date of each statement of financial condition being filed. Schedule III shall be filed for each period for which a statement of income and changes in plan equity is filed. All schedules shall be audited if the related statements are audited.

* * * * *

§ 210.7-03 [Amended]

13. By revising in Note (1) of paragraph (a) in § 210.7-03 the reference to "Accounting Series Release No. 118 (35 FR 19986)" to read § 404.03 of the Codification of Financial Reporting Policies."

14. By revising the definition of the term "Associate" in paragraph 7(e)(4) of § 210.9-03 to read as follows:

§ 210.9-03 Balance Sheets.

* * * * *

7. *Loans*

(e) * * *

(4) Definition of terms. For purposes of this rule, the following definitions shall apply:

"Associate" means (i) a corporation, venture or organization of which such person is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities; (ii) any trust or other estate in which such person has a substantial beneficial interest or for which such person serves as trustee or in a similar capacity and (iii) any member of the immediate family of any of the foregoing persons.

* * * * *

15. By revising paragraphs 5, 9, and 10, of § 210.9-04 to read as follows:

§ 210.9-04 Income statements.

* * * * *

5. *Total interest income (total of lines 1 through 4).*

* * * * *

9. *Total interest expense (total of lines 6 through 8).*

10. *Net interest income (line 5 minus line 9).*

* * * * *

16. By revising § 210.10-01(b)(2) to read as follows:

§ 210.10-01 Interim financial statements.

* * * * *

(b) * * *

(2) If appropriate, the income statement shall show earnings per share and dividends declared per share applicable to common stock. The basis of the earnings per share computation shall be stated together with the number of shares used in the computation. In addition, see Item 601(b)(11) of Regulation S-K, [17 CFR 229.601(b)(11)].

* * * * *

§ 210.10-01 [Amended]

17. By further amending § 210.10-01, paragraph (b)(6), by revising the reference to "Item 7 of Regulation S-K, 17 CFR 229.20" to read "Item 601 of Regulation S-K, 17 CFR 229.601".

18. By revising § 210.12-01 to read as follows:

§ 210.12-01 Application of §§ 210.12-01 to 210.12-29.

These sections prescribe the form and content of the schedules required by §§ 210.5-04, 210.6-10, 210.6A-05, 210.7-05 and 210.9-07.

19. By revising footnote 1 to the schedule in § 210.12-05 to read as follows:

§ 210.12-05 Indebtedness of and to related parties—not current.

* * * * *

[1] Group separately for (1) unconsolidated subsidiaries; (2) other persons, the investments in which are accounted for by the equity method; and (3) other affiliates. Indebtedness of and to individual related parties which exceed two percent of total assets shall be stated separately.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

20. The authority citation for Part 229 continues to read in part as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a) * * *.

21. By revising paragraph (b) of § 229.302 to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

* * * * *

(b) *Information on the effects of changing prices.* Information on the effects of changing prices on business

enterprises shall be presented by registrants subject to the reporting provisions of applicable Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

22. The authority citation for Part 230 continues to read in part as follows:

Authority: Sections 230.100 to 230.174 issued under sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * *.

23. By revising subparagraph (1) of the definition of "significant subsidiary" in § 230.405 to read as follows:

§ 230.405 Definition of terms.

* * * * *

Significant Subsidiary. The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions.

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

24. The authority citation for Part 240 continues to read in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted. §§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78o. §§ 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt., * * *.

25. By revising paragraph (1) of the definition of "significant subsidiary" in § 240.12b–2 to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Significant Subsidiary. The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions.

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

26. The authority citation of Part 249 continues to read in part as follows:

Authority: The Securities Act of 1934, 15 U.S.C. 78a. et seq. * * *.

27. By revising the Instructions as to Financial Statements of Form 11–K in § 249.311 as follows: (Form 11–K does not appear in the Code of Federal Regulations.)

§ 249.311 Form 11–K, for annual reports of employee stock purchase, savings and similar plans pursuant to section 15(d) of the Securities Exchange Act of 1934.

* * * * *

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

1. The following financial statements shall be furnished for the plan.

(a) An audited statement of financial condition as of the end of the latest two fiscal years of the plan (or such lesser period as the plan has been in existence).

(b) An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

2. The statements required by this item shall be prepared in accordance with the applicable provisions of Article 6A of Regulation S–X (17 CFR 210).

Statutory Authority

These amendments are being adopted pursuant to authority in Sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77*f*, 77g, 77h, 77j, 77s(a)] of the Securities Act of 1933; Sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)] of the Securities Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e(b), 79n, 79t(a)] of the Public Utility Holding Company Act of 1935; and Sections 8, 30, 31, and 38(a) [15 U.S.C. 80a–8, 80a–29, 80a–30, 80a-37(a)] of the Investment Company Act of 1940.

By the Commission.

June 6, 1985.

Shirley E. Hollis,

Assistant Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the miscellaneous technical amendments adopted in Securities Act Release No. 33–6584 will not have a significant economic impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification is that the effects of the amendments will not be significant for any class of registrants because the amendments are technical in nature only, and are consistent with generally accepted accounting principles, and therefore, the compliance burden is not being changed.

June 6, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–14429 Filed 6–17–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Colloidal Ferric Oxide Injection; Iron Dextran Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the animal drug regulations to codify two previously approved new animal drug applications sponsored by Ralston-Purina Co. and Boehringer Ingelheim Animal Health, Inc. This document corrects editorial errors.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 85–13136 appearing on page 23298 in the issue of Monday, June 3, 1985, the following corrections are made in the third column on page 23298:

1. In amendment 2, in the fourth line "redesignated paragraph (c)" is corrected to read "redesignated paragraph (c)(1)".

2. Under § 522.940 *Colloidal ferric oxide injection*, "(c) *Sponsor*" is corrected to read "(c)(1) *Sponsor*."

Dated: June 11, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-14535 Filed 6-17-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Quali Tech, Inc., providing for the manufacture of a 100-gram-per-pound tylosin premix used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: June 18, 1985.

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

SUPPLEMENTARY INFORMATION: Quali Tech, Inc., 318 Lake Hazeltine Drive, Chaska, MN 55318, is the sponsor of a supplement to NADA 97-980 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of a 100-gram-per-pound tylosin premix used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.625 is amended by revising paragraph (b)(14) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(14) To 016968: 1, 2, 4, 8, and 10 grams per pound, paragraph (f)(1) (i), (iii), (iv), and (vi) of this section; 20, 25, 40, and 100 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: June 12, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-14536 Filed 6-17-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for MAC-PAGE, Inc., providing for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: June 18, 1985.

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

SUPPLEMENTARY INFORMATION: MAC-PAGE, Inc., 1600 South Wilson Ave., Dunn, NC 28334, is sponsor of NADA 131-956 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.630 [Amended]

2. In § 558.630 *Tylosin and sulfamethazine* in paragraph (b)(10) by inserting numerically the number "047427".

Dated: June 10, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-14532 Filed 6-17-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Music City Supplement Co. providing for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: June 18, 1985.

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

SUPPLEMENTARY INFORMATION: Music City Supplement Co., 401 Cowan St., Nashville, TN 37202, is sponsor of NADA 127-826 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.630 [Amended]

2. In § 558.630 *Tylosin and sulfamethazine*, paragraph (b)(10), by adding numerically the number "017519."

Dated: June 10, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-14531 Filed 6-17-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for The Ohio Farmers Grain and Supply Association providing for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: June 18, 1985.

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

SUPPLEMENTARY INFORMATION: The Ohio Farmers Grain and Supply Association, P.O. Box M, Fostoria, OH 44830, is sponsor of NADA 138-343 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.630 [Amended]

2. In § 558.630 *Tylosin and sulfamethazine*, paragraph (b)(10), by

adding numerically the number "026439."

Dated: June 10, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-14534 Filed 6-17-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Southern Micro-Blenders, Inc., providing for manufacturing premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: June 18, 1985.

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

SUPPLEMENTARY INFORMATION: Southern Micro-Blenders, Inc., 3801 North Hawthorne St., Chattanooga, TN 37406, is sponsor of the NADA 138-453 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.630 [Amended]

2. In § 558.630 *Tylosin and sulfamethazine*, paragraph (b)(10), by adding numerically the number "049685".

Dated: June 10, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-14533 Filed 6-17-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8030]

Original Issue Discount Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to reporting requirements for original issue discount on publicly offered debt instruments as prescribed by section 1275(c)(2) of the Internal Revenue Code of 1954, which was added by section 41 of the Tax Reform Act of 1984. The temporary regulations are necessary to provide issuers of debt instruments having original issue discount with the immediate guidance needed to meet the requirements of section 1275(c)(2). The regulations are also necessary to provide guidance to officers and employees of the Internal Revenue Service with respect to the requirements of that section.

DATES: The regulations under section 1275(c)(2) apply to publicly offered debt instruments having original issue discount that are issued after August 16, 1984, and are effective June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa Bearman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (LR-125-84) (202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

This document provides temporary regulations relating to reporting requirements for original issue discount on publicly offered debt instruments as prescribed by section 1275(c)(2) of the Internal Revenue Code of 1954, which was added by section 41 of the Tax Reform Act of 1984 (98 Stat. 494).

The Tax Reform Act of 1984 recodified and expanded the rules relating to the tax treatment of original issue discount as previously set forth in sections 1232, 1232A, and 1232B of the Internal Revenue Code of 1954.

Section 1275(c)(2) of the Code requires the issuer of a publicly offered debt instrument having original issue discount to furnish the Secretary certain information with respect to such an issue.

New Rules

These temporary regulations require an issuer of a publicly offered debt instrument issued at a discount to furnish the Secretary with his name, address, and taxpayer identification number, the issue date, maturity date, and CUSIP number of the issue, the amount of original issue discount for the entire issue, the issue price, the stated redemption price at maturity, the stated interest rate and dates of interest payments, a description of the issue, the method selected for determining the amount of original issue discount allocable to a short accrual period, and such other information as may be required.

Questions Reserved

The temporary regulations do not address the question of the proper method for determining the amount of original issue discount of a debt instrument which is part of a serial issue

nor do they address, for purposes of section 1275(c)(2), the proper method for determining the issue price of a stripped bond or coupon. Additionally, the regulations do not address information reporting requirements under section 1275(c)(1). These questions are under active consideration by the Internal Revenue Service.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Theresa Bearman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other officers of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR §§ 1.1271–1.1288

Income taxes, Capital gains and losses, Original issue discount, Market discount, Stripped bonds and stripped coupons, Short-term obligations.

26 CFR Part 602

OMB Control Numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805; * * *.

Par. 2. A new § 1.1275–3T is added immediately following § 1.1274–6T. New § 1.1275–3T reads as follows:

§ 1.1275–3T Original issue discount information reporting requirements. (Temporary)

(a) [Reserved].

(b) *Information required to be reported to Secretary*—(1) *In general.* In the case of any issue of publicly offered debt instruments issued after August 16, 1984, that have original issue discount, other than an issue of debt instruments described in section 1272(a)(2), the issuer must make an information return on Form 8281. The term "issuer" includes not only domestic issuers but also any foreign issuer who is otherwise subject to United States income tax law, unless the issue is neither (i) listed or quoted on an established securities market (as defined in § 1.453–3(d)(4)) in the United States nor (ii) offered for sale or resale in the United States in connection with its original issuance. In addition, any person who makes a public offering of stripped bonds or stripped coupons (as defined in section 1286 (e)(2) and (e)(3), respectively) is treated as an issuer of publicly offered debt instruments having original issue discount.

(2) *Information required to be reported.* The following information shall be reported to the Secretary on Form 8281—

(i) The name, address, and taxpayer identification number of the issuer;

(ii) The issue date (as defined in section 1275(a)(2)), maturity date, and CUSIP number of the issue;

(iii) The amount of original issue discount for the entire issue (as defined in section 1273(a)(1));

(iv) The issue price (as defined in section 1273(b)) expressed as a percentage of the principal amount;

(v) The stated redemption price at maturity of the entire issue, or of each debt instrument within the issue if in denominations of other than $1,000;

(vi) The The stated interest rate and the interest payment dates;

(vii) A description of the debt instrument, or, in place of the description, a copy of the offering circular or prospectus, which description shall include a statement of any terms and conditions of the instrument that govern—

(A) Whether payments of principal may be made prior to maturity of the debt instrument;

(B) Whether the debt instrument is part of an investment unit;

(C) Whether the debt instrument is issued in an exchange described in section 368(a);

(D) Whether the debt instrument is part of a serial issue;

(E) Whether the debt instrument is a stripped bond or stripped coupon; and

(F) Whether the debt instrument is collateralized by United States Treasury bonds;

(viii) The method selected for computing the amount of original issue discount allocable to a short accrual period; and

(ix) Such other information as is required by the form.

(3) *Time and manner of filing of information return*—(i) The information return required by paragraph (b)(1) of this section shall be filed on Form 8281 with the Internal Revenue Service at the address specified on the form. This return must be made on Form 8281 regardless of whether other information returns are filed by use of electronic media.

(ii) Form 8281 shall be filed with respect to each issue of publicly offered debt instruments—

(A) For debt instruments issued after May 31, 1985, within 30 days after date of issuance; and

(B) For debt instruments issued after August 16, 1984, and before June 1, 1985, on or before July 1, 1985.

(4) *Penalty.* For rules relating to the penalty provided for failure to make an information return under paragraph (b) of this section, see section 6706(b) and the regulations under that section.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table

"§ 1.1275–3T ..... 1545–0887"

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective

date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: May 24, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85-14495 Filed 6-17-85; 8:45 am]
BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2606

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Administrative Review of Agency Decisions to increase the number of full time Appeals Board members from three to at least four. A panel of three Board members will decide each appeal. The purpose of this rule is to provide for a more effective and expeditious appeals process.

EFFECTIVE DATE: This amendment is effective June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Deborah West, Attorney, Legal Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, (202) 254-7224. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 19, 1979, the PBGC published a final rule regarding administrative review of agency decisions (44 FR 42181). The purpose of the regulation is to ensure that persons who are adversely affected by certain initial determinations of the PBGC are provided with an opportunity to obtain review of those determinations. The current regulation applies to eleven types of determinations and provides for two types of agency review. Seven types of initial determinations are subject to appeal to the Appeals Board; four are subject to reconsideration by an official in the office that issued the initial determination, at a level higher than that of the person who issued the initial determination. On April 25, 1983, the regulation was amended to change the composition of the Appeals Board to a Chairperson and two senior agency officials, each appointed by the Executive Director (48 FR 17070). The April 1983 amendment also provided that the General Counsel and the Executive Director or the Deputy Executive Director would be ex officio members of the Appeals Board.

The PBGC is now amending the regulation to increase the number of regular Appeals Board members and to eliminate ex officio membership. PBGC intends that, with four or more rather than three agency officials devoting full time to reviewing appeals, the appeal processing time and current backlog of appeals will be reduced substantially. PBGC has also determined that ex officio Board membership is unnecessary.

The term "Appeals Board" is defined, at § 2606.2 of the revised regulation, to mean a board consisting of three agency officials. The Executive Director shall appoint a senior PBGC official to serve as Chairperson and three or more other PBGC officials to serve as regular Appeals Board members. The Chairperson shall designate, with respect to each case, the panel of three officials who will constitute the Appeals Board for that case. The panel that constitutes the Appeals Board with respect to a case may, but need not, include the Chairperson. As under the prior regulation, a person may not serve on the Appeals Board with respect to any case in which he or she made a decision regarding the merits of the determination being appealed.

The Pension Benefit Guaranty Corporation has determined that this amendment is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on the fact that the amendment is procedural, and advises the public of a change in agency organization.

Because this regulation deals only with matters of agency organization and procedure, a general notice of proposed rulemaking is not required. See 5 U.S.C. § 553(b). Further, since a general notice of proposed rulemaking is not required, this rule is not covered by the Regulatory Flexibility Act, 5 U.S.C. § 601(2). The PBGC finds that an immediate effective date for this amendment is needed to efficiently and effectively administer the PBGC's appeals process.

List of Subjects in 29 CFR Part 2606

Pensions, Pension insurance.

PART 2606—[AMENDED]

In consideration of the foregoing, Part 2606 of Chapter XXVI of Title 29, Code of Federal Regulations is hereby amended as follows:

1. The authority for Part 2606 continues to read as follows:

Authority: Sec. 4002(b)(3), Pub. L. 93-406, as amended by sec. 403(e), Pub. L. 96-364, 94 Stat. 1208, 1302 (1980) (29 U.S.C. 1302(b)(3)).

2. In § 2606.2, the definition of "Appeals Board" is revised to read as follows:

§ 2606.2 Definitions

* * * * *

"Appeals Board" means a board consisting of three PBGC officials. The Executive Director shall appoint a senior PBGC official to serve as Chairperson and three or more other PBGC officials to serve as regular Appeals Board members. The Chairperson shall designate the three officials who will constitute the Appeals Board with respect to a case, provided that a person may not serve on the Appeals Board with respect to a case in which he or she made a decision regarding the merits of the determination being appealed. The Chairperson need not serve on the Appeals Board with respect to all cases.

* * * * *

Issued at Washington, D.C. on this 30th day of May 1985.

David M. Walker,
Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-14530 Filed 6-17-85; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 85-12]

Drawbridge Operation Regulations; Willamette River, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of Multnomah County, Oregon, the Coast Guard is temporarily changing the regulations governing the operation of the highway drawbridge across the Willamette River at Hawthorne Street in Portland, Oregon, by allowing the drawspan to be maintained in a semi-open position and not be required to open fully for the

passage of vessels. This change is being made to allow for immobilization of the lift span to accommodate emergency repairs of the draw lift sheaves. Since this action will accommodate the anticipated needs of about 99 percent of the commercial marine traffic expected to pass the bridge, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective May 29, 1985 and terminates on July 26, 1985. We anticipate granting an extension of the temporary regulation past that date to allow for compliance of repairs.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. The comments will be available for inspection and copying in room 3564 at this address. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation as it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to public interest since immediate action is needed to prevent further damage, destruction, or loss of the draw span of the Hawthorne Bridge or hazard to the public.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to insure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Comments should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Receipt of comments will be acknowledged if a self-addressed postcard or envelope is enclosed. Based upon the comments received, the regulations may be changed.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of Regulation

A recently completed inspection of the Hawthorne Bridge revealed cracks in all eight of the lift span counterweight sheaves. The cracks are considered of such potential hazard as to require immediate closure of the bridge and replacement of the sheaves and other defective parts. Multomah County's engineering staff has determined that the draw span can be raised and safely maintained in a stabilized condition at a height 20 feet above the normal closed position. This would provide a vertical clearance of 55 feet above the maximum predicted spring run-off elevation of +14 feet on the Portland Gauge. Based upon consultation with waterway user groups, it was determined that the proposed clearance would provide for the passage of about 99 percent of the commercial vessels normally operating on the waterway.

Current operating regulations require the bridge to open on call for the passage of vessels, except during morning and afternoon closed periods. Under the temporary regulations, the bridge will be closed to vehicular traffic and the drawspan will be maintained in a partially open position, which will provide for about 99 percent of the commercial vessels requiring passage past the bridge. There will be no closed periods and the drawspan will not be required to provide greater clearance for additional classes of vessels.

Economic Assessment and Certification

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

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These temporary regulations will have no appreciable consequences since they will have no effect on about 99 percent of the vessels using the waterway. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Regulations

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

1. The authority citation for Part 117 is revised to read as follows:

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

2. Section 117.897 is revised by adding (d) to read as follows:

§ 117.897 Willamette River.

* * * * *

(d) The draw of the Hawthorne Bridge, mile 13.1 at Portland, Oregon, shall be maintained in a partially open position.

(1) In the partially open position, the draw shall provide a vertical clearance of not less than 55 feet above a water surface elevation of +14 feet on the Portland Gauge.

(2) The provisions of section (a)(1) pertaining to the Hawthorne Bridge will not apply while this temporary regulation is in effect.

Dated: June 5, 1985.

R.R. Garrett,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 85–14462 Filed 6–17–85; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

[FPMR Amendment H–152]

Increase of Offer by High Bidder at Sealed Bid or Auction Sale

AGENCY: Federal Property Resources Services, GSA.

ACTION: Final rule.

SUMMARY: This rule amends the regulation covering the time limitation prescribed for increasing a responsive bid that is less than the property's appraised fair market value in a sealed bid or auction sale of Federal surplus real property. This amendment will ensure that the bidder has adequate time to increase such a bid.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: James H. Pitts, Office of Real Property (202–535–7067).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and

consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus government property, and Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for Part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390. (40 U.S.C. 486(c)).

Subpart 101–47.3—Surplus Real Property Disposal

2. Section 101–47.305–1 is amended by revising paragraph (b) to read as follows:

§ 101–47.305–1 General.

* * * * *

(b) Where the advertising does not result in the receipt of a bid at a price commensurate with the fair market value of the property, the highest bidder may, at the discretion of the head of the disposal agency or his designee and upon determination of responsiveness and bidder responsibility, be afforded an opportunity to increase his offered price. The bidder shall be given a reasonable period of time, not to exceed fifteen working days, to respond. At the time the bidder is afforded an opportunity to increase his bid, all other bids shall be rejected and bid deposits returned. Any sale at a price so increased may be concluded without regard to the provisions of § 101–47.304–9 and § 101–47.304–12.

* * * * *

Dated: June 4, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–14568 Filed 6–17–85; 8:45 am]

BILLING CODE 6820–96–M

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

Audit Requirements for State and Local Governments

AGENCY: Department of the Interior.

ACTION: Final rule with request for comments.

SUMMARY: The Department of the Interior establishes audit requirements for State and Local governments that receive Federal aid through the Department and defines its responsibility for implementing and monitoring those requirements. A Departmental rule is needed to comply with section 7505 of the Single Audit Act of 1984 (Pub. L. 98–502), and OMB Circular A–128, "Audit Requirements for State and Local Governments." The rule supersedes Attachment P, "Audit Requirements," dated October 22, 1979, to OMB Circular A–102, "Uniform requirements for grants to State and local governments," among recipients of assistance that is extended through this Department.

DATES: Final rule effective July 18, 1985; comments must be received on or before July 18, 1985.

ADDRESS: Send comments to: Assistant Secretary—Policy Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240.

Comments received may be inspected at Room 5123 between 8:30 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Alfred J. Poole, III (202) 343–3963.

SUPPLEMENTARY INFORMATION: The Department of the Interior is designated as cognizant agency for 299 Indian Tribes, 110 State agencies and 2 local governments. The Designation is made by Office of Management and Budget (OMB) and is subject to change. As cognizant agency for these entities, the Department is responsible to oversee the implementation of the Single Audit Act and OMB Circular A–128 by these entities. The Single Audit Act of 1984 and the Circular require that these entities arrange for entitywide audits and prorate the cost of audit to the Federal assistance program.

This rule is published to satisfy the specific request of officials at OMB and to establish Department of the Interior regulations for administering and enforcing the Single Audit Act of 1984 (Pub. L. 98–502). The Secretary has decided to incorporate the OMB Circular in the body of the regulations as a separate Subpart under 43 CFR Part 12: "Administrative Requirements for Cost Principles for Assistance Programs". This decision is based on the determination that since the requirements for single audits are now statutory requirements, the Department of the Interior should have its own rules on implementation of the statutory provisions and those rules should not necessarily be restricted to a reference to OMB Circular A–128. Initially, our rules will consist primarily of the provisions of OMB Circular A–128. It is our intention that the provisions of this Circular and any subsequent related OMB Circular will continue to form the nucleus of our rules on implementation of the Single Audit Act of 1984. However, as the provisions of the Act are applied and implemented, the Department may revise these regulations to give consideration to the special needs of our Department programs. Such revisions will be coordinated with officials at the OMB and with our Department's Inspector General.

The Language used in paragraph 12.26 (Audit Costs) is not written exactly word for word from Circular A–128. Specifically, subparagraph b has been rewritten and sub-paragraph c has been added to this rule. The corresponding paragraph in the circular is 16 (Audit Costs).

Statement of Effects

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule applies to recipients of Federal Assistance provided through U.S. Department of the Interior alone. The Department imposes no requirements for collection, reporting nor record keeping of information beyond those required by OMB Circular A–128. The affected public consists of State governments, local governments and Indian Tribes, including Indian Tribal enterprises. No individuals, households, farms, businesses or other institutions are subject to the requirements of this rule. This rule imposes no compliance costs upon the public and represents the minimum public burden consistent with OMB directive.

This rule is not estimated to have more than $100 million gross annual effect on the economy nor to result in major increases in costs or prices for any of the following sections: Consumers, individual industries, Federal, State, or local governments, agencies or geographic regions.

Authorship Statement

This rule was prepared by Alfred J. Poole, III, Departmental Audit Coordinator, on behalf of the Assistant Secretary—Policy, Budget and Administration

Environmental Effects

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under

the National Environmental Policy Act of 1969.

Public Comment Period

A 60 day period was provided by the Office of Management and Budget for receipt of comments pertinent to the proposed Circular (see 49 FR 50134, Wednesday, December 26, 1984.); an additional public comment period is therefore determined to be unnecessary in accordance with 5 U.S.C. 553(b)(B). However, comments on the rule are solicited and will be considered during the development of the Department's policies and procedures for the implementation of the Act among the various federally assisted programs.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

PART 12—ADMINISTRATIVE REQUIREMENTS FOR COST PRINCIPLES FOR ASSISTANCE PROGRAMS

Accordingly, 43 CFR Part 12 "Administrative Requirements for Cost Principles for Assistance Programs" is amended to read as set forth below:

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

Authority: 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-128.

2. The current sections in Part 12 (12.1 thru 12.5) are designated as Subpart A—Administrative Requirements and Cost Principles.

3. A new Subpart B—Audit Requirements for State and Local Governments is added to read as follows:

Subpart B—Audit Requirements for State and Local Governments

Sec.

Subpart B—Audit Requirements for State and Local Governments

§ 12.11 Purpose.

This Circular is issued pursuant to section 7505 of the Single Audit Act of 1984, (Pub. L. 98-502), and OMB Circular A-128. It establishes audit requirements for State and local governments that receive Federal aid, through the U.S. Department of the Interior and defines the Department's responsibilities for implementing and monitoring those requirements.

§ 12.12 Supersession.

The rule supersedes the requirements of Attachment P, "Audit Requirements," dated October 22, 1979, to OMB Circular A-102, "Uniform requirements for grants to State and local governments," among recipients of assistance for which the Department of the Interior is the cognizant audit agency.

§ 12.13 Background.

The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

§ 12.14 Policy.

The Single Audit Act requires the following:

(a) State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

(b) State or local governments that receive between $25,000 and $100,000 a year have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

(c) State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

(d) Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

§ 12.15 Definitions.

For the purposes of this rule the following definitions from the Single Audit Act apply:

(a) "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in § 12.21 of this rule.

(b) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State or local governments.

(c) "Federal agency" has the same meaning as the term 'agency' in section 551 (1) of Title 5, United State Code.

(d) "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(e) "Generally accepted government auditing standards" means the *Standards for Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated February 27, 1981.

(f) "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

(g) "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

(h) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native

Claims Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(i) "Local government" means any unit of local government within a State, including a county, a borough, municipality, a city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(j) "Major Federal Assistance program," as defined by Pub. L. 98-502, is described in the appendix to this rule.

(k) "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(l) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State regional, or interstate entity that has governmental functions and any Indian tribe.

(m) "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

§ 12.16 Scope of audit.

The Single Audit Act provides that:

(a) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishment that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(c) Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this rule. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements for grants to universities, hospitals, and other nonprofit organizations.

(d) The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have a material effect on its financial statements and on each major Federal assistance program.

§ 12.17 Frequency of audit.

Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall honor requests for biennial audits by governments that have administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

§ 12.18 Internal control and compliance reviews.

The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

(a) *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

(b) *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(i) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(ii) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(iii) The principal compliance requirements of the largest Federal aid

programs may be ascertained by referring to *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

§ 12.19 Subrecipients.

State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

(a) Determine whether State or local subrecipients have met the audit requirements of this rule and whether subrecipients covered by Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

(b) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this rule, OMB Circular A–110, or through other means (e.g. program reviews) if the subrecipient has not yet had such an audit.

(c) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

(d) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(e) Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this rule.

§ 12.20 Relation to other audit requirements.

The Single Audit Act provides that an audit made in accordance with this rule shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

(a) The provisions of this rule do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

(b) The provisions of this rule do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

(c) A Federal agency that makes or contracts for audits made by recipients pursuant to this rule shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

§ 12.21 Department of the Interior responsibilities.

The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of OMB Circular A–128 and this rule.

(a) The Office of Management and Budget will assign cognizant agencies for States and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

(b) A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this rule.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this rule. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this rule; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

§ 12.22 Illegal acts or irregularities.

If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also § 12.23(a)(3) of this part for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

§ 12.23 Audit reports.

Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

(a) The audit report shall state that the audit was made in accordance with the provisions of OMB Circular A–128. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's

significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements.

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

(b) The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

(c) All fraud, abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts of which the auditors become aware, should normally be covered in a separate written report submitted in accordance with paragraph 12.23f.

(d) In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

(e) The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

(f) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to the recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

(g) Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

(h) Recipients shall keep audit reports on file for three years from their issuance.

§ 12.24 Adult resolution.

As provided in § 12.21, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned. Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

§ 12.25 Audit workpapers and reports.

Workpapers and reports shall be retained for minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

§ 12.26 Audit costs.

The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

(a) The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

(b) Generally, costs charged to Federal assistance programs for a single audit shall be consistent with the proportion of Federal funds to total funds expended by the recipient. These costs may be exceeded, however, if appropriate documentation demonstrates higher actual costs.

(c) The cost charged to any one program shall be reasonably proportionate to the cost of the audit effort devoted to that program.

§ 12.27 Sanctions.

The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with OMB Circular A-128. In cases of continued inability or unwillingness to have a proper audit, the Department of the Interior will consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is satisfactorily completed,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

§ 12.28 Auditor selection.

In arranging for audit services, State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovermental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

§ 12.29 Small and minority audit firms.

Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this rule. Recipients of Federal assistance provided by this Department shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

(b) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms owned and controlled by socially and economically disadvantaged individuals.

(c) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and

controlled by socially and economically disadvantaged individuals.

(d) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

(e) Encourage contracting with consortiums of small audit firms as described in paragraph (a) of this section when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

(f) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

§ 12.30 Reporting.

The Department of the Interior will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of Circular A-128. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

§ 12.31 Supplemental program guidance.

Each bureau and office of this Department may issue appropriate supplemental guidance to implement the requirements of this rule within its federally-assisted programs, subsequent to the concurrence and approval of the text by the Assistant Secretary-Policy, Budget and Administration.

Richard R. Hite,

Principal Deputy Assistant, Secretary/ Controller-Policy, Budget and Administration.

June 6, 1985.

Appendix—Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	1 billion	$3 million
1 billion	2 billion	4 million
2 billion	3 billion	7 million
3 billion	4 billion	10 million
4 billion	5 billion	13 million
5 billion	6 billion	16 million
6 billion	7 billion	19 million
Over 7 billion		20 million

[FR Doc. 85-14591 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6662]

Suspension of Community Eligibility; Schaghticoke, NY; Correction

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule, correction.

SUMMARY: This rule corrects the final rule published in the **Federal Register** Monday, June 3, 1985, (50 FR 23308). In Region II, the Town of Schaghticoke, New York is listed in error. It should be corrected to the Village of Schaghticoke. The correct community number is 361058B. All other information listed for the Village is correct. All Records should be amended.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA-Room 416, Washington, D.C. 20472.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Issued: June 12, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-14543 Filed 6-17-85; 8:45 am]

BILLING CODE 6718-03-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; Income Levels for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; revised Appendix; correction.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Official Poverty Threshold as defined by the Department of Health and Human Services. On April 4, 1985, the revised Appendix was printed in the **Federal Register**, 50 FR 13331. The revised Appendix contained some mathematical errors that have been brought to the attention of the Corporation. This Correction to the revised appendix corrects those errors.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005, (202) 272-4010.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of the Corporation's Regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget. Responsibility for revision of the Official Poverty Threshold was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services.

On April 4, 1985, the revised Appendix A was printed in the **Federal Register**, 50 FR 13331. Since the publication of the Revised Appendix A, the Corporation has been apprised that the Revised Appendix contains some mathematical errors. This correction eliminates those errors. The corrected revised figures for 1985 equivalent to 125% of the current official Poverty Threshold are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services, Eligibility.

PART 1611—ELIGIBILITY

The Authority for 45 CFR Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1), 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2)).

Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation Poverty Guidelines

Size of family unit	All States but Hawaii [1] and Alaska	Alaska [2]	Hawaii [3]
1	$6,562	$8,225	$7,550
2	8,812	11,012	10,137
3	11,062	13,825	12,725
4	13,312	16,637	15,320
5	15,562	19,475	17,900
6	17,812	22,262	20,487
7	20,062	25,075	23,075
8	22,312	27,887	25,662

[1] For family units with more than eight members, add $2,250 for each additional member in a family.
[2] For family units with more than eight members, add $2,812 for each additional member in a family.
[3] For family units with more than eight members, add $2,587 for each additional member in a family.

Dated: June 13, 1985.

Richard N. Bagenstos,

Acting General Counsel.

[FR Doc. 85-14511 Filed 6-17-85; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 7

[CGD 81-058]

Boundary Lines

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Seagoing Barge Act was revised in 1980 to define a seagoing barge as one that proceeds outside a defined boundary. The purpose of this rulemaking is to establish demarcation lines for the Seagoing Barge Act and more clearly define the existing Boundary Lines which govern the application of various maritime safety statutes. Additionally, the rule consolidates the Boundary Lines where possible.

EFFECTIVE DATE: This rulemaking is effective on July 18, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Donald B. Parsons (G-MVI-2), Room 1407, U.S. Coast Guard Headquarters, 2100 2nd St., SW., Washington, D.C., 20593, (202) 426-4431.

SUPPLEMENTARY INFORMATION: The Coast Guard published proposed rules in the **Federal Register** on June 7, 1982 (47 FR 24604) that sought to establish lines for the Seagoing Barge Act and more clearly define the existing Boundary Lines which govern the application of various maritime safety statutes. A supplemental notice of proposed rulemaking was published on September 15, 1983 (48 FR 41454) and public hearings were held in New Orleans, LA, and Boston, MA, on October 18 and 26, 1983, respectively. As a result of the comments received, substantial changes were made to the proposed rule and a second supplemental notice of proposed rulemaking was published on August 13, 1984 (49 FR 32229). Thirteen comment letters have since been received, and the proposal was discussed at the public meetings of the Towing Safety Advisory Committee (TSAC) on October 11, 1984, and the Rules of the Road Advisory Council (RORAC) on September 20, 1984. Most of the responses were favorable and no substantive changes have been made to the rule as last proposed.

Drafting information

The principal persons involved in drafting this final rule are: Lieutenant Commander Donald B. Parsons, Project Manager, Office of Merchant Marine Safety, and Lieutenant Dave Shippert, Project Attorney, Office of the Chief Counsel.

Discussion

As amended, the Act of February 19, 1895 (33 U.S.C. 151, The Boundary Line Statute) authorizes the Secretary of Transportation to designate and define the lines dividing the high seas from inland waters for the purpose of determining the applicability of various marine safety statutes (33 U.S.C. 151(b)). These lines, promulgated at Part 7 of Title 46 Code of Federal Regulations, currently apply to six statutes. These statutes deal with vessel inspection, equipment and manning standards, and are briefly described as follows:

(1) The Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 et seq.) requires the carriage of radiotelephones on board certain vessels inside the Boundary Lines on the navigable waters of the United States (i.e., inside the three-mile line).

(2) The Coastwise Loadline Act (46 U.S.C. 88) applies to merchant vessels of 150 gross tons and over, engaged in coastwise voyages by sea, and passing outside the Boundary Lines.

(3) The Officers Competency Certificates Convention, Geneva, 1936, (54 Stat. 1683) is in force and the United States is party thereto. Article 1 extends the Convention to all vessels registered in a nation party to the Convention and engaged in maritime navigation. The domestic legislation on the topic, 46 U.S.C. 8304, limits the application of the Convention, for the United States, to vessels navigating on the high seas pursuant to the understanding filed by the United States at the time of ratification ("That the United States Government understands and construes the words 'maritime navigation' appearing in this convention to mean navigation on the high seas only"), and defines the high seas with reference to the Boundary Line.

(4) 46 U.S.C. 3301(7) requires the inspection of seagoing motor vessels. A "seagoing motor vessel" is defined in 46 U.S.C. 2101(33) as a "motor vessel of at least 300 gross tons making voyages beyond the Boundary Line."

(5) 46 U.S.C. 3302(d) exempts from inspection requirements certain vessels under 150 gross tons that operate inside the Boundary Line within the waters of southeastern Alaska and the State of Washington.

(6) 33 U.S.C. 152, applies to the length of towing hawsers between towing vessels and barges when operating inside the Boundary Line.

In 1980, Pub. L. 96-324 amended the Seagoing Barge Act, 46 U.S.C. 395, by defining a seagoing barge as one that "proceeds outside the line dividing the inland waters from the high seas, as defined in section 2 of the Act, (33 U.S.C. 151)." Prior to this rule, the Coast Guard had utilized the traditional definition of "seagoing" as meaning a barge that proceeds past the headlands. This rule establishes new boundary lines under 33 U.S.C. 151(b) at 46 CFR Part 7 to determine the applicability of the Seagoing Barge Act.

Under the Boundary Line Act, as amended in 1980 (Pub. L. 96-324), lines may not be located more than twelve nautical miles seaward of the baseline from which the territorial sea is measured and the lines may differ in position for the purposes of different statutes. The Coast Guard has adopted the principle that, wherever possible, a single line should be established for all purposes, since multiple lines create the possibility of confusion.

The establishment and placement of the lines in these regulations related solely to safety and do not concern themselves with the issue of State or Federal sovereignty or jurisdiction in the areas involved.

Discussion of Comments

Thirteen comment letters were received as a result of the 13 August 1984 Supplemental Notice of Proposed Rulemaking (SNPRM). Oral comments were also received at the meetings held in Washington, D.C., on October 11, 1984, by TSAC and September 20, 1984, by RORAC. This final rule is almost identical to the latest SNPRM with only a few minor changes as discussed below.

1. Ten of the commenters were specifically in favor of the proposed

rule, as were those present at the TSAC meeting.

2. One commenter requested that the Boundary Line be moved several hundred yards offshore at Bakers Haulover Inlet, FL, to enable dredges to work the harbor entrance and approaches without having to undergo inspection for certification. The cost and manhours necessary to accomplish this do not seem justified considering the short distance from the inlet entrance that the vessels would be operating. The Coast Guard agrees and this change has been incorporated at CFR 7.95(n).

3. RORAC recommended that the Bridge-to-Bridge Radiotelephone Act line be moved to 12 miles or at least as far seaward as practicable, and one commenter expressed disappointment that the line was not extended to the twelve-mile limit. Also, it was stated that there would be confusion if this line was established now and then changed in only a few years. As discussed in the preambles of the previous proposals, the Vessel Bridge-to-Bridge Radiotelephone Act (Pub. L. 92-63) line is limited to not more than three miles offshore by law (33 U.S.C. 1201 et seq.). This line has been placed at three miles along the entire coast to provide consistency and simplicity in identifying its location. Additionally, its location is easily found because it is printed on most charts as the seaward extent of the Territorial Sea.

When, or even if, this line will ever be authorized to be located further offshore is not known. Therefore, whether or not confusion will be created by establishing it now and relocating it at some future date is only speculation. The only reasonable alternative to placing it at three miles now would be to leave it unchanged. This is not considered acceptable, however, because in many places radiotelephones have only been required inside of harbors. Requiring the use of radiotelephones in traffic lanes and harbor entrances is felt to be a far superior alternative from a safety standpoint.

4. One commenter pointed out that there were three errors in the SNPRM. These consisted of a buoy that had been renumbered, an inlet that had been renamed, and a tower that was in fact a tank. These changes have been incorporated in this final rule at 46 CFR 7.95 (f), (i), and (j).

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rulemaking has been found to be so minimal that further evaluation is unnecessary. The Boundary Lines in this rulemaking coincide with the existing lines or, in many cases (e.g., the Gulf of Mexico), extend seaward of the existing lines thereby imposing fewer regulatory requirements on vessels and companies affected by these regulations. Since the impact of this rulemaking is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 7

Law enforcement, Vessels.

Accordingly, Part 7 of Title 46, Code of Federal Regulations, is amended as follows:

1. By revising 46 CFR Part 7 to read as follows:

PART 7—BOUNDARY LINES

General

Sec.

Atlantic Coast

Gulf Coast

Hawaii

Pacific Coast

Alaska

Authority: Sec. 2, 28 Stat. 672 as amended (33 U.S.C. 151); sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 108); 49 CFR 1.46(b).

General

§ 7.1 General purpose of boundary lines.

The lines in this part delineate the application of the following U.S. statutes: 33 U.S.C. 152 relating to the length of towing hawsers; 33 U.S.C. 1201 et seq., the Vessel Bridge-to-Bridge Radiotelephone Act; 46 U.S.C. 88, the Coastwise Loadline Act; 46 U.S.C. 3301(6) requiring the inspection of seagoing barges which are defined in 46 U.S.C. 2101(32); 46 U.S.C. 3301(7) requiring the inspection of seagoing motor vessels which are defined in 46 U.S.C. 2101(33); 46 U.S.C. 3302(d) which exempts from inspection requirements certain vessels under 150 gross tons that operate within the waters of southeastern Alaska and the State of Washington; and 46 U.S.C. 8304, "Implementing the Officers' Competency Certificates Convention, 1936."

§ 7.5 Rules for establishing boundary lines.

(a) For application of the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201 et. seq., the line is 3 miles seaward of the baseline from which the territorial sea is measured.

(b) Barges of 100 gross tons and over operating on the sheltered waters of British Columbia as defined in the United States-Canada treaty of 1933 (49 Stat. 2685, TS 869) are not required to be inspected as seagoing barges under 46 U.S.C. 3301.

(c) Except as otherwise described in this part, Boundary Lines are lines drawn following the general trend of the seaward, highwater shorelines and lines continuing the general trend of the

seaward, highwater shorelines across entrances to small bays, inlets and rivers.

Atlantic Coast

§ 7.10 Eastport, ME to Cape Ann, MA.

(a) A line drawn from the easternmost extremity of Kendall Head to latitude 44°54'45" N. longitude 66°58'30" W.; thence to the range marker located in approximate position latitude 44°51'45" N. longitude 66°59" W.

(b) A line drawn from West Quoddy Head Light to latitude 44°48'5" N. longitude 66°56.4' W. (Sail Rock Lighted Whistle Buoy "1"); thence to latitude 44°37.5' N. longitude 67°09.8' W. (Little River Lighted Whistle Buoy "2LR"); thence to latitude 44°14.5' N. longitude 67°57.2' W. (Frenchman Bay Approach Lighted Whistle Buoy "FB"); thence to Mount Desert Light; thence to Matinicus Rock Light; thence to Monhegan Island Light; thence to latitude 43°31.6' N. longitude 70°05.5' W. (Portland Lighted Horn Buoy "P"); thence to Boon Island Light; thence to latitude 42°37.9' N. longitude 70°31.2' W. (Cape Ann Lighted Whistle Buoy "2").

§ 7.15 Massachusetts Bay, MA.

A line drawn from latitude 42°37.9' N. longitude 70°31.2' W. (Cape Ann Lighted Whistle Buoy "2") to latitude 42°22.7' N. longitude 70°47.0' W. (Boston Lighted Horn Buoy "B"); thence to Race Point Light.

§ 7.20 Nantucket Sound, Vineyard Sound, Buzzards Bay, Narragansett Bay, MA, Block Island Sound and easterly entrance to Long Island Sound, NY.

(a) A line drawn from Chatham Light to latitude 41°36.1' N. longitude 69°51.1' W. (Pollack Rip Entrance Lighted Horn Buoy "PR"); thence to latitude 41°26.0' N. longitude 69°46.2' W. (Great Round Shoal Channel Lighted Buoy "2"); thence to Sankaty Head Light.

(b) A line drawn from the westernmost extremity of Nantucket Island to the southwesternmost extremity of Wasque Point, Chappaquiddick Island.

(c) A line drawn from Gay Head Light to Block Island Southeast Light; thence to Montauk Point Light on the easterly end of Long Island.

§ 7.25 Montauk Point, NY to Atlantic Beach, NY.

(a) A line drawn from Shinnecock East Breakwater Light to Shinnecock West Breakwater Light.

(b) A line drawn from Moriches Inlet East Breakwater Light to Moriches Inlet West Breakwater Light.

(c) A line drawn from Fire Island Inlet Breakwater Light 348° true to the southernmost extremity of the spit of land at the western end of Oak Beach.

(d) A line drawn from Jones Inlet Light 322° true across the southwest tangent of the island on the north side of Jones Inlet to the shoreline.

§ 7.30 New York Harbor, NY.

A line drawn from East Rockaway Inlet Breakwater Light to Ambrose Light; thence to Highlands Light (north tower).

§ 7.35 Sandy Hook, NJ to Cape May, NJ.

(a) A line drawn from Shark River Inlet North Breakwater Light "2" to Shark River Inlet South Breakwater Light "1".

(b) A line drawn from Manasquan Inlet North Breakwater Light to Manasquan Inlet South Breakwater Light.

(c) A line drawn along the submerged Barnegat Inlet North Breakwater to Barnegat Inlet North Breakwater Light "2"; thence to Barnegat Inlet Light "5"; thence along the submerged Barnegat Inlet South Breakwater to shore.

(d) A line drawn from the seaward tangent of Long Beach Island to the seaward tangent of Pullen Island across Beach Haven and Little Egg Inlets.

(e) A line drawn from the seaward tangent of Pullen Island to the seaward tangent of Brigantine Island across Brigantine Inlet.

(f) A line drawn from the seaward extremity of Absecon Inlet North Jetty to Atlantic City Light.

(g) A line drawn from the southernmost point of Longport at latitude 39°18.2' N. longitude 74°32.2' W. to the northeasternmost point of Ocean City at latitude 39°17.6' N. longitude 74°33.1' W. across Great Egg Harbor Inlet.

(h) A line drawn parallel with the general trend of the seaward, highwater shoreline across Corson Inlet.

(i) A line formed by the centerline of the Townsend Inlet Highway Bridge.

(j) A line formed by the shoreline of Seven Mile Beach and Hereford Inlet Light.

§ 7.40 Delaware Bay and tributaries.

A line drawn from Cape May Inlet East Jetty Light to latitude 38°55.8' N. longitude 74°51.4' W. (Cape May Harbor Inlet Lighted Bell Buoy "2CM"); thence to latitude 38°48.9' N. longitude 75°02.3' W. (Delaware Bay Entrance Channel Lighted Buoy "8"); thence to the northernmost extremity of Cape Henlopen.

§ 7.45 Cape Henlopen, DL to Cape Charles, VA.

(a) A line drawn from the easternmost extremity of Indian River Inlet North Jetty to latitude 38°36.5' N. longitude 75°02.8' W. (Indian River Inlet Lighted Gong Buoy "1"); thence to Indian River Inlet South Jetty Light.

(b) A line drawn from Ocean City Inlet Light "6" to latitude 38°19.4' N. longitude 75°05.0' W. (Ocean City Inlet Entrance Lighted Buoy "4"); thence to latitude 38°19.3' N. longitude 75°05.1' W. (Ocean City Inlet Entrance Lighted Buoy "5"); thence to the easternmost extremity of the south breakwater.

(c) A line drawn from Assateague Beach Tower Light to latitude 37°50.2' N. longitude 75°24.9' W. (Chincoteague Inlet Lighted Bell Buoy "CI"); thence to the tower charted at latitude 37°52.6' N. longitude 75°26.7' W.

(d) A line drawn from the southernmost extremity of Cedar Island to latitude 37°34.7' N. longitude 75°36.0' W. (Wachapreague Inlet Entrance Lighted Buoy "1"); thence due south to shore at Parramore Beach.

(e) A line drawn from the seaward tangent of Parramore Beach to the lookout tower on the northern end of Hog Island chartered in approximate position latitude 37°27.2' N. longitude 75°40.5' W.

§ 7.50 Chesapeake Bay and tributaries.

A line drawn from Cape Charles Light to latitude 36°56.8' N. longitude 75°55.1' W. (North Chesapeake Entrance Lighted Gong Buoy "NCD"); thence to latitude 36°54.8' N. longitude 75°55.6' W. (Chesapeake Bay Entrance Lighted Bell Buoy "CBC"); thence to latitude 36°55.0' N. longitude 75°58.0' W. (Cape Henry Buoy "1"); thence to Cape Henry Light.

§ 7.55 Cape Henry, VA to Cape Fear, NC.

(a) A line drawn from Rudee Inlet Jetty Light "2" to latitude 36°50' N. longitude 75°56.7' W.; thence to Rudee Inlet Jetty Light "1".

(b) A line drawn from Bodie Island Light to latitude 35°49.3' N. longitude 75°31.9' W. (Oregon Inlet Approach Lighted Whistle Buoy "OI"); thence to Oregon Inlet Radiobeacon.

(c) A line drawn from Hatteras Inlet Light 255° true to the eastern end of Ocracoke Island.

(d) A line drawn from the westernmost extremity of Ocracoke Island at latitude 35°04' N. longitude 76°00.8' W. to the northeasternmost extremity of Portsmouth Island at latitude 35°03.7' N. longitude 76°02.3' W.

(e) A line drawn across Drum Inlet parallel with the general trend of the seaward, highwater shoreline.

(f) A line drawn from the southernmost extremity of Cape Lookout to latitude 34°38.4' N. longitude 76°40.6' W. (Beaufort Inlet Lighted Bell Buoy

"2BI"); thence to the seaward extremity of the Beaufort Inlet west jetty.

(g) A line drawn from the seaward extremity of Masonboro Inlet north jetty to latitude 34°10.3' N. longitude 77°48.0' W. (Masonboro Inlet Lighted Whistle Buoy "A"); thence to the beach in approximate position latitude 34°10' N. longitude 77°49.4' W.

§ 7.60 Cape Fear, NC to Sullivans Island, SC.

(a) A line drawn from the southernmost extremity to Cape Fear to latitude 33°49.5' N. longitude 78°03.7' W. (Cape Fear River Entrance Lighted Bell Buoy "2CF"); thence to Oak Island Light.

(b) A line drawn from the southernmost extremity of Bird Island at approximate position latitude 33°51.2' N. longitude 78°32.6' W. to latitude 33°50.3' N. longitude 78°32.5' W. (Little River Inlet Entrance Lighted Whistle Buoy "2LR"); thence to the northeasternmost extremity of Waties Island at approximate position latitude 33°51.2' N. longitude 78°33.6' W.

(c) A line drawn from the seaward extremity of Murrells Inlet north jetty to latitude 33°31.5' N. longitude 79°01.6' W. (Murrells Inlet Lighted Bell Buoy "MI"); thence to Murrells Inlet South Jetty Light.

(d) A line drawn from Georgetown Light to latitude 33°11.6' N. longitude 79°05.4' W. (Winyah Bay Lighted Bell Buoy "2WB"); thence to the southernmost extremity of Sand Island.

§ 7.65 Charleston Harbor, SC.

A line drawn from Charleston Light on Sullivans Island to latitude 32°40.7' N. longitude 79°42.9' W. (Charleston Lighted Whistle Buoy "2C"); thence to Folly Island Loran Tower (latitude 32°41.0' N. longitude 79°53.2' W.).

§ 7.70 Folly Island, SC to Hilton Head Island, SC.

(a) A line drawn from the southernmost extremity of Folly Island to latitude 32°35' N. longitude 79°58.2' W. (Stono Inlet Lighted Whistle Buoy "1S"); thence to Kiawah Island bearing approximately 307° true.

(b) A line drawn from the southernmost extremity of Kiawah Island to latitude 32°31' N. longitude 80°07.8' W. (North Edisto River Entrance Lighted Whistle Buoy "2NE"); thence to Botany Bay Island in approximate position latitude 32°33.1' N. longitude 80°12.7' W.

(c) A line drawn from the microwave antenna tower on Edisto Beach charted in approximate position latitude 32°29.3' N. longitude 80°19.2' W. across St. Helena Sound to the abandoned lighthouse tower on Hunting Island charted in approximate position latitude 32°22.5' N. longitude 80°26.5' W.

(d) A line drawn from the abandoned lighthouse on Hunting Island in approximate position latitude 32°22.5' N. longitude 80°26.2' W. to latitude 32°18' N. longitude 80°25' W.; thence to the standpipe on Fripp Island in approximate position latitude 32°19' N. longitude 80°28.7' W.

(e) A line drawn from the westernmost extremity of Bull Point on Capers Island to latitude 32°04.8' N. longitude 80°34.9' W. (Port Royal Sound Lighted Whistle Buoy "2PR"); thence to the easternmost extremity of Hilton Head at latitude 32°13.2' N. longitude 80°40.1' W.

§ 7.75 Savannah River/Tybee Roads.

A line drawn from the southwesternmost extremity of Braddock Point to latitude 31°58.3' N. longitude 80°44.1' W. (Tybee Lighted Whistle Buoy "T"); thence to the southeasternmost extremity of Little Tybee Island bearing approximately 269° true.

§ 7.80 Tybee Island, GA to St. Simons Island, GA.

(a) A line drawn from the southernmost extremity of Savannah Beach on Tybee Island 255° true across Tybee Inlet to the shore of Little Tybee Island south of the entrance to Buck Hammock Creek.

(b) A line drawn from the southernmost extremity of Little Tybee Island at Beach Hammock to the easternmost extremity of Wassaw Island.

(c) A line drawn from Wassaw Island in approximate position latitude 31°52.5' N longitude 80°58.5' W. to latitude 31°48.3' N. longitude 80°56.8' W. (Ossabaw Sound North Channel Buoy "OS"); thence to latitude 31°39.3' N. longitude 81°02.3' W. (St. Catherines Sound Buoy "St. C."); thence to latitude 31°31.2' N. longitude (Sapelo Sound Buoy "S"); thence to the easternmost extremity of Blackbeard Island at Northeast Point.

(d) A line drawn from the southernmost extremity of Blackbeard Island to latitude 31°19.4' N. longitude 81°11.5' W. (Doboy Sound Lighted Buoy "D"); thence to latitude 31°04.1' N. longitude 81°16.7' W. (St. Simons Lighted Whistle Buoy "ST S").

§ 7.85 St. Simons Island, GA to Little Talbot Island, FL.

(a) A line drawn from latitude 31°04.1' N. longitude 81°16.7' W. (St. Simons Lighted Whistle Buoy "ST S") to latitude 30°42.7' N. longitude 81°19.0' W. (St. Mary's Entrance Lighted Whistle Buoy "1"); thence to Amelia Island Light.

(b) A line drawn from the southernmost extremity of Amelia Island to latitude 30°29.4' N. longitude 81°22.9' W. (Nassau Sound Approach Buoy "6A"); thence to the northeasternmost extremity of Little Talbot Island.

§ 7.90 St. Johns River, FL.

A line drawn from the southeasternmost extremity of Little Talbot (Spike) Island to latitude 30°23.8' N. longitude 81°20.3' W. (St. Johns Lighted Whistle Buoy "2 STJ"); thence to St. Johns Light.

§ 7.95 St. Johns Point, FL to Miami Beach, FL.

(a) A line drawn from the seaward extremity of St. Augustine Inlet north jetty to latitude 29°55' N. longitude 81°15.3' W. (St. Augustine Lighted Whistle Buoy "ST. A."); thence to the seaward extremity of St. Augustine Inlet south jetty.

(b) A line formed by the centerline of the highway bridge over Matanzas Inlet.

(c) A line drawn from the seaward extremity of Ponce de Leon Inlet north jetty to latitude 29°04.7' N. longitude 80°54' W. (Ponce de Leon Inlet Lighted Bell Buoy "2"); thence to Ponce de Leon Inlet Approach Light.

(d) A line drawn from Canaveral Harbor Approach Channel Range Front Light to latitude 28°23.7' N. longitude 80°32.2' W. (Canaveral Bight Wreck Lighted Buoy "WR6"); thence to the radio tower on Canaveral Peninsula in approximate position latitude 28°22.9' N. longitude 80°36.6' W.

(e) A line drawn across the seaward extremity of the Sebastian Inlet Jetties.

(f) A line drawn from the seaward extremity of the Fort Pierce Inlet North Jetty to latitude 27°28.5' N. longitude 80°16.2' W. (Fort Pierce Inlet Lighted Whistle Buoy "2"); thence to the tank located in approximate position latitude 27°27.2' N. longitude 80°17.2' W.

(g) A line drawn from the seaward extremity of St. Lucie Inlet north jetty to latitude 27°10'N. longitude 80°08.4' W. (St. Lucie Inlet Entrance Lighted Whistle Buoy "2"); thence to Jupiter Island bearing approximately 180° true.

(h) A line drawn from the seaward extremity of Jupiter Inlet North Jetty to the northeast extremity of the concrete apron on the south side of Jupiter Inlet.

(i) A line drawn from the seaward extremity of Lake Worth Inlet North Jetty to latitude 26°46.4' N. longitude 80°01.5' W. (Lake Worth Inlet Lighted Bell Buoy "2LW"); thence to Lake Worth Inlet Lighted Buoy "3"; thence to the

seaward extremity of Lake Worth Inlet South Jetty.

(j) A line drawn across the seaward extremity of the Boynton Inlet Jetties.

(k) A line drawn from Boca Raton Inlet North Jetty Light "2" to Boca Raton Inlet South Jetty Light "1".

(l) A line drawn from Hillsboro Inlet Light to Hillsboro Inlet Entrance Light "2"; thence to Hillsboro Inlet Entrance Light "1"; thence west to the shoreline.

(m) A line drawn from the tower location in approximate position latitude 26°06.9' N. longitude 80°06.4' W. to latitude 26°05.5' N. longitude 80°04.8' W. (Port Everglades Lighted Whistle Buoy "1"); thence to the signal tower located in approximate position latitude 26°05.5' N. longitude 80°06.5' W.

(n) A line drawn from the seaward extremity of Bakers Haulover Inlet north jetty 090° true to longitude 80°07.2' W.; thence to the seaward extremity of Bakers Haulover Inlet south jetty.

§ 7.100 Florida Reefs and Keys from Miami, FL to Marquesas Keys, FL.

(a) A line drawn from the tower located in approximate position latitude 25°46.7' N. longitude 80°08' W. to latitude 25°46.1' N. longitude 80°05.0' W. (Miami Lighted Whistle Buoy "M"); thence to Fowey Rocks Light (latitude 25°35.4' N. longitude 80°05.8' W.); thence to Pacific Reef Light (latitude 25°22.3' N. longitude 80°08.5' W.) thence to Carysfort Reef Light (latitude 25°13.3' N. longitude 80°12.7' W.); thence to Molasses Reef Light "10" (latitude 25°00.7' N. longitude 80°22.6' W.); thence to Alligator Reef Light (latitude 24°51.1 N. longitude 80°37.1' W.); thence to Tennessee Reef Light (latitude 24°44.7' N. longitude 80°46.9' W.); thence to Sombrero Key Light (latitude 24°37.6' N. longitude 81°06.6' W.); thence to American Shoal Light (latitude 24°31.5' N. longitude 81°31.2' W.); thence to latitude 24°27.7' N. longitude 81°48.1' W. (Key West Entrance Lighted Whistle Buoy); thence to Cosgrove Shoal Light (latitude 24°27.5' N. longitude 82°11.2' W.); thence due north to a point 12 miles from the baseline from which the territorial sea is measured in approximate position latitude 24°47.5' N. longitude 82°11.2' W.

Gulf Coast

§ 7.105 Marquesas Keys, FL to Rio Grande, TX.

(a) A line drawn from Marquesas Keys, Florida at approximate position latitude 24°47.5' N. longitude 82°11.2' W. along the 12-mile line which marks the seaward limits of the contiguous zone (as defined in 33 CFR Part 2.05–15) to Rio Grande, Texas at approximate position latitude 25°58.6' N. longitude 96°55.5' W.

Hawaii

§ 7.110 Mamala Bay, HI.

A line drawn from Barbers Point Light to Diamond Head Light.

Pacific Coast

§ 7.115 Santa Catalina Island, CA.

(a) A line drawn from the northernmost point of Lion Head to the north tangent of Bird Rock Island; thence to the northernmost point of Blue Cavern Point.

(b) A line drawn from White Rock to the northernmost point of Abalone Point.

§ 7.120 Mexican/United States Border to Point Fermin, CA.

(a) A line drawn from the southerly tower to the Coronado Hotel in approximate position latitude 32°40.8' N. longitude 117°10.6' W. to latitude 32°39.1' N. longitude 117°13.6' W. (San Diego Bay Channel Lighted Bell Buoy "5"); thence to Point Loma Light.

(b) A line drawn from Mission Bay South Jetty Light "2" to Mission Bay North Jetty Light "1".

(c) A line drawn from Oceanside South Jetty Light "4" to Oceanside Breakwater Light "3".

(d) A line drawn from Dana Point Jetty Light "6" to Dana Point Breakwater Light "5".

(e) A line drawn from Newport Bay East Jetty Light "4" to Newport Bay West Jetty Light "3".

(f) A line drawn from Anaheim Bay East Jetty Light "6" to Anaheim Bay West Jetty Light "5"; thence to Long Beach Breakwater East End Light "1". A line drawn from Long Beach Entrance Light "2" to Long Beach Light. A line drawn from Los Angeles Main Channel Entrance Light "2" to Los Angeles Light.

§ 7.125 Point Vincente, CA to Point Conception, CA.

(a) A line drawn from Redondo Beach East Jetty Light "2" to Redondo Beach West Jetty Light "3".

(b) A line drawn from Marina Del Rey Light "4" to Marina Del Rey Breakwater South Light "1". A line drawn from Marina Del Rey Breakwater North Light "2" to Marina Del Rey Light "3".

(c) A line drawn from Port Hueneme East Jetty Light "4" to Port Hueneme West Jetty Light "3".

(d) A line drawn from Channel Islands Harbor South Jetty Light "2" to Channel Islands Harbor Breakwater South Light "1". A line drawn from Channel Islands Harbor Breakwater North Light to Channel Islands Harbor North Jetty Light "5".

(e) A line drawn from Ventura Marina South Jetty Light "6" to Ventura Marina Breakwater South Light "3". A line drawn from Ventura Marina Breakwater North Light to Ventura Marina North Jetty Light "7".

(f) A line drawn from Santa Barbara Harbor Light "4" to latitude 34°24.1' N. longitude 119°40.7' W. (Santa Barbara Harbor Lighted Bell Buoy "1"); thence to Santa Barbara Harbor Breakwater Light.

§ 7.130 Point Conception, CA to Point Sur, CA.

(a) A line drawn from the southernmost extremity of Fossil Point at longitude 120°43.5' W. to the seaward extremity of Whaler Island Breakwater.

(b) A line drawn from the outer end of Morro Bay Entrance East Breakwater to latitude 35°21.5' N. longitude 120°52.3' W. (Morro Bay Entrance Lighted Bell Buoy "1"); thence to Morro Bay West Breakwater Light.

§ 7.135 Point Sur, CA to Cape Blanco, OR.

(a) A line drawn from Monterey Harbor Light "6" to latitude 36°36.5' N. longitude 121°53.2' W. (Monterey Harbor Anchorage Buoy "A"); thence to the northernmost extremity of Monterey Municipal Wharf No. 2.

(b) A line drawn from seaward extremity of the pier located 0.3 mile south of Moss Landing Harbor Entrance to the seaward extremity of the Moss Landing Harbor North Breakwater.

(c) A line drawn from Santa Cruz Light to the southernmost projection of Soquel Point.

(d) A straight line drawn from Point Bonita Light across Golden Gate through Mile Rocks Light to the shore.

(e) A line drawn from the northwestern tip of Tomales Point to latitude 38°15.1' N. longitude 123°00.1' W. (Tomales Point Lighted Horn Buoy "2"); thence to latitude 38°17.2' N. longitude 123°02.3' W. (Bodega Harbor Approach Lighted Gong Buoy "BA"); thence to the southernmost extremity of Bodega Head.

(f) A line drawn from Humboldt Bay Entrance Light "4" to Humboldt Bay Entrance Light "3".

(g) A line drawn from Crescent City Outer Breakwater Light "5" to the southeasternmost extremity of Whaler Island at longitude 124°11' W.

§ 7.140 Cape Blanco, OR to Cape Flattery, WA.

(a) A line drawn from the seaward extremity of the Coos Bay South Jetty to latitude 43°21.9' N. longitude 124°21.7' W. (Coos Bay Entrance Lighted Bell Buoy "1"); thence to the seaward extremity of the Coos Bay North Jetty.

(b) A line drawn from lookout tower located in approximate position latitude 46°13.6' N. longitude 124°00.7' W to

latitude 46°12.8' N. longitude 124°08.0' W. (Columbia River Entrance Lighted Whistle Buoy "2"); thence to latitude 46°14.5' N. longitude 124°09.5' W. (Columbia River Entrance Lighted Bell Buoy "1"); thence to North Head Light.

(c) A line drawn from latitude 46°52.8' N. longitude 124°12.6' W. (Grays Harbor Light to Grays Harbor Entrance Lighted Whistle Buoy "2"); thence to latitude 46°55.0' N. longitude 124°14.7' W. (Grays Harbor Entrance Lighted Whistle Buoy "3"); thence to Grays Harbor Bar Range Rear Light.

§ 7.145 Strait of Juan de Fuca, Haro Strait and Strait of Georgia WA.

(a) A line drawn from the northernmost point of Angeles Point to latitude 48°21.1' N. longitude 123°02.5' W. (Hein Bank Lighted Bell Buoy); thence to latitude 48°25.5' N. longitude 122°58.5' W. (Salmon Bank Lighted Gong Buoy "3"); thence to Cattle Point Light on San Juan Island.

(b) A line drawn from Lime Kiln Light to Kellett Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to latitude 48°46.6' N. longitude 122°53.4' W. (Clements Reef Bouy "2"); thence to International Boundary Range B Front Light.

Alaska

§ 7.150 Canadian (BC) and United States (AK) Borders to Cape Spencer, AK.

(a) A line drawn from the northeasternmost extremity of Point Mansfield, Sitklan Island 040° true to the mainland.

(b) A line drawn from the southeasternmost extremity of Island Point, Sitklan Island to the southernmost extremity of Garnet Point, Kanagunut Island; thence to Lord Rock Light; thence to Barren Island Light; thence to Cape Chacon Light; thence to Cape Muzon Light.

(c) A line drawn from Point Cornwallis Light to Cape Bartolome Light; thence to Cape Edgecumbe Light; thence to the westernmost extremity of Cape Cross.

(d) A line drawn from Surge Bay Entrance Light to Cape Spencer Light.

§ 7.155 Cape Spencer, AK to Cape St. Elias, AK.

(a) A line drawn from the westernmost extremity of Harbor Point to the southernmost extremity of LaChaussee Spit at Lituya Bay.

(b) A line drawn from Ocean Cape Light to latitude 59°31.9' N. longitude 139°57.1' W. (Yakutat Bay Entrance Lighted Whistle Buoy "2"); thence to the southeasternmost extremity of Point Manby.

(c) A line drawn from the northernmost extremity of Point Riou to the easternmost extremity of Icy Cape.

§ 7.160 Point Whitshed, AK to Aialik Cape, AK.

(a) A line drawn from the southernmost extremity of Point Whitshed to the easternmost extremity of Hinchinbrook Island.

(b) A line drawn from Cape Hinchinbrook Light to Schooner Rock Light "1".

(c) A line drawn from the southwesternmost extremity of Montague Island to Point Elrington Light; thence to the southernmost extremity of Cape Puget.

(d) A line drawn from the southernmost extremity of Cape Resurrection to the Aialik Cape.

§ 7.165 Kenai Peninsula, AK to Kodiak Island, AK.

(a) A line drawn from the southernmost extremity of Kenai Peninsula at longitude 151°44.0' W. to East Amatuli Island Light; thence to the northwesternmost extremity of Shuyak Island at Party Cape; thence to the easternmost extremity of Cape Douglas.

(b) A line drawn from the southernmost extremity of Pillar Cape on Afognak Island to Spruce Cape Light; thence to the easternmost extremity of Long Island; thence to the northeasternmost extremity of Cape Chiniak.

(c) A line drawn from Cape Nunilak at latitude 58°09.7' N. to the northernmost extremity of Raspberry Island. A line drawn from the westernmost extremity of Raspberry Cape to the northernmost extremity of Miners Point.

§ 7.170 Alaska Peninsula, AK to Aleutian Islands, AK.

(a) A line drawn from the southernmost extremity of Cape Kumlium to the westernmost extremity of Nakchamik Island; thence to the easternmost extremity of Castle Cape at Chignik Bay.

(b) A line drawn from Second Priest Rock to Ulakta Head Light at Iliuliuk Bay entrance.

(c) A line drawn from Arch Rock to the northernmost extremity of Devilfish Point at Captains Bay.

(d) A line drawn from the easternmost extremity of Lagoon Point to the northwesternmost extremity of Cape Kutuzof at Port Moller.

§ 7.175 Alaska Peninsula, AK to Nunivak, AK.

(a) A line drawn from the northernmost extremity of Goose Point at Egegik Bay to Protection Point.

(b) A line drawn from the westernmost extremity of Kulukak Point to the northernmost extremity of Round Island; thence to the southernmost extremity of Hagemeister Island; thence to the southernmost extremity of Cape Peirce; thence to the southernmost extremity of Cape Newenham.

(c) A line drawn from the church spire located in approximate position latitude 59°45' N. longitude 161°55' W. at the mouth of the Kanektok River to the southernmost extremity of Cape Avinof.

§ 7.180 Kotzebue Sound, AK.

A line drawn from Cape Espenberg Light to latitude 66°52' N. longitude 163°28' W.; and thence to Cape Krusenstern Light.

Dated: June 12, 1985.

B.G. Burns,

Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-14453 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 90

[Gen. Docket 81-413; FCC 85-245]

Authorization of Spread Spectrum Systems Under Parts 15 and 90 of the FCC Rules and Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action changes Part 15 of the Rules to allow spread spectrum systems to operate in the ISM bands at 902–928, 2400–2483.5 and 5725–5850 MHz on a noninterference basis to other authorized users of these bands. The maximum output power of these systems is limited to 1 watt.

Changes are also made to Part 90 of the Rules to allow law enforcement officers to operate direct sequence and time hopping spread spectrum transmitters on selected Public Safety Radio Service frequencies. To protect the agents involved in these operations, the station identification requirement, which was previously required for these operations, has been dropped. Approval from the local area coordinator, of the Police Radio Service of the district in which the license and equipment are to be used, must be first obtained before a licensed law enforcement officer can operate a spread spectrum transmitter on these frequencies.

EFFECTIVE DATE: June 15, 1985.

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

FOR FURTHER INFORMATION CONTACT:

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Dr. Michael Marcus, (202) 632–7040

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 15

Radio frequency devices.

47 CFR Part 90

Private land mobile radio services, Radio.

First Report and Order

In the matter of authorization of spread spectrum and other wideband emissions not presently provided for in the FCC Rules and Regulations; Gen. Docket No. 81–413.

Adopted: May 9, 1985.
Released: May 24, 1985.

By the Commission.

Introduction and Summary

1. Spread spectrum modulation is a wideband modulation which was originally developed for military applications but which has several interesting civil applications.[1] This technology has been implicitly forbidden by the FCC rules with a few limited exceptions. On June 30, 1981, the Commission adopted a *Notice of Inquiry* ("*Inquiry*")[2] in this proceeding seeking comments on a rule structure that would permit civil use of this technololgy.[3]

2. Based on the comments received in the *Inquiry*, we adopted a *Further Notice of Inquiry* and *Notice of Proposed Rulemaking* ("*Further Notice*"),[4] on May 26, 1984, proposing specific rules for spread spectrum in Parts 15 and 90 of our Rules. In this First Report and Order we are adopting some of the proposals of the *Further Notice* with some modification. The remaining issues in the *Further Notice* raised significant controversy in the Comments and we are continuing to review these to see what action is appropriate.

3. In general, the replies to the *Inquiry* favored the Commission's effort to introduce this communications technique. However, many of the respondents were concerned that implementation of this technique might cause unacceptable interference to existing services unless its development was restricted to low-powered, limited range applications and that the allowable frequencies and powers were carefully chosen. Because the technology is new and unfamiliar to the civilian sector, many urged the Commission to proceed slowly with its implementation until sufficient experience in the identification and measurement of spread spectrum signals had been gained and an assessment had been made of their interference potential. Without this information, the majority of the respondents were firmly against a general overlay of spread spectrum systems upon existing services. However, few objected to the use of these systems in an overlay fashion, as long as they were restricted to low-power and limited range applications.

4. From the responses to the *Inquiry* the FCC developed rulemaking proposals for the operation of spread spectrum systems as licensed devices in the Police Radio Service under Part 90 of the Rules and as low-powered, limited range devices to be authorized under Part 15 of the Rules. As a further incentive for the development of this technology, the rules would allow spread spectrum systems of higher power to operate in the 902–928, 2400–2483.5 and 5725–5875 MHz Industrial, Scientific and Medical ISM bands. However, the record was still not sufficiently complete to allow a drafting of the equipment authorization procedures and measurement standards that would be used to determine the equipment compliance for these systems. Accordingly, the *Further Notice* was released by the Commission on May 21, 1984 to solicit further information on the equipment authorization and measurement procedures and to obtain comments on the proposed rules.

Discussion of Comments and Reply Comments

5. Thirty-seven comments and fifteen reply comments were filed in response to the *Further Notice*. These came from a wide range of parties and interest groups. A list of those filing comments is contained in Appendix A.[5, 6] Along with comments from individuals, comments were received from amateur radio, broadcasting, business and industry, cordless telephone manufacturing, police and public safety, and radiopositioning and radionavigation interest groups. Most of the comments which were received were directed to issues or questions posed in the *Further Notice* and no significant new matters relative to the proceeding were raised.

6. Many of the respondents favored the proposed authorization of spread spectrum for low-power limited range communications devices and considered the proposed rules conservative enough for immediate adoption. Others, including broadcasting interests in particular, expressed concern over interference to their services from these devices. Though not opposing the Commission's action in general, they did oppose the overlay of spread spectrum systems on the frequency bands in which they are operating.

7. More specifically, broadcasting groups and some large consumer product manufacturers (RCA, GE and others) suggested that the present level of television service would be seriously degraded if spread spectrum systems were allowed to operate in the television bands. Even though the proposed rules were formulated to offer to this service a level of protection from direct sequence systems equivalent to a TASO 3 level of reception at the Grade A service contour, it was argued that an interference level based on this criterion would produce a degradation of picture quality for those living outside of this contour. It was also argued that interference from these systems would cause a loss of picture quality in those

[1] The spreading or dilution of the energy in spread spectrum systems over a wide bandwidth results in several possible advantages: short range overlays on other emissions, resistance to interference from other emissions, and low detectability. While it is not anticipated that spread spectrum will replace other types of modulations in general, the unique characteristics of spread spectrum offer important options for the communications system designer.

[2] 47 FCC 2d 876.

[3] A companion Notice of Proposed Rulemaking was adopted in Docket 81–414 proposing use of spread spectrum in the Amateur Radio Service and has been implemented, in part, in a Report and Order we are adopting today.

[4] 49 FR 21951. FCC 2d

[5] Some of the comments which were received were not pertinent to this proceeding. ONI, Racal-Decca Survey, Inc., Sercel Inc. and Teledyne Hastings-Raydist all filed comments which were concerned solely with radiolocation operations in the 1600–3000 kHz band. These comments are outside the scope of this proceeding which is concerned with spread spectrum systems operating on frequencies above 70 MHz. The comments of these parties will be considered under Docket 84–874 which is dealing with radiolocation allocations in the 1900–2000 kHz band.

[6] Exxon's comments which described a downward looking impulse radar system being developed under a Special Temporary Authorization from the Private Radio Bureau, were also outside the scope of this proceeding. Although the Exxon system operates on frequencies between 100 and 1000 MHz, its relatively high output power (33 watts) and antenna height (to be operated from a hovering aircraft) may require a special allocation under Part 2 of the Rules rather than any consideration in this proceeding under Part 15. We have not received sufficient information in this proceeding in the type of system Exxon proposes to formulate a specific proposal.

areas, both within and outside the Grade A service contour, where reception is superior to TASO 3 at the present time.

8. COMSAT, STC and AT&T were concerned that some microwave, cellular and satellite facilities may be especially vulnerable to interference from spread spectrum devices particularly in those services where wide bandwidths are employed and weak signals are involved.

9. ARRL and several individual amateurs were concerned about possible interference from spread spectrum systems operating in the amateur bands at 144–146, 220–225 and 420–450 MHz. They argued that since amateurs operate in residential environments, which could conceivably contain many Part 15 spread spectrum devices, their systems would be more susceptible to interference from these devices than those in other services which are operating principally in nonresidential environments. It was further argued that in many amateur operations the level of the ambient noise is critical since they are often dealing with very weak signals which in many cases are barely on the fringes of detection. These signals can be easily masked and lost in interference coming from other sources.

10. Of the parties submitting comments that opposed the proposed authorization of spread spectrum systems, RCA was the only one that supported its position with analysis. RCA's analysis dealt with possible interference to FM and television broadcasting from spread spectrum systems operating in the broadcast bands. However this is not a consideration in this item which is concerned with the authorization of spread spectrum systems in the ISM bands and on Public Safety Radio frequencies.

11. Several police and public safety groups filed comments on the proposed authorization of spread spectrum systems in the Police Radio Service bands under Part 90 of the Rules. The major concern of all of these parties was not interference to their service from the police use of spread spectrum systems in these bands, but rather from other spread spectrum systems that would be authorized to use these bands on a secondary basis. The only major difficulty that was foreseen with the police use of spread spectrum systems in these bands was a possible increase in band congestion. To ease this congestion, as well as to provide a broader range of frequencies that could be used for covert operations, it was suggested that the proposed Part 90 spread spectrum authorization be extended to all frequencies in the Public Safety Radio Services.

12. Both APCO and the County of Orange, California, thought that there was no need to increase the present power limit of 2 watts for fast frequency hopping systems operating in the Public Safety bands and that the proposed 15 watt limit for these systems should be reduced to 2 watts. They stated that a 2 watt limit should be sufficient for all of their present and future frequency hopping needs and can easily be increased later if necessary. They also requested that the station identification requirement of § 90.19(g)(3) of the present Rules should be eliminated for undercover operations, since it not only jeopardizes the security of these operations but it also creates a real danger to the agents involved.

> We have long noted that this is an ambiguous rule, providing use "without special authorization", while at the same time requiring "station identification". This inconsistency has led to some problems which would no doubt be perpetuated and possibly increased by the rules as proposed. We would suggest some special type of provision which would allow the frequency coordinator to recommend or assign these channels on a secondary basis, but without the necessity for a formal license, which defeats the intent of maintaining security through anonymity.[1]

County of Orange also requested the use of other Public Safety frequencies for surveillance operations using modulations other than spread spectrum only if approval or the coordinator had been obtained.

13. No serious objections were raised to the authorization of spread spectrum systems in the 902–928, 2400–2483.5 and 5725–5875 MHz ISM bands as long as these operations did not cause interference to systems that have been authorized the use of these bands under other Parts of the Rules. Both NTIA and GE thought that there should be a cap on the maximum output power which these systems can use. NTIA suggested a power limit of 10 watts, GE a limit of 7 watts. COMSAT expressed concern that use of 5850–5875 MHz might cause interference to the new Fixed Satellite Service allocation in that band.

14. In the *Further Notice*, we asked if the proposed rules would be sufficient to allow the development of wireless data terminal systems or whether more power should be allowed for these devices, either by the creation of a special business-industrial class permission under Part 15 or by authorizing them in one of the licensed services. Hewlett-Packard, which has been developing these systems on an experimental basis under Part 5 of the Rules, suggested that the power limits proposed in the *Further Notice* are not sufficient for these devices. Based upon the field strengths which they consider to be adequate for the development of these devices, the proposed level for direct sequence emissions of 33 uV/m at 3 meters per 4 MHz of bandwidth is at least 10 times too small. If this power limit cannot be raised for these systems, then Hewlett-Packard suggested that wireless data terminals be licensed in the Private Land Mobile Radio Services as a separate service under Part 90 of the Rules. RCA felt that since these terminals would be mainly business and not consumer devices, they should be licensed under Part 94 of the Rules for the Private Operational-Fixed Microwave Service, rather than under Part 15.

15. Comments were also solicited in the *Further Notice* concerning the feasibility of authorizing carrier current spread spectrum systems. Hewlett-Packard has already made measurements on an experimental 5 milliwatt system and finds that the technology is very promising. Hewlett-Packard can foresee little interference to other authorized services from these systems as long as the carrier current operations are confined to large buildings or areas within buildings which have their power supplied from transformers rather than by a direct connection to the AC power lines. These power transformers with their large interwinding capacitances would prevent much of the RF energy generated by the spread spectrum systems from being fed back into the AC power lines. Carrier current systems are limited to operation on frequencies below 20 MHz because of the excessive signal losses that occur when operated on frequencies above this. We find the two Hewlett-Packard suggestions to be promising new applications of this technology and will consider in the near future further action to authorize their use.

16. A request was made in the *Further Notice* for assistance in developing measurement procedures for spread spectrum systems. Although many parties addressed this matter, there was little consensus as to what these procedures should be. However, most parties did agree that a measurement bandwidth must be specified before any meaningful measurement procedures could be drawn up.

17. Some cordless telephone manufacturers expressed concern in the

[1] APCO Comments, page 5.

comments that the proposed spread spectrum authorizations could prejudice their petition for 2 MHz of spectrum in the 900 MHz band.[8] They felt that the present action by the Commission might force them to utilize a technology which they do not have the resources at the present time to develop, and which may not provide sufficient power for their needs.

18. Of the bands presented above, only two were addressed in a degree which allows for a well reasoned decision. We are deferring without prejudice action on all other issues addressed in the *Further Notice*. The two issues to be decided at this time are the use of spread spectrum in the Police Radio Service and the use of spread spectrum in the ISM bands.

Findings

Spread Spectrum in the Police Radio Service

19. The record of this proceeding is sufficiently complete at the present time to enable us to authorize frequency hopping systems to be operated on a limited basis on certain frequencies in the Public Safety Radio Service. This would expand the provisions currently given in § 90.19(g)(3). This authorization is limited to law enforcement officers and its purpose is to allow them to set up communication links on these frequencies that can be used in connection with physical surveillance, stakeouts, raids and other such activities. Operation on these frequencies will be on a noninterference basis to the operations of other licensees who have been authorized the use of these frequencies under other sections of the Part 90 Rules. In addition, their use of these frequencies is subject to the approval of the applicable frequency coordinators of the Public Safety Radio Service of the district in which the license and equipment are to be used and if non-police Public Safety frequencies are to be used the coordination of the other service's coordinator is also needed. The changes to Part 90 of the Rules and Regulations to accomplish this authorization are presented in Appendix B.

20. Since spread spectrum transmissions are not readily detectable by criminals who may be monitoring the air waves and since they are difficult to jam, this authorization gives law enforcement officers an extremely valuable tool to use in their operations. Federal law enforcement agencies operating radio systems under 47 U.S.C. 305 are already authorized by the National Telecommunications and Information Administration to use spread spectrum in their operations on a case-by-case basis. These new rules extend this same capability to state and local law enforcement agencies as well.

21. Under the new Part 90 Rules frequency hopping systems with a maximum output power of 2 watts are allowed to operate on any of the frequencies presently available to the Public Safety Services as listed in Subpart B of Part 90 of the Rules. The 2 watt power limit for these systems is the same as that which is permitted for all present users of these frequencies, on a "without prior FCC approval" basis, irrespective of the modulation which they may be using. Hence, frequency hopping systems which are operating on these frequencies are not expected to cause harmful interference to other users of this spectrum. The 2 watt output power limit applies to all frequency hopping systems that are operating on these frequencies no matter what their hop rate is. Requests to use higher powers will be considered on a case-by-case basis for special temporary authorizations. Appendix C gives guidelines for coordinators to use in considering requests to use frequency hopping systems which we feel should be adequate to prevent harmful interference.

22. While the Commission and some law enforcement agencies have experience with frequency hopping systems, at this time there is very little non-military experience with direct sequence systems. We have traditionally been extremely careful in minimizing the likelihood of harmful interference to critical public safety systems. Thus we shall defer at the moment the permanent authorization of direct sequence systems for police use until we have more data available. We plan to conduct tests at our Laboratory and will invite representatives of the police community to participate. Pending further action in this area, experimental and developmental licenses and special temporary authorization will be available to manufacturers and police licensees who wish to try direct sequence systems.

23. Both APCO and the County of Orange, California have brought to our attention the inherent danger that the station identification requirement of § 90.19(g)(3) of the present rules poses to both the security of undercover operations and the safety of the agents involved. Since the frequencies allocated for these operations can only be used by the law enforcement officers for spread spectrum, and, since approval must be obtained from the applicable frequency coordinators prior to the use of these frequencies for police spread spectrum operations, it would seem that any unauthorized use of these frequencies can be readily detected. Thus, we feel that the station identification requirement present in this section of the Rules is superfluous and can be deleted safely.

Spread Spectrum in the ISM Bands

24. Spread spectrum systems are also being authorized under Part 15 for general usage in the 902–928 MHz, 2400–2483.5 MHz and 5725–5850 MHz ISM bands. Due to COMSAT's concern in its comments about the possibility for interference to the Fixed Satellite Service allocated at 5850–5875 MHz, we have excluded these frequencies from spread spectrum usage. These systems may operate within these bands with a maximum output power of 1 watt. RF output power outside these bands over any 100 kHz bandwidth must be 20 dB below that in any 100 kHz bandwidth within the band which contains the highest level of the desired power. For certification of spread spectrum equipment that is to be used in these bands, the applicant applying for certification must demonstrate by either measurement or analysis that this limit has been met. Spread spectrum systems are allowed to operate within the ISM bands only on a noninterference basis to other operations that have been authorized the use of these bands under other Parts of the Rules. They must not cause any harmful interference to these operations and must accept any interference which these systems may cause to their own operations.[9]

25. Although both NTIA and GE found no great difficulty with spread spectrum systems operating within the ISM bands with maximum output powers of 7 watts, GE did take exception to the opening of these bands to communications systems which have been accustomed to operation with some degree of protection from

[8] See Electronic Industries Association *Petition for Rulemaking*, RM 4760; (requesting an allocation of 2 MHz of spectrum for cordless telephone use in the 900 MHz band) (filed March 1, 1984.)

[9] NTIA has recently studied the current and potential electromagnetic usage of these three bands. Their findings are contained in the following reports.

See Bohdan Bulawka, "Spectrum Resource Assessment in the 902–928 MHz Band", NTIA Report 80–46, September 1980;

See Robert T. Watson, "Spectrum Resource Assessment in the 2300–2450 MHz Band", NTIA Report 81–78, September 1981;

See William B. Grant, John C. Carroll and Charles J. Chilton, "Spectrum Resource Assessment in the 5650–5925 Mhz Band", NTIA Report 83–115, January 1983.

interference. GE fears that the steady encroachment on these bands by other services will eventually lead to petitions from these other users for protection from interference from ISM devices. This would be unfortunate since industry is constantly finding new uses of these frequencies in many diverse applications ranging from coal desulphurization to food sterilization.

26. We appreciate GE's concern in this regard and acknowledge the danger in opening these bands to high power communications devices. In addition, Part 15 of the Rules is intended to provide authorization for low power communications devices and not for communications devices of considerable output power. To open the Part 15 rules to high-powered communications devices, even in a band where other authorized high powered industrial and government equipment is already operating, would not be in keeping with the purpose of this Part of the Rules. Therefore we have reduced considerably the original power limits that we proposed for systems operating in these bands, even below the levels proposed by NTIA and GE. Even at that, the limit of 1 watt that we are allowing for these systems is still much higher than the level of power that we would normally authorize for devices. However, both because of the unique nature of these bands and because the systems being authorized under these rules will be spreading this energy over a wide bandwidth, we believe an output power level of 1 watt is justified. In view of the 1 watt power limit which we are adopting in the final rules we believe the possibility of these systems interfering with other authorized users of these bands is small.

Conclusion

27. The rules which are adopted here for spread spectrum systems operating in the Police Radio Service and in the ISM bands have been kept deliberately conservative in order to minimize any possibility of interference from these systems to existing services. As a further safeguard, all spread spectrum devices which will be permitted under the Part 15 rules proposed in this Report and Order are required to be certified as a prerequisite to marketing. The Rules for the certification of Part 15 low power communication devices are given in the Rules and Regulations under Part 15, Subpart B. See also Part 2, Subpart J, for general certification and type acceptance procedures. In addition, the Commission has the discretionary authority to call in sample devices for testing as part of the certification process. As we have done in the past with cordless telephones, CB radios, home computers and other devices, we expect to engage in a thorough sampling program until we are confident that the manufacturers have gained sufficient knowledge and skill in building these devices, so that they pose no potential interference problems to other uses of the radio spectrum. The procedures for the type acceptance of equipment to be used in the Police Radio Service are given in § 90.203 of the Rules and in Subpart J of Part 2.

28. With the above mentioned safeguards that have been built into the Rules, we do not feel that requiring spread spectrum transmitters to use automatic identifiers is warranted at the present time. However in the future, when a much broader authorization of spread spectrum systems may be considered, we may wish to consider some form of transmission identifier to assist us in identifying and locating units which may be causing interference.

29. We are deferring without prejudice action on the remaining issues which were discussed in the *Further Notice*, such as, the operation of low powered spread spectrum devices on frequencies above 70 MHz, the measurement procedures to be used in the certification of these devices and the possibility of licensing spread spectrum wireless data terminals and carrier current systems under other Parts of the Rules. For further information about this Report and Order contact, Dr. Joseph McNulty at (301) 725–1585 or Dr. Michael Marcus at (202) 632–7040.

Regulatory Flexibility Final Analysis

30. *Reason for Action.* The Commission believes that its rules and policies should be reviewed in the context of current social, technological and financial environments in which licensees and applicants operate, so that service to the public may be facilitated while at least regulatory cost is imposed. It is in this light that it is considering modification of its Part 15 and Part 90 rules.

31. *The Objectives.* The Commission proposes to accommodate spread spectrum systems by reducing regulation to the maximum extent feasible. The Commission believes that such action will lead to a more rapid development of spread spectrum technology in the civilian sector.

32. *Legal basis.* Action proposed herein is taken pursuant to sections 4(i), 7(a), 302 and 303(r) of the Communications Act of 1934, as amended.

33. *Description, potential impact and number of small entities affected.* The ability to develop communications equipment which employs spread spectrum modulation techniques as described in the attached Rules will be beneficial to all entities which are involved. Therefore, we foresee only positive impacts on small entities.

34. *Recording, record keeping and other compliance requirements.* The modifications to Part 15 and 90 of the Rules would require record generation by the manufacturer sufficient to meet the usual equipment authorization requirements. Additionally, the modifications of the part 90 Rules require a simple onetime notification to the applicable frequency coordinators of the district in which the license and equipment are to be used.

35. *Federal rules which overlap, duplicate or conflict with this rule.* None.

36. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective.* None.

37. Accordingly, it is ordered, that effective June 15, 1985, Part 15 and Part 90 of the Rules and Regulations are amended as set forth in the attached Appendix B. The authority for this action is found in section 4(i), 7(a), 302, and 303(r) of the Communications Act of 1934, as amended.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—List of Parties Supplying Comments and Reply Comments to the Further Notice

The following parties supplied Comments to the *Further Notice of Inquiry* and *Notice of Proposed Rulemaking:*

Aeronautical Radio, Inc., (ARINC)
American Radio Relay League, (ARRL)
American Telephone and Telegraph Company, (AT&T)
Associated Public-Safety Communications Officers, Inc., (APCO)
Association of Maximum Service Telecasters, (MST)
California Public Safety-Radio Association, Inc., (CPRA)
Communications Satellite Corporation, (COMSAT)
Jonathan C. Dahm
Joint submission by Dr. George R. Cooper and Dr. William W. Chapman
Del Norte Technology, Inc.
Door Operator & Remote Controls Manufacturers Association, (DORCMA)
Dynascan Corporation

The Consumer Electronics Group of the Electronic Industries Association, (EIA/CEG)
The Personal Communications Section, Telecommunications Group, of the Electronic Industries Association
Exxon Communications Company
General Electrics, (GE)
Geostar Corporation
Hewlett-Packaged, (HP)
County of Los Angeles, Department of Communications
Mura Corporation
National Association of Broadcasters, (NAB)
National Association of Business and Educational Radio, Inc., (NABER)
National Broadcasting Company, Inc., (NBC)
Offshore Navigation, Inc., (ONI)
Radscan, Inc.
RCA Corporation, (RCA)
Ronald E. Reder
Cortland E. Richmond
Satellite Television Corporation, (STC)
Schenectady Amateur Radio Association, Inc.
Sercel Incorporated
Telesciences International Limited
Joint submission by 15 telephone companies
Texas VHF-FM Society
U.S. Dept. of Commerce, National Telecommunications and Information Administration, (NTIA)
Wilkins Engineering
Zenith Electronics Corporation

The following parties supplied Reply Comments to the *Further Notice of Inquiry* and *Notice of Proposed Rulemaking:*

American Petrolum Institute, (API)
American Telephone and Telegraph Company, (AT&T)
Association of Maximum Service Telecasters, (MST)
Communications Satellite Corporation, (COMSAT)
County of Orange, California
Del Norte Technology, Inc.
The Personal Communications Section, Telecommunications Group, of the Electronic Industries Association
General Electric, (GE)
Hewlett-Packard, (HP)
National Association of Broadcasters, (NAB)
Offshore Navigation, Inc., (ONI)
Racal-Decca Survey, Inc.
Radscan, Inc.
Teledyne Hastings-Raydist
Joint submission by 19 telephone companies
U.S. Dept. of Commerce, National Telecommunications and Information Administration, (NTIA)

Appendix B—Changes to Parts 2, 15 and 90 of the FCC Rules and Regulations

PART 2—[AMENDED]

A. Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 2 continues to read:

Authority: Section 4(i), 7(a), 302, and 303(r) of the Communications Act of 1934, as amended.

1. Section 2.1, General Definitions, is amended by inserting the following definitions in alphabetical order.

§ 2.1 [Amended]

* * * * *

Direct Sequence Systems. A direct sequence system is a spread spectrum system in which the incoming information is usually digitized, if it is not already in a binary format, and modulo 2 added to a higher speed code sequence. The combined information and code are then used to modulate a RF carrier. Since the high speed code sequence dominates the modulating function, it is the direct cause of the wide spreading of the transmitted signal.

* * * * *

Frequency Hopping Systems. A frequency hopping system is a spread spectrum system in which the carrier is modulated with the coded information in a conventional manner causing a conventional spreading of the RF energy about the carrier frequency. However, the frequency of the carrier is not fixed but changes at fixed intervals under the direction of a pseudorandom coded sequence. The wide RF bandwidth needed by such a system is not required by a spreading of the RF energy about the carrier but rather to accommodate the range of frequencies to which the carrier frequency can hop.

* * * * *

Pulsed FM Systems. A pulsed FM system is a spread spectrum system in which a RF carrier is modulated with a fixed period and fixed duty cycle sequence. At the beginning of each transmitted pulse, the carrier frequency is frequency modulated causing an additional spreading of the carrier. The pattern of the frequency modulation will depend upon the spreading function which is chosen. In some systems the spreading function is a linear FM chirp sweep, sweeping either up or down in frequency.

* * * * *

Spread Spectrum Systems. A spread spectrum system is an information bearing communications system in which: (1) Information is conveyed by modulation of a carrier by some conventional means, (2) the bandwidth is deliberately widened by means of a spreading function over that which would be needed to transmit the information alone. (In some spread spectrum systems, a portion of the information being conveyed by the system may be contained in the spreading function.)

* * * * *

Time Hopping Systems. A time hopping system is a spread spectrum system in which the period and duty cycle of a pulsed RF carrier are varied in a pseudorandom manner under the control of a coded sequence. Time hopping is often used effectively with frequency hopping to form a hybrid time-division, multiple-access (TDMA) spread spectrum system.

* * * * *

Hybrid Spread Spectrum Systems. Hybrid spread spectrum systems are those which use combinations of two or more types of direct sequence, frequency hopping, time hopping and pulsed FM modulation in order to achieve their wide occupied bandwidths.

* * * * *

PART 15—[AMENDED]

B. Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 15 continues to read:

Authority: Sections 4(i), 7(a), 302, and 303(r) of the Communications Act of 1934, as amended.

1. New § 15.126 is added to read as follows:

§ 15.126 Operation of spread spectrum systems.

Spread spectrum systems may be operated in the 902–928 MHz, 2400–2483.5 MHz and 5725–5850 MHz frequency bands subject to the following conditions:

(a) They may transmit within these bands with a maximum peak output power of 1 watt.

(b) RF output power outside these bands over any 100 kHz bandwidth must be 20 dB below that in any 100 kHz bandwidth within the band which contains the highest level of the desired power. The range of frequency measurements shall extend from the lowest frequency generated in the device (or 100 MHz whichever is lower) up to a frequency which is 5 times the center frequency of the band in which the device is operating.

(c) They will be operated on a noninterference basis to any other operations which are authorized the use of these bands under other Parts of the Rules. They must not cause harmful interference to these operations and must accept any interference which these systems may cause to their own operations.

Note.—Spread spectrum systems using the 902–928 MHz, 2400–2500 MHz and 5725–5850 MHz bands should be cautioned that they are sharing these bands on a noninterference basis with systems supporting critical government requirements that have been allocated the usage of these bands on a primary basis. Many of these systems are airborne radiolocation systems that emit a high EIRP which can cause harmful interference to other users. For further information about these systems, write to: Director, Office of Plans and Policy, U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4096, Washington, D.C. 20230.

Also, future investigations of the effect of spread spectrum interference to Government operations in the 902–928 MHz band may require a future decrease in the power limits.

(d) For frequency hopping systems, at least 75 hopping frequencies, separated by at least 25 kHz, shall be used, and the average time of occupancy on any frequency shall not be greater than four-tenths of one second within a 30-second period. The maximum bandwidth of the hopping channel is 25 kHz. For direct sequence systems, the 6 dB bandwidth must be at least 500 kHz.

(e) If the device is to be operated from public utility lines, the potential of the RF signal fed back into the power lines shall not exceed 250 microvolts at any frequency between 450 kHz and 30 MHz.

PART 90—[AMENDED]

C. Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 90 continues to read:

Authority: Sections 4(i), 7(a), 302, and 303(r) of the Communications Act of 1934, as amended.

1. Section 90.19(g)(3) is revised as follows:

§ 90.19 Police radio service.

* * * * *

(g) * * *

(3) A licensee may use, without special authorization from the Commission, any mobile service frequency between 40 and 952 MHz, listed in Subpart B of this Part of the Rules, for communications in connection with physical surveillance, stakeouts, raids, and other such activities. Such use shall be on a secondary basis to operations of licensees regularly authorized on the assigned frequencies. The maximum output power that may be used for such communications is 2 watts. Transmitters, operating under this provision of the Rules, shall be exempted from the station identification requirements of § 90.425. Use of Public Safety frequencies not listed in paragraph (d) of this section is conditional on the approval of the coordinator corresponding to each frequency. Spread spectrum transmitters may be operated on Public Safety frequencies between 37 and 952 MHz, providing that they are type accepted by the Commission under the provisions of §§ 2.803 and 90.203 of the Rules, and meet the following conditions:

(i) Frequency hopping transmitters can be operated, with a maximum output power of 2 watts, on any Public Safety mobile service frequency between 37 and 952 MHz listed in Subpart B of this section. At least 20 hopping frequencies shall be used and the average time of occupancy on any frequency shall not be greater than 1/10 second in every 2 seconds;

(ii) Use of spread spectrum transmitters under this section of the Rules is subject to approval by the applicable frequency coordinator of the radio services of the district in which the license and equipment are to be used.

2. Section 90.207 is amended by revising paragraph (k) as follows:

§ 90.207 Types of emissions.

* * * * *

(k) For stations in the Fire, Police and Power Radio Services utilizing digital voice modulation, in either the scrambled or unscrambled mode, F3Y emission will be authorized. Authorization to use F3Y emission is construed to include the use of F9Y emission subject to the provisions of § 90.233.

3. Section 90.209 is amended by adding new paragraph (h) as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(h) All out of band emissions, including spurious emissions from switching, that are produced by frequency hopping systems, shall be kept below the limits specified in this Section of the Rules for similar systems which are modulated about a fixed frequency and do not frequency hop.

Appendix C—Initial Coordinator Guidelines for Spread Spectrum

Spread spectrum can be an important tool for law enforcement use in applications where it is vital that radio transmissions must not be detected. While conventional voice privacy systems protect the contents of a message, the presence of encrypted communications is readily detectable and in itself could jeopardize the security of a sensitive operation.

These guidelines are intended to help coordinators in approving requests to use spread spectrum. Requests that do not comply with these guidelines may not be interference-prone, but would require either more detailed calculations or a field test to determine the likelihood of interference. Coordinators may also wish to consider approving uses that have a small interference potential if they feel the value of the operation supported exceeds the cost of the interference.

A frequency hopping (FH) system which hops at a rate of over 100 hops/sec and which hits a conventional voice channel less than 5% of the time will not cause harmful interference regardless of field strength. The interaction of FH with traditional systems becomes more noticeable as the hopping rate is decreased. Hopping rates of less than 10 hops/sec are not recommended for this reason. Frequency hopping systems may trigger carrier operated repeaters on frequencies that they use. (Such repeaters are rare in the public safety services and the Commission has consistently discouraged their use because of their susceptibility to false triggering.) Thus, special steps are needed to protect such repeaters. Interaction with conventional receivers will be further minimized if the hopping frequencies are interleaved between conventional channels.

The following conditions should be met for coordination without a field test:

1. All FH systems should hop at more than 10 hops/sec. As hopping rates greater than 100 hops/sec are preferred, coordinators may wish to have a field demonstration of slower systems.

2. The coordinator should ensure that the sum of the inverse of the processing gain (that is, the number of frequencies used) of all FH systems operated in a given band within a 70 mile diameter does not exceed .05.

3. All frequencies used by carrier operated repeaters within 50 miles should be excluded from the set of hopping frequencies unless it can be demonstrated that the turn-on delay of the repeater is adequate to prevent false triggering (50–100 ms is probably needed).

4. All frequencies used by digital data systems and paging systems within 50 miles should be excluded from the set of

hopping frequencies unless a field test can show absence of harmful interference.

[FR Doc. 85-14590 Filed 6-17-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 73 and 97

[BC Docket No. 79-47; RM-2830; FCC 85-302]

Rebroadcasts of Transmissions of Non-broadcast Radio Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein amends Parts 73 and 97 of the Commission's rules concerning broadcast use of transmission of non-broadcast radio stations. These rule changes: (1) Eliminate the prohibition on rebroadcasts of messages transmitted by personal radio service (CB and GMRS) stations; (2) revise and clarify the amateur radio rules pertaining to broadcast-related activity; (3) permit rebroadcasts of CB and amateur transmissions without prior permission of the message originator; and (4) eliminate the requirements for FCC rebroadcast permission. The elimination of the prohibition on rebroadcasts of personnel radio service messages and the requirements for FCC rebroadcast permission allows broadcasters greater discretion with respect to program material sources and significantly reduces the administrative burden associated with rebroadcasts of transmissions by non-broadcast radio stations. The modification to permit rebroadcasts of CB and amateur messages without permission from the message originator conforms the rules to recent changes to section 705 of the Communications Act of 1934, as amended. Finally, the revisions to the amateur rules clarify the Commission's intention to maintain the amateur service for purposes separate and distinct from broadcasting.

EFFECTIVE DATE: July 22, 1985.

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

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Television, Radio.

47 CFR Part 97

Amateur radio.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 73 and 97 of the Commission's rules concerning rebroadcasts of transmissions of non-broadcast radio stations; BC Docket No. 79-47, RM-2830, FCC 85-302.

Adopted: June 7, 1985.
Released: June 13, 1985.

By the Commission.

1. The Commission is adopting revisions to its broadcast rules concerning rebroadcast of non-broadcast radio transmissions to eliminate unnecessary restrictions and administrative procedures and to conform them to new provisions of the Communications Act of 1934, as amended. These revisions provide for: (1) Elimination of the prohibition on rebroadcasts of Personal Radio Service communications;[1] (2) elimination of the requirement for FCC rebroadcast approval; and, (3) exemption of rebroadcasts of CB and amateur radio communications from the requirements for prior authorization from the orginating station. The Commission also is revising portions of its amateur radio rules to clarify its intention to maintain the amateur service for purposes separate from broadcasting.

Background

2. This proceeding was initiated in 1979 in response to a petition for rule making filed by the National Association of Broadcasters (NAB). In its petition, the NAB asked the Commission to amend the rules to permit broadcast stations to rebroadcast CB emergency transmissions and to permit amateur stations to transmit emergency and public safety information for broadcast and broadcast-related purposes. On March 15, 1979, the Commission adopted a combined *Notice of Inquiry and Memorandum Opinion and Order (Inquiry)*, 44 FR 20465, that denied the NAB's request for changes to the amateur rules, but asked for comments and additional information on the question of whether to permit rebroadcasts of CB emergency messages.

3. Subsequent to the *Inquiry*, in 1982, the Congress modified section 605 of the Communications Act to eliminate the statutory proscriptions on the unauthorized interception of amateur and CB radio transmissions.[2] In October of 1984, Congress again modified section 605 and redesignated the new version as section 705, 47 U.S.C. § 705. However, the 1984 modifications do not affect matters relating to privacy or rebroadcasts of the subject radio communications.[3] An additional development concerning rebroadcast activity occurred in the context of the October 1983, United States military action in Grenada, when questions arose concerning use of amateur radio facilities in conjunction with broadcast news gathering activities.

4. In light of the record developed with respect to the *Inquiry*, the 1982 statutory revisions, and the uncertainty concerning the rules with respect to use of amateur communications in broadcast news gathering, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*), 49 FR 30549, in the rebroadcast matter on July 12, 1984. In the *Notice*, the Commission indicated it was undertaking a comprehensive review and revision of its regulations with respect to rebroadcasts of transmissions of non-broadcast radio stations. The *Notice* set forth specific proposals for eliminating restrictions and procedures with respect to rebroadcast activity and for rewriting portions of the amateur rules to clarify the Commission's policy with respect to use of amateur facilities for broadcast purposes.

5. Thirteen comments and eight reply comments were submitted in response to the *Notice*. A list of parties filing comments and replies is presented in Appendix A.

6. *Current Rule Provisions.* Under the current rules, broadcast stations generally are permitted to rebroadcast the transmissions of non-broadcast radio stations, subject to requirements for prior permission that vary with the type of stations originating the message.[4] The exception to this general policy is that the rules prohibit any rebroadcast of communications from Personal Radio Service stations, that is, stations in the CB and GMRS radio services.[5] In the case of private radio

[1] The Personal Radio Services, as addressed in Part 95 of the rules, include the General Mobile Radio Service (GMRS), the Remote Control (R/C) Radio Service and the Citizens Band (CB) Radio Service. Prior to 1976, the Personal Radio Sevices were known as the Citizens Radio Service with subdivisions Class A, Class C, and Class D that corresponded to the individual subservices under the Personal Radio Services designation. *See, Third Report and Order* in Docket No. 20120, 41 FR 56067.

[2] *See* Communications Amendments Act of 1982, Pub. L. 97-259.

[3] *See*, Cable Communications Policy Act of 1984, Pub. L. No. 98-549, § 5, 98 Stat. 2779 (1984).

[4] The rebroadcast rules are set forth in 47 CFR 73.1207

[5] *See* 47 CFR 73.1207(e). *See also* footnote 1, *supra*.

communications, the broadcaster is required to obtain rebroadcast permission from the originating station and the FCC. To rebroadcast communications of common carrier stations, the broadcaster must secure permission from the message originator in addition to the station licensee and the FCC. In either case, FCC approval may be requested informally by telephone, and must be followed with a written confirmation that includes the written consent of the parties associated with the originating station. Radio communications originated by stations owned and operated by the Federal Government may be rebroadcast with the permission of the originating government agency. FCC approval is not necessary for rebroadcasts of Federal Government radio transmissions, but the broadcaster is required to submit written notification that prior permission for the rebroadcast had been obtained. The rules for the Personal Radio Services prohibit use of CB and GMRS stations to convey program material for rebroadcast on a radio or television station.[6] However, the rules do permit these stations to be used for other purposes such as news gathering and administrative activities associated with program production.

7. The amateur rules specify that an amateur station may not be used to engage in any form of broadcasting, but do permit amateur operators to give consent to rebroadcast of their transmissions, provided that the transmissions do not contain any direct or indirect reference to the rebroadcast.[7] Section 97.114 of the rules prohibits use of an amateur station for third party communications involving compensation or business activity.[8] Thus, the rules effectively preclude a broadcaster from any interactive use of amateur radio facilities.

Discussion

8. Upon review of the record in this proceeding, we have decided to adopt rule changes that are generally consistent with the proposals described in the *Notice*. These changes are largely deregulatory in nature and serve to facilitate greater opportunity for broadcasters to make use of non-broadcast radio communications.

9. As discussed in the *Notice*, the Commission is concerned with two separate and distinct policy objectives in the rebroadcast matter, each of which directly relates to statutory provisions in the Communications Act. The first is the requirement under section 303 that the Commission classify radio stations and limit use of the frequencies assigned to the classes of stations to the purposes of the service to which they are allocated. The other is privacy and protection of communications from unauthorized use as provided in section 705. The *Notice* discussed proposals for changes to the rules that serve both of these statutory provisions and also invited comment on any other issue that might arise in the context of this matter.

Revisions Pertaining to Section 303

10. Section 303 of the Communications Act directs the Commission to manage the use of the radio spectrum, and to do this in a manner that generally encourages the larger and more effective use of radio in the public interest.[9] With respect to use of the frequencies, sections 303(a) and 303(b) provides that the Commission shall "[c]lassify radio stations" and "[p]rescribe the nature of the service to be rendered by each class of stations and each station within any class," 47 U.S.C. 303(a)–(b). In order to assure the most effective use of the spectrum in terms of users and types of services in accordance with these statutory obligations, the Commission has found it necessary "to establish priorities, limit eligibility to hold radio station licenses, and restrict the use of stations to specified purposes and types of services which will be most beneficial to the public," *Citizen's Band Radio Rules*, 38 FCC 1238, 1241 (1965).

11. Consistent with sections 303(a) and (b), the Commission's rules generally permit rebroadcasts of transmissions of stations in non-broadcast radio services, but prohibit the use of stations in services not allocated for broadcast purposes to transmit communications intended for broadcasting. This approach allows broadcast use of non-broadcast communications as a source of information and does not interfere with other services' normal authorized traffic and operation.

12. *Rebroadcasts of Personal Radio Service Communications.* In the *Notice*, we proposed to eliminate the prohibition on rebroadcasts of Personal Radio Service transmissions in § 73.1207(e) of the rules. We indicated that upon consideration of our basic policy towards rebroadcasting and the comments from the *Inquiry*, we believed this rule was no longer justifiable.

13. Section 73.1207(e) was added to the broadcast rules in an *Order* adopted November 12, 1975, 40 FR 54791.[10] The Commission stated that this action would conform the broadcast rules with the prohibitions in the Personal Radio Service rules on transmission of program material for a broadcast station and would address concerns that, due to congestion and other related considerations, the Personal Radio Services were impractical for use in conjunction with the broadcast services.[11] Thus, the decision that gave rise to the rule prohibiting rebroadcast of Personal Radio Service transmissions was intended to address situations in which CB and GMRS radio stations would be used to transmit broadcast program material. In the *Notice*, we observed that in prohibiting all rebroadcasts of Personal Radio Service communications the rule goes beyond the issue of use of such facilities for transmission of broadcast program material.

14. In the *Inquiry* and the *Notice*, the Commission also addressed an issue with respect to the possibility of rebroadcasts of false or misleading information that is often present in CB communications.[12] We were concerned that rebroadcasts of erroneous information could be harmful, especially when it pertains to emergency or public safety situations. Broadcast parties responding to the *Inquiry* submitted that this would not be a problem because stations could be expected to exercise the same discretion in rebroadcasting CB reports as they normally exercise in broadcasting information provided by the public through other means such as telephone, letter, or personal contact. The responses to the *Inquiry* did not resolve our concerns with respect to the quality of CB communications as a source of broadcast news. Nonetheless, we agree with the statements by the NAB and others that broadcasters are aware of their responsibilities to the public and can be expected to apply appropriate discretion in rebroadcasting intercepted CB messages. We further stated that we believe licensees are in a

[6] *See* 47 CFR 95.181(i)[12] (GMRS rules), and 47 CFR 95.413(h) (CB rules).

[7] *See* 47 CFR 97.113.

[8] *See* 47 CFR 97.114.

[9] *See* U.S.C. 303.

[10] Section 73.1207(e) was originally added as § 73.1207(d).

[11] *See Order, supra*, at para. 2(h). The Commission indicated that there were "strong reasons" in addition to conformance for this rule: (1) The broadcast services are adequately served by remote pickup broadcast service facilities for remote transmissions of this type; (2) the [Personal Radio Services are] essentially designed to provide for private, short distance radio communications for business and personal use; and (3) congestion in the [Personal Radio Services] increases constantly making sole use of a channel beyond guarantee and therefore impractical for use in conjunction with the broadcast services."

[12] *See Notice*, paras. 12–13.

position to know their communities well enough to make individual determinations in such cases.[13]

15. The parties responding to the *Notice* generally agree with our initial finding. The National Radio Broadcasters Association (NRBA) submits that the benefits to be derived from rebroadcasts of Personal Radio Service communications far outweigh the potential for harm from transmission of inaccurate or useless information. CBS and NAB agree that to permit rebroadcasts of Personal Radio Service messages would not conflict with the intended purposes of these services and would provide increased access to sources of emergency traffic, road, and weather information. The only opposition to this proposal was expressed by the American Legal Foundation (ALF). It argues that to permit rebroadcasts of CB and GMRS messages would contradict the nature and purpose of these services by forcing station operators to curtail transmissions of private and personal information.

16. We find that the record supports our initial conclusion that rebroadcasts of CB or GMRS radio communications in the same manner as other non-broadcast radio services would not conflict with the purposes of the Personal Radio Services. We believe that the purposes of these services are adequately protected by the rules that prohibit use of CB and GMRS stations to convey broadcast program material.[14] We find no merit in the ALF's contention that rebroadcasts of CB and GMRS radio messages would lead station operators in these services to curtail transmissions of private or personal information. As discussed below, CB transmissions are not afforded statutory privacy protections, and GMRS transmissions are protected from unauthorized use by Section 705 of the Communications Act. In addition, we are sensitive to the First Amendment rights of broadcasters and do not wish to impose any regulation that might unnecessarily restrict broadcasters access to information resources. Therefore, we are eliminating the prohibition on rebroadcasts of Personal Radio Service communications.

17. *Revisions to the Amateur Rules.* In the *Notice*, we indicated that the staff regularly receives requests and inquiries with respect to use of amateur radio facilities for broadcast purposes, particularly news gathering in emergency situations. In view of these inquiries, we were concerned that the amateur rules might be insufficiently specific with respect to our intent that they prohibit all activities involving use of amateur stations for broadcast purposes. We proposed to resolve this problem by rewriting the appropriate parts of the amateur rules and including a specific prohibition on the use of amateur stations for broadcast news gathering and other program production purposes.

18. The comments are generally supportive of this position, with one exception. The National Association of Broadcasters (NAB), the Radio-Television News Directors Association (RTNDA), and CBS, Inc., all support a broadcast news gathering exception for transmission of information concerning *bona fide* news events when other telecommunications facilities are unavailable or inadequate. The American Radio Relay League (ARRL) opposed such an exception as overly broad and inconsistent with the noncommercial nature of the amateur radio service. The ARRL took the position that only certain currently well-defined emergency uses of amateur transmissions should be excepted, and that no rule change is required.[15]

19. The ARRL also asserts that proposed §§ 97.113(b) and 73.1207 are inherently in conflict, arguing that a rule prohibiting use of an amateur station for broadcast program production or news gathering is not consistent with a rule allowing a broadcast station to retransmit an amateur signal. The ARRL argues that by definition any such broadcast station retransmission of an amateur signal would be for program production or news gathering purposes. The ARRL further states that prohibiting *all* retransmissions instead of just "automatic" retransmissions of non-amateur stations would adversely affect amateur operators. ARRL asserts that this would outlaw the practice of "manual" or non-automatic retransmission, i.e., where an amateur operator manually holds the microphone of the amateur transmitter up to a non-amateur receiver, such as an FM radio.

20. Upon consideration of the record, we are revising the amateur rules and including specific provisions to prohibit use of amateur stations for broadcast news gathering or production purposes as proposed. These rules will prohibit use of an amateur radio station as a remote pickup or auxiliary link broadcast service facility. Such uses of an amateur radio station as forwarding weather reports or providing commuter traffic reports for use in any broadcast context will continue to be expressly prohibited.

21. We proposed to remove emergency communications (current § 97.91(a)) from the list of exceptions to the new 97.113 to anticipate and eliminate any possible construction that amateurs would be free to broadcast in an emergency. In light of objections to removal of an explicit authorization to engage in one-way emergency communications, we have redefined amateur emergency communications to insure against any misinterpretation. Emergency communications are listed as an exception to the provisions of the new Section 97.113.

22. We note that a rule of reason applies when interpreting this emergency exception to the broadcast prohibitions in the amateur radio service. Thus, conveying news information directly relating to an unforeseen event which involves the safety of human life or the immediate protection of property falls within this rule of reason, if it cannot be transmitted by any means other than amateur radio because of the remote location of the originating transmission or because normal communications have been disrupted by earthquake, fire, flood, tornado, hurricane, severe storm or national emergency. In instances where other communication facilities were unavailable, RTNDA had sought a much broader application of amateur radio to broadcast purposes. In support of this proposition they cited only examples of necessary, emergency communications. We believe acceptable uses of amateur radio in emergencies are governed by traditional common sense interpretations of those provisions of current § 97.91 which we are now including in § 97.113. Therefore, our rule of reason approach described above accomodates RTNDA's expressed purposes without creating unnecessary exceptions to the amateur rules which could needlessly encourage unauthorized broadcast-related amateur transmissions.

23. With respect to the ARRL's claim that there is conflict in the rules, we point out that § 97.113(b) does not restrict broadcasters from retransmitting amateur communications, but rather it prohibits amateur operators from transmitting messages for broadcast or broadcast-related purposes. This restriction on amateur transmissions is necessary to preserve the non-commerical nature of the amateur service. Section 73.1207 implements privacy protections under section 705 of

[13] *Id.* para. 15.

[14] *See* footnote 6, *supra.*

[15] *See* the February 25, 1985 letter from the ARRL to the Chief, Special Services Division, Private Radio Bureau.

the Communications Act. It is not intended to insure that other radio services are used for their intended purposes. Sections 73.1207 and 97.113 serve different regulation objectives are not contradictory.

24. In regard to the ARRL's comments concerning amateur retransmission of non-amateur radio communications, we have never construed the word "automatic" in § 97.113 to legitimize the practice of holding an amateur microphone to a non-amateur receiver. In the case of retransmitting National Oceanic and Atmospheric Administration (NOAA) weather reports, used as an example by the ARRL, we note that the ARRL itself in its annotated publication of our rules states that the only ways to satisfy this rule are to write a script based on the weather report or to obtain it from a source other than a transmission (such as from a telephonic recording over the public switched telephone network).[16] Thus removal of the word "automatic" clarifies this rule at a time when "automatic" has taken on new and different meanings in the context of amateur repeater, auxiliary and beacon usage.

25. *Revisions Pertaining To Section 705.* Section 705 prohibits unauthorized use of radio communications.[17] Prior to the 1982 revisions to the Communications Act, this statutory protection of privacy applied to virtually all radio transmissions except those intended for use by the general public.[18] The new section 705 expressly excludes CB and amateur radio communications from the privacy protections. In enacting this provision, Congress recognized that "[a]ll amateur and CB radio operators may use any of the channels allocated to their services" and concluded "[t]hus, these operators do not enjoy any reasonable expection of privacy . . . ."[19]

26. In accordance with the requirements of section 705, the Commission's rules require broadcasters to obtain appropriate permissions prior to rebroadcast on non-broadcast radio transmissions.

27. *Permission from CB and Amateur Stations.* In view of the new statutory provisions, we proposed to exempt rebroadcasts of CB and amateur transmissions from the requirements for prior authorization from the originating station. Broadcast interests support this proposal. In comments expressive of the consensus of the broadcast respondents, the NAB submits that elimination of the requirements for rebroadcast consent from CB and amateur operators would make available an important and often unique source of information and would not pose any reasonable concerns with respect to privacy. Amateur radio parties are opposed to elimination of the requirement for rebroadcast permission from amateur stations. The American Radio Relay League (League) argues that while an amateur station may not expect privacy in its transmissions, some case-by-case control over broadcast transmission of amateur signals is necessary to insure that the non-commercial nature of amateur radio is preserved. The League asks the Commission to retain the amateur consent provision and thereby place control over the use of amateur communications in the hands of those who have a direct interest in maintaining the character and integrity of the service. Comments from individual amateur licensees express concern for loss of privacy if the rebroadcast consent requirements are lifted.

28. After consideration of the record concerning this issue, we continue to believe that it is no longer necessary or desirable to require broadcasters to obtain rebroadcast consent from CB and amateur radio stations. We do not agree that the non-commercial nature of amateur radio will be jeopardized if this requirement is eliminated. In the absence of this rule, amateur operators will remain in full control of all communications transmitted on the amateur band. Broadcast use of amateur communications, with the exception of third party communications in emergency situations as discussed *supra*, will continue to be limited to secondary, or "receive only", purposes. Thus, we see no threat to the non-commercial nature of amateur radio if the consent requirement is eliminated. In addition, the legislative history of Pub. L. 97-259 clearly states that ". . . these operators do not enjoy any reasonable expectation of privacy . . . ."[20] Furthermore, we find no justification for maintaining privacy protections for CB and amateur transmissions as a matter of policy. Accordingly, we are exempting CB and amateur transmissions from the requirements for prior authorization from the originating station in § 73.1207(c)(1).[21] With this change to the broadcast rules, the provision in § 97-113 of the amateur rules that specifically allows amateurs to grant rebroadcast consent is no longer necessary. Therefore, we are deleting this provision from § 97.113.

29. *FCC Rebroadcast Approval.* In the *Notice*, we proposed to eliminate the requirements for FCC approval to rebroadcast transmissions of private, non-broadcast radio stations and for written notification to the FCC that permission had been obtained prior to rebroadcast of transmissions of a government radio station. Our internal review of these rules revealed that FCC approval, whether informal (telephone) or formal (written) is routinely granted if the rebroadcast would otherwise be consistent with the rules. This review also indicated that the written notifications associated with rebroadcasts of government communications are simply associated with a station's records and do not form the basis for any subsequent regulatory or administrative activity.

30. In the *Notice*, we indicated that in the absence of the requirements for FCC approval and notification, we would consider alternative regulation to insure and verify compliance with the consent requirements of section 705. We proposed to require licenses to obtain written rebroadcast permission from the

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[16] *See FCC Rule Book*, ARRL, 1984, at 6-6.

[17] The current section 705 states, in relevant part, that:

No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person . . . .

No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto.

This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communciation which is transmitted by any station for use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.

Unauthorized rebroadcasts of broadcast signals are prohibited under a separate provisions in section 325(a) of the Communications Act. *See* 47 U.S.C. 325(a).

[18] The earlier version of the then section 605 applied to all radio communications except for those which are "broadcast or transmitted by amateur or others for use of the general public" or which relate to ships in distress. Under this version of the law, the matter of when an amateur communication is for the general public was clarified by a 1980 judicial interpretation that amateur communications other than calls for contact with another station were subject to the protection of section 605, *Reston* v. *FCC, 492 F. Supp. 697 (D.D.C. 1980).*

[19] H.R. Rep. No. 765, 97th Cong. 2d Sess. (1982).

[20] *See* Congressional Record—House, H6540 (August 19, 1982).

[21] We note that Congress did not exclude GMRS transmissions from the provisions of section 705. Thus, the GMRS service is still protected and our rules will continue to require rebroadcast permission from stations in this service.

originating station in all cases where section 705 applies, and to maintain a copy of that permission at the station, to be available to the FCC on request. The written permission would be maintained until final FCC action on the station's license renewal subsequent to the rebroadcast or for one year, whichever is longer. We also asked for suggestions for an approach that would provide for "implied consent."

31. The commenting parties unanimously support our initial conclusion that the requirements for FCC approval and notification with respect to rebroadcasts of non-broadcast radio transmissions serve no useful regulatory purpose. CBS generally opposes any new rules to insure compliance and verification with respect to rebroadcast consent. It contends that such requirements are unnecessary given the criminal penalties for violation of section 705 and the remedies available to private parties through civil litigation. CBS submits that in view of these penalties, broadcasters have strong incentives to take whatever steps are necessary to insure that rebroadcast consent is obtained and to maintain adequate records to document that consent. As an alternative to our initial proposal, it suggests a rule that would permit broadcasters to rely on informal, express verbal approval which would be followed by a written document prepared by either the message originator or the broadcast station. The NAB also believes that the best approach would be simply to defer to the provisions of sections 705. The NAB submits that it is hesitant to support an implied consent policy in the case of police, fire, and other public safety communications. However, it suggests that such an approach might be feasible with respect to other private radio communications and that implied consent could be determined from the nature and content of the transmissions.

32. After consideration of the record, we conclude that the requirements for FCC rebroadcast approval and notification serve no useful regulatory purpose. Accordingly, we are eliminating them. This action will remove unnecessary regulatory procedures and relieves both broadcast licensees and the Commission of the burden of complying thereto.

33. We agree with CBS and the NAB that additional requirements to insure compliance and verification with respect to rebroadcast consent under section 705 are unnecessary. We conclude that our own provisions for rule violations,[22] and the civil and criminal penalties CBS mentions provide sufficient incentive to insure that broadcasters comply with the rebroadcast consent requirements and that they maintain adequate documentation to verify that consent was obtained. Accordingly, we will not set forth rules requiring licensees to maintain written verification of rebroadcast consent. We also conclude that an implied consent approach would be difficult to make workable within the context of section 705 and, therefore, we will not adopt such an approach.

34. *Foreign Satellites.* The Turner Broadcasting System requests that the Commission issue an interpretation to the effect that it would not violate section 705 to rebroadcast brief excerpts of programming obtained from foreign satellites, without FCC approval, but with the consent of the signal originator. Turner also contends that such an interpretation would also be consistent with other interests such as copyright, privacy, and the INTELSAT Agreement that are protected in the U.S. through enforcement of section 705. In reply comments, the Communications Satellite Corporation (COMSAT) argues that Turner's request should be denied on the grounds that it introduces questions with respect to United States treaty obligations and other national and foreign policy interests related to international satellite transmissions and thus goes beyond the issues that led to the *Notice*. COMSAT also contends that Turner's request is inconsistent with the approach the Commission has taken to date with respect to blanket authority to intercept foreign satellites and therefore should be denied on its merits.

35. We find that the issues with respect to United States treaty obligations and international agreements raised in Turner's request are beyond the scope of this proceeding. Accordingly, we are not ruling on Turner's request to the extent that it involves permission to receive and use excerpts of foreign satellite programming on a routine basis. We wish to indicate that we are not taking a position on the merits of this aspect of Turner's request. However, we note that once a licensee has obtained clear authority from the Commission to receive and use foreign satellite programming, there is no bar to rebroadcasting such programming. In this context, we note the Common Carrier Bureau recently issued a *Memorandum, Opinion, and Authorization* (File No. 907–DSE–L–85, action May 17, 1985 by the Chief, Common Carrier Bureau) concerning an application by the Cable News Network, Inc. (CNN), a Turner affiliated company. That action issued a "conditional grant" to CNN to receive signals from the Soviet Union's GHORIZONT STATIONS 4 and 7 satellites. Under the new rules adopted herein, CNN may rebroadcast programming from these satellites without further approval from the FCC.

Procedural Matters

36. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final regulatory flexibility analysis is:

I. Need for and Purpose of the Rules

The Commission has determined that portions of its rules pertaining to rebroadcasts of non-broadcast radio communications impose unnecessary restrictions and administrative procedures on radio service licensees and the Commission and, therefore, has eliminated those provisions of the rebroadcast rules. These changes will provide increased opportunities for commercial broadcasters to use non-broadcast radio communications in news and other programming. We have rewritten the amateur rules that address use of amateur facilities for broadcast purposes to clarify our general policy prohibiting such uses and to include an exception to permit third party communications on behalf of broadcasters over amateur stations in emergency situations. We believe the public interest benefits in news and information dissemination that can be obtained by permitting third party broadcast traffic in emergencies are sufficient to outweigh the concerns of our general policy of prohibiting such uses of amateur stations. This action also implements certain provisions of the Communications Amendments Act of 1982.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. *Issues raised:* No issues or concerns were raised in response to the initial regulatory flexibility analysis.

B. *Assessment:* The Commission considers the absence of comments discussing adverse impact with respect to its proposals to relax the rules for rebroadcasts of non-broadcast radio communications and to rewrite the amateur rules that pertain to use of an amateur station for broadcast purposes to be indicative of their lack of potential for negative or harmful effects on small business entities. We believe the new rebroadcast rules will have a positive

[22] *See* § 1.80 of the Commission's rules.

effect on broadcast stations by providing increased and easier access to information that is available through non-broadcast radio services.

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

III. Significant Alternatives Considered and Rejected

With respect to the proposal to eliminate the prohibition on rebroadcasts of Personal Radio Service communications, the alternative was to retain the current rule. The Commission found that this restriction on use of CB and GMRS radio transmissions is no longer justifiable.

The Commission proposed to rewrite portions of the amateur rules to clarify its intent to maintain the amateur service for purposes separate and distinct from broadcasting. The alternative was to adopt some form exception that would permit limited third party amateur communications for broadcasters. The Commission agreed with the arguments in the comments that it would serve the public interest to permit limited third party amateur communications for broadcasters and therefore adopted a version of the alternative approach with respect to this issue.

The alternative to the proposal to exempt CB and amateur communications from the requirement to obtain consent from the originating station prior to rebroadcast was to continue to require such consent. In view of the revised section 705 of the Communications Act, we found it unnecessary to require broadcasters to obtain rebroadcast permission from CB and amateur operators.

The final proposal was to eliminate the requirements that stations: (1) Obtain FCC approval prior to rebroadcast of private, non-broadcast radio communications and, (2) notify the FCC that prior consent had been obtained in cases of rebroadcasts of communications of government owned radio stations. Instead of these requirements, the Commission proposed merely to require licensees to obtain a copy of written permission from the message originator, to be available on request. The alternatives were: (1) Require only informal, verbal permission from the message originator, (2) not specify requirements for verification, and (3) maintain the current requirements for permission. The Commission determined that in view of the criminal and civil penalties for violation of section 705, specific rules to insure compliance and verification of compliance with the statutory consent requirements are not necessary. The Commission therefore eliminated the provisions in its rules requiring separate FCC approval and notification in cases where non-broadcast radio communications are rebroadcast.

37. Authority for adoption of the rules set forth herein is provided in sections 2, 4(i), 303, and 705 of the Communications Amendments Act of 1934, as amended.

38. Accordingly, it is ordered that Parts 73 and 97 of the Commission's rules are amended as set forth in Appendix B, effective July 22, 1985. In addition, it is ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Comments

1. Radio-Television News Directors Association
2. Michael Christ Trahos
3. National Radio Broadcasters Association
4. National Broadcasting Company, Inc.
5. CBS, Inc.
6. National Association of Broadcasters
7. American Legal Foundation
8. Turner Broadcasting System, Inc.
9. Joseph Anthony Wolos
10. Alexander S. Jones
11. James E. Sanford
12. Stephen J. Nelson
13. David B. Popkin

Parties Filing Reply Comments

1. Radio-Television News Directors Association
2. Northern Television, Inc.
3. Joseph S. Cochran
4. National Association of Broadcasters
5. Reporters Committee for Freedom of the Press and American Society of Newspaper Editors
6. National Broadcasting Company
7. Communications Satellite Corporation
8. Turner Broadcasting System, Inc.

Appendix B

Parts 73 and 97 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.1207 is amended by revising paragraph (c) to read as follows:

§ 73.1207 Rebroadcasts.

* * * * *

(c) The transmissions of non-broadcast stations may be rebroadcast under the following conditions:

(1) Messages originated by privately-owned non-broadcast stations other than those in the Amateur and Citizens Band (CB) Radio Services may be broadcast only upon receipt of prior permission from the non-broadcast licensee. Additionally, messages transmitted by common carrier stations may be rebroadcast only upon prior permission of the originator of the message as well as the station licensee.

(2) Except as provided in paragraph (d) of this section, messages originated entirely by non-broadcast stations owned and operated by the Federal Government may be rebroadcast only upon receipt of prior permission from the government agency originating the messages.

(3) Messages originated by stations in the amateur and Citizens Band (CB) radio services may be rebroadcast at the discretion of broadcast station licensees.

* * * * *

In § 73.1207, paragraph (e) is removed.

PART 97—AMATEUR RADIO SERVICES

B. 1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609

2. Paragraph (w) of § 97.3 is revised to read as follows:

§ 97.3 Definitions.

* * * * *

(w) *Emergency communication.*

A non-directed request for help or a distress signal directly relating to the immediate safety of human life or the immediate protection of property.

* * * * *

3. Paragraph (d) of § 97.85 is revised to read as follows:

§ 97.85 Repeater operation

* * * * *

(d) A station in repeater operation shall be operated in a manner insuring that it is not used for broadcasting (see § 97.113).

* * * * *

4. Section 97.91 is removed and reserved.

5. Section 97.110 is revised to read as follows:

§ 97.110 Business communications prohibited.

The transmission of business communications by an amateur radio station is prohibited except for emergency communications (see § 97.3(w)).

6. Section 97.113 is revised to read as follows:

§ 97.113 Broadcasting and broadcast related activities prohibited.

(a) An amateur station shall not be used to engage in any form of broadcasting, that is, the dissemination of radio communications intended to be received by the public directly or by intermediary relay stations.

(b) An amateur station may not be used for any activity related to program production or news gathering for broadcast purposes.

(c) An amateur station shall not retransmit programs or signals emanating from any class of radio station other than amateur, except for emergency communications (see § 97.3(w)).

(B) The following one-way amateur transmissions are not considered broadcasting:

(1) Beacon or radio control operation;

(2) Information bulletins consisting solely of subject matter relating to amateur radio;

(3) Transmissions intended for persons learning or improving proficiency in the international Morse code; and

(4) Emergency communications (see § 97.3(w)).

(e) Round table discussions or net operations where more than two amateur stations are in communication with one another are not considered broadcasting.

[FR Doc. 85-14584 Filed 6-17-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 50694-5094]

High Seas Salmon Fishery off Alaska

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

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) announces the commercial salmon fishing periods in the fishery conservation zone (FCZ) off southeast Alaska for 1985. The Secretary notes that the Pacific Salmon Treaty limits the 1985 harvest for all commercial and recreational fisheries in southeast Alaska to 263,000 chinook salmon. This action is necessary to establish the commercial troll fishing periods for 1985 under the treaty and is intended to conserve chinook salmon stocks that contribute to the Alaska, British Columbia, Oregon, Washington, and Idaho chinook salmon fisheries.

EFFECTIVE DATE: June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Section 7(a) of Pub. L. 99-5, the Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 *et seq.*, requires the Secretary to issue conforming amendatory regulations applicable to the U.S. exclusive economic zone (coterminous with the FCZ) to fulfill U.S. treaty obligations to Canada. This action amends the regulations at 50 CFR Part 674 to adopt fishing seasons and catch limitations for 1985 which, is conjunction with similar measures adopted by the State of Alaska for its waters, will ensure that the high seas salmon fishery in conducted in a manner which fulfills our international obligations.

The fishing periods and guideline on the harvest of chinook salmon announced here were the subject of a joint meeting of the Alaska Board of Fisheries (Board) and the North Pacific Fishery Management Council (Council) in Sitka, Alaska, during the first week of February 1985. The tentative fishing periods were selected by the commercial troll salmon fishermen and then adopted by the Board and the Council. The guideline on the chinook harvest by the commercial and recreational salmon fisheries is based on a provision of the Pacific Salmon Treaty. During this meeting, the Regional Director, acting on behalf of the Secretary, consulted with the Director of the Alaska Department of Fish and Game (ADF&G). The Secretary of the Interior and the Coast Guard have also been consulted.

Under the Chinook Annex of the Pacific Salmon Treaty (Annex 4, chapter 3), each nation is to exchange its annual fishery management plans prior to each fishing season. On April 16, ADF&G presented its plan for managing the salmon troll fisheries to the U.S.-Canada Joint Technical Committee for Chinook Salmon. The technical committee found these fishing periods and the harvest guideline to be consistent with the Pacific Salmon Treaty.

Fishing Periods

The fishing periods (expressed in Alaska Daylight Time) for the commercial troll fishery in the FCZ off southeast Alaska are as follows unless later modified.

All salmon species but coho: From 0001 hours on June 3, 1985, until 2400 hours on June 13, 1985; From 0001 hours on July 1, 1985, until 2400 hours on July 14, 1985.

All salmon species: From 0001 hours on July 15, 1985, until the combined commercial and recreational harvest reaches the harvest limit.

All salmon species but chinook: From the time the combined commercial and recreational harvest reaches the chinook salmon harvest limit until 2400 hours on September 20, 1985.

Note.—After the fishing season begins, NOAA may issue notices to modify the fishing seasons given above on the basis of the following or other contingencies:

(a) The second period for harvesting all species but coho may open earlier than July 1, if the catch rates during the first period are low enough to allow the fishery for all salmon to last until approximately August 15.

(b) The second period for harvesting all species but coho may be closed before July 15, if the cumulative chinook catch reaches the harvest limit.

(c) If management actions need to be taken to extend the chinook fishery to August 15, any closures of fishing areas made after July 20 will be for specific locations rather than region-wide.

(d) Although not required by the Pacific Salmon Treaty, the public is advised that the fishery for all salmon species, which begins on July 15, may be closed for 10 days (or more or less) about mid-August unless an evaluation of the southeast Alaska coho salmon runs shows them to be well above average in magnitude and that there is good inshore movement. This closure, if necessary, is designed to stabilize or reduce the proportion of the coho runs harvested in the offshore and coastal fisheries, to allow adequate harvests by the inside fisheries, and to allow adequate numbers of coho to escape the fisheries and reach the spawning grounds.

Chinook Harvest Limit

The base level for the harvest of chinook salmon by the commercial and recreational fisheries is 263,000 legal-size chinook salmon, the harvest limit established by the Pacific Salmon Treaty for all fisheries in southeast Alaska. The Board and the Council made preseason estimates of the chinook harvest by the net fisheries of 28,000 fish, by the recreational fisheries of 22,000 fish, and by the troll fisheries of 213,000 fish. Under provisions of the Pacific Salmon Treaty, this base harvest

level may be increased by an undetermined amount to account for specific contributions from new enhancement activities, provided this increase will not extend the schedule for rebuilding the salmon runs past the year 1998. The chinook harvest limit for the commercial troll fishery will be finally determined after harvests by net and winter fisheries are calculated, taking into account the estimated recreational harvest for the remainder of the year.

Other Matters

This action is exempt from sections 4 through 8 of the Administrative Procedure Act, the Regulatory Flexibility Act, the National Environmental Policy Act, and Executive Order 12291 because, as is expressly provided in Sec. 7(a) of Pub. L. 99–5, it involves a foreign affairs function. It does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fish, Fisheries, Fishing, International organizations.

Dated: June 13, 1985.

Malcolm Baldridge,

Secretary.

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

For the reasons set forth above, Part 674 is revised as follows:

1. The authority citation for Part 674 is revised to read as follows:

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 674.21, paragraphs (a) and (c) are revised to read as follows:

§ 674.21 Time and area limitations.

(a) *Commercial fishing.* (1) *West area.* Commercial fishing for salmon is not permitted at any time.

(2) *East area.* Fishing periods in 1985 (Alaska Daylight Time) are as follows:

(i) All salmon species but coho—0001 hours June 3 to 2400 hours June 13; 0001 hours July 1 to 2400 hours July 14.

(ii) All salmon species—0001 hours July 15 until the combined commercial and recreational harvest reaches the harvest limit.

(iii) All salmon species but chinook—from the time the combined commercial and recreational harvest reaches the harvest limit until 2400 hours September 20.

* * * * *

(c) Fishing times, harvest limits, and areas prescribed in this section may be modified in accordance with § 7(a) of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3636); or under § 674.23 of this Part.

[FR Doc. 85–14611 Filed 6–13–85; 4:26 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 117
Tuesday, June 18, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1136

Milk in the Great Basin Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue through December 1985 a suspension of certain diversion provisions of the Great Basin Federal milk order, and to suspend certain additional provisions. The proposed suspension would continue to remove the limit on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The requirement that at least 6 days' production of each producer whose milk is diverted to nonpool plants be received at pool plants in order for the diverted milk to be priced and pooled under the order would also be suspended. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of July through December 1985.

DATE: Comments are due not later than June 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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 suspension of the following provisions of the order regulating the handling of milk in the Great Basin marketing area is being considered for the months of July through December 1985:

(1) Section 1136.13(c)(2).

(2) In § 1136.13(c)(3), the language "*Provided*, that the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;", and

(3) In § 1136.13(c)(4), the language "*Provided*, that the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;".

All persons who want to send written data, views, or arguments about the proposed suspension 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, not later than 7 days from the date of publication of this notice in the **Federal Register**. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include July 1985 in the suspension period.

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 suspension would continue, for the months of July through December 1985, to remove the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. The order now provides that a cooperative association may divert up to 25 percent of its member milk physically received at pool plants in any month of March through August, and up to 20 percent of its member milk physically received at pool plants in any month of September through February. Similarly, the operator of a pool plant may divert up to 25 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of March through August, and 20 percent during the months of September through February. Also proposed to be suspended for the same period is the requirement that at least 6 days' production of each producer be received at a pool plant each month.

The proposed suspension was requested by Western General Dairies, Inc., a cooperative association that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies. The basis for the request is an increased amount of milk surplus to the fluid needs of the market which must be handled by Western General. The cooperative states that while the diversion limits have been suspended, milk has had to move uneconomically from distant production areas into pool plants solely for qualification purposes. Such movements have displaced milk production closer to the pool plants, causing that milk to be moved to distant nonpool plants for manufacturing use. In the absence of the suspension, the cooperative expects that some of the milk of its member producers who regularly have supplied the fluid market would have to be moved, uneconomically, first to pool plants and then to nonpool manufacturing plants in order to continue pool status for such milk during the months of July through December 1985.

List of Subjects in 7 CFR Part 1136

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1136 continues to read as follows:

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

Signed at Washington, D.C., on: June 12, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–14618 Filed 6–17–85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[85–463]

Criminal Referrals and Other Reports or Statements

Dated: June 10, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board is proposing to formalize its longstanding expectation that institutions whose accounts are insured by the FSLIC ("insured institutions") will report crimes, suspected crimes and unexplained losses they suffer to the appropriate law enforcement authorities, and to prescribe the contents of those reports. The proposed amendments are intended to facilitate appropriate law enforcement responses and to provide a data base for monitoring the types and extent of crimes against insured institutions. The proposed amendments would also prohibit the making of a false or misleading statement or an omission to state a material fact concerning a matter within the Board's jurisdiction, as well as prohibiting the making of such false statement or omission to an auditor of an insured institution concerning its affairs. The proposal would also require that an insured institution file a notice and proof of loss concerning any covered loss with its fidelity bond company.

DATE: Comments must be received by August 15, 1985.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 377–6434, or Rosemary Stewart, Associate General Counsel, (202) 377–6437, Enforcement Division, Office of General Counsel, at the above address.

SUPPLEMENTARY INFORMATION: For many years, it has been the practice of the Federal Home Loan Bank Board ("Board"), acting for itself or as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), to refer criminal matters and suspected criminal matters that are uncovered during the course of examinations of insured institutions or that are disclosed to the Board's representatives by those institutions, to the appropriate law enforcement authorities. In accordance with an agreement reached between the federal financial institution regulatory agencies and the Department of Justice ("Justice"), the Board is proposing regulations that will facilitate the assessment and investigation of possible criminal matters by bringing them to Justice's attention earlier and by providing Justice with specific information needed to determine whether the matter warrants investigation and prosecution. The proposed amendments are intended to facilitate appropriate law enforcement responses and to provide a data base for monitoring the types and extent of crimes against insured institutions.

The proposed regulation would make it the express duty of the insured institution to report in writing to the appropriate United States Attorney concerning a crime, suspected crime or unexplained loss suffered by an insured institution within 14 business days after discovery, with copies to be sent to the appropriate local office of the Federal Bureau of Investigation and the District Director of the Board's Office of Examinations and Supervision for the district in which the institution's main office is located. Although criminal referrals by insured institutions were not previously required by regulation, it has long been the Board's expection that insured institutions will make such referrals themselves, consistent with the obligation that they share with all persons or organizations with knowledge of the commission of crimes, 18 U.S.C. 4. Moreover, an insured institution's duty to follow safe and sound practices requires that it discourage criminal acts that cause it loss by facilitating prosecution of those committing crimes against it. The Board believes that most insured institutions do make criminal referrals at the present time, although they often are accomplished by a telephone call to the FBI or other law enforcement authority. This results in frequent failures to convey necessary information at the time of the referral, and often the Board is unaware of such referrals until its examiners next visit the institution. This is particularly troublesome in cases where the Board itself may wish to initiate civil or administrative action to redress the same matter addressed in the criminal referral. The proposed regulation would ensure that Board representatives learn of such matters immediately by requiring that copies of all referrals be sent to the Board's District Director in the appropriate district.

The Board's regulations currently require only that any loss suffered by insured institutions due to the dishonesty of a director, officer, attorney, agent or employee be reported to the Board. 12 CFR 563.18(b). As a result, many institutions do not bring known or suspected criminal violations to the attention of the law enforcement agencies charged with the duty of prosecuting them. By formalizing the Board's understanding that the insured institution is responsible for referring all criminal matters to law enforcement authorities, the proposed regulation would promote investigation and prosecution of persons involved in crimes against insured institutions because the organization with the most direct knowledge of the conduct would be preparing the reports, and because referrals would be made without the delay caused by waiting for Board personnel to discover or be informed of them.

The proposed regulation specifies basic items that would be required to be included in the report:

(1) The identity and asset size of the insured institution;

(2) The approximate date and dollar amount of the suspected violation;

(3) The amount of any loss;

(4) The amount of any recovery obtained;

(5) The location of the United States Attorney and the office of the Federal Bureau of Investigation to which the report is being sent;

(6) The identity of any person suspected of committing the violation and whether he is currently affiliated with the insured institution;

(7) A summary of the suspected violations;

(8) A chronological account of the violations, including copies of relevant documents, an explanation of who benefitted from the transactions, any explanation of the transaction provided by the suspect or others, and recommendations for further investigation;

(9) Whether there has been a confession;

(10) Identities of any witnesses and persons discovering the violation; and

(11) The identities of the person preparing the report and of persons who are authorized to discuss the referral with the Federal Bureau of Investigation and the Department of Justice.

If the crime involves less than $10,000 before recovery and no affiliated person is suspected of being involved, the written report need not include items (4), (8), or (10). It is anticipated that, should a regulation be adopted that is substantially similar to the proposal, the Board, in cooperation with the federal banking agencies and Justice, would prepare and distribute a new form by which insured institutions could make referrals in compliance with these requirements. If the forms were not prepared by the time of adoption of a final regulation, were that to occur, institutions would be able to use existing Board Form 366.

The proposed regulation would also allow oral reports to be made to the law enforcement agencies in emergencies, such as when a witness or evidence is likely to become unavailable before a written report can be made, or when other circumstances dictate an immediate notification. In such cases, the referral would be documented by completion of the referral form after the oral referral has been made.

Once a report has been made, the chief executive officer of the institution or his designee would be required to notify the board of directors of the filing of such report no later than its next regularly scheduled meeting. The institution would be required to keep a record of all crimes, suspected crimes, or unexplained losses for three years after the report is filed.

The Board also is proposing that 12 CFR 563.18 be expanded to prohibit insured institutions and persons associated with them from making any statement to the Board that is false or misleading with respect to a material fact or that omits to state a material fact concerning any matter within the Board's jurisdiction. In addition, the proposed regulation would prohibit such statements when made to an auditor or person preparing or reviewing an insured institution's financial statements. False or misleading statements involving insured institutions or the Board currently may be crimes under 18 U.S.C. 1001, 1006, 1008, and 1009. The proposed regulatory provision would permit the Board to bring enforcement actions to redress false statements or omissions to disclose material facts regardless of whether the matter is prosecuted by other law enforcement authorities.

In addition, the Board is proposing to require that an insured institution promptly notify its fidelity bond company and file a proof of loss concerning any covered loss pursuant to the procedures provided by its fidelity bond. Prompt notification and filing of a proof of loss will maximize the chance of recovery under the bond, thus contributing to the financial safety and soundness of the insured institution.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all institutions the accounts of which are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would require reports of possible criminal violations by institutions and would prohibit false or misleading statements or material omissions by persons associated with insured institutions without regard to the institutions' asset size.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The proposal is designed to codify the Board's expectation that insured institutions report criminal matters to law enforcement authorities and that communications to the Board will not be false or misleading. The Board has proposed to limit what must be included in a report by providing fewer requirements for reports of crimes involving smaller losses and not involving affiliated persons and generally including only those elements of information that would be essential to law enforcement efforts. There are no alternatives that would result in fewer restrictions on small institutions and still accomplish the goal of requiring the reporting of criminal matters to the appropriate law enforcement authorities.

List of Subjects in 12 CFR Part 563

Savings and Loan Associations, Federal Savings and Loan Insurance Corporation.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority for 12 CFR Part 563 would continue to read:

Authority: Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730), 1947 Reorg. Plan No. 3, 12 FR 4981, 3 CFR 1071 (1943-48 Comp.)

2. Revise § 563.18 as follows:

§ 563.18 Criminal referrals and other reports or statements.

(a) *Periodic reports.* Each insured institution and service corporation thereof shall make such periodic or other reports of its affairs in such manner and on such forms as the Corporation may prescribe. The Corporation may provide that reports filed by insured institutions or service corporations to meet the requirements of other regulations, also satisfy requirements imposed under this section.

(b) *False or misleading statements or omissions.* No insured institution or director, officer, agent, employee, affiliated person, or other person participating in the conduct or the affairs of such institution shall: (1) Make any written or oral statement to the Board, the Corporation, or an agent, representative or employee of eithter of them that is false or misleading with respect to any material fact, or omits to state a material fact concerning any matter within the jurisdiction of the Board or Corporation; or (2) make any such statement or omission to a person or organization auditing an insured institution or otherwise preparing or reviewing its financial statements concerning the accounts, assets, management, condition, ownership, safety or soundness, or other affairs of the institution.

(c) *Notifications of loss and reports of increase in deductible amount of bond.* An insured institution shall promptly notify its fidelity bond company and file a proof of loss concerning any covered losses pursuant to the procedures provided by its fidelity bond. Whenever a deductible amont specified in a bond is increased above the permissible deductible amount specified in the table in § 563.19(b) of this Part, the affected insured institution or service corporation shall report promptly the facts concerning such increase in writing to the District Director of the Office of Examinations and Supervision for the district in which the home office of such institution is located.

(d) *Reports of crimes, suspected crimes, and unexplained losses*— (1) *Purpose and scope.* Insured institutions are required to promptly notify the appropriate law enforcement authorities and the Corporation after unexplained losses or known or suspected criminal acts are discovered. This section applies to known or suspected crimes against insured institutions both by employees of the insured institution and by others, and to crimes or suspected crimes against another financial institution thought to be committed by a person associated with the insured institution.

(2) *Reports.* A written report shall be made by an insured institution to the United States Attorney for the area in which the crime, suspected crime or unexplained loss occurred, within 14 business days after discovry, and copies of the report shall be sent to the appropriate local office of the Federal Bureau of Investigation and to the Board's District Director for the district in which the home office of the insured institution is located, concerning an unexplained loss or known or suspected criminal conduct, including any:

(i) Theft, robbery, embezzlement, check-kiting operation, fraud or attempted fraud, unexplained loss, or other known or suspected misapplication of funds or other things of value belonging to an insured institution or entrusted to its care;

(ii) Requests for, receipt of, or agreement to receive bribes in connection with any transaction or business of such an institution; or

(iii) False statements or reports or overvaluation of land, property or security, or omission to state or attempt to conceal information for the purpose of influencing the actions of an insured institution, the Corporation or the Board.

(3) Except as provided in paragraph (d)(4) of this section, the written report shall include the following:

(i) The identity of the insured institution and its asset size;

(ii) The approximate date and dollar amount of the suspected violation;

(iii) The amount of any loss;

(iv) The amount of any recovery obtained;

(v) The location of the United States Attorney and of the office of the Federal Bureau of Investigation to which the report is being sent;

(vi) The identity of any person suspected of committing the violation and whether he is currently affiliated with the insured institution;

(vii) A summary of the suspected violations;

(viii) A chronological account of the violation, including copies of relevant documents, an explanation of who benefitted from the transaction, any explanation of the transaction provided by the suspect or others, and recommendations for further investigation;

(ix) Whether there has been a confession;

(x) Identities of any witnesses and persons discovering the violation; and

(xi) The identities of the person preparing the report and of persons who are authorized to discuss the referral with the Department of Justice or other law enforcement authorities.

(4) If the referral involves an actual or probable loss or unexplained disappearance of less than $10,000 before any recovery and no affiliated person is suspected of being involved, the written report is required to include only the information required by paragraphs (3)(i), (ii), (iii), (v), (vi), (vii), (ix) and (xi) of this paragraph (d).

(5) Reports required under this section shall be made on forms prescribed by the Corporation. Reports may be made orally in emergency cases, such as when it is likely that evidence or witnesses will become unavailable before a written report can be made; or where other circumstances dictate an immediate referral. In such cases, the report shall be documented by later completion and filing of the prescribed form(s).

(6) The chief executive officer of the insured institution or his designee shall notify the board of directors, not later than its next regularly scheduled meeting following the crime, suspected crime, or unexplained loss, of any reports filed pursuant to this section.

(7) Reports made under this section and related records of all crimes, suspected crimes, or unexplained losses shall be maintained at the insured institution's home office for three years.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-14556 Filed 6-17-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PR-85-6]

14 CFR Ch. I

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawls of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before August 19, 1985.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916,

FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 10, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24503	Regional Airline Association	*Description of petition:* To amend § 135.157 so that the oxygen requirements for operations of pressurized aircraft at altitudes above 10,000 feet mean sea level (MSL), up to and including 25,000 feet MSL (flight level 250) are more consistent with §§ 121.331 and 121.333 requirements for operation of pressurized airplanes at these same altitudes. *Regulations affected:* 14 CFR 135.157.
24616	Hawaiian Airlines, Inc	*Description of petition:* Petitioner requests that the FAA institute a rulemaking proceeding to establish uniform criteria for the grant of exemption to 14 CFR 91.303. The institution of such a proceeding will ensure that all views will be heard and received in the final formulation of a governmental policy on this controversial issue. *Regulations affected:* 14 CFR 91.303.
24601	Worldwide Airlines, Inc.; Carefree Vacations, Inc.	*Description of petition:* Petitioners are requesting the FAA to use the rulemaking procedure for the adoption of uniform criteria in order to satisfy the Court's remand in *Airmark Corporation v. FAA, et al.*, decided March 29, 1985. Uniform standards for exemption should be adopted by a rulemaking proceeding so that the FAA satisfies the constitutional, statutory, and federal common law requirements that agency actions be consistent and even-handed. *Regulations affected:* 14 CFR 91.303.
24397	The Association of Flight Attendants (AFA)/Joint Council of Flight Attendants Unions (CFAU).	*Description of petition:* The Petitioner, AFA, representing 21,000 flight attendants at 14 airlines, petitions for flight and duty time regulations in Parts 121 and 135 equivalent to those applying to the pilots. Insofar as the pilot rules are amended during the time this petition is under consideration, petitioner seeks to have the amended rules applied to flight attendants, except insofar as they allow longer than eight (8) hours of daily flight time in a single duty period, and except insofar as they allow for any rest period less than nine (9) hours. Additionally, petitioner seeks to eliminate the ambiguity of the phrase "free from duty." Training, deadheading, stand-by and ready reserve status or retroactive notification to cover an elapsed period of off-time would not constitute the intent of "free from duty." The basis for this proposal is that flight attendants perform crucial safety duties during normal and emergency situations, and should have the same degree of rest as the pilots. Petitioner CFAU, representing 37,000 flight attendants, proposes that air carriers be required to limit periods of work to a maximum of 14 scheduled duty hours (flag) and 13 scheduled duty hours (domestic) with reductions in scheduled duty limits under specified conditions. An extension of duty time is allowable for long range non-stop flights. The proposed rules would limit a flight attendant's monthly and yearly cumulative duty hours to maximums of 200 and 2,000 hours, respectively. *Regulations affected:* 14 CFR Portions of Parts 121 and 135.

[FR Doc. 85-14516 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-20-AD]

Airworthiness Directives; Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A and T207A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A and T207A Airplanes. This AD would require inspection of the inboard end on replacement wings or rear spars (full spar or inboard end) to determine if a doubler had been installed during manufacture. If the doubler is not installed, corrective action is required to prevent possible failure of the wing rear spars.

DATES: Comments must be received on or before July 25, 1985.

Compliance: Within the next 100 hours time in service after the effective date of this AD.

ADDRESSES: Cessna Single Engine Service Bulletin SEB85-9 dated May 3, 1985, applicable to this AD may be obtained from the Cessna Aircraft Company, Post Office Box 1521, Wichita, Kansas 67201 or the Rules Docket at the address below.

Send comments on the proposal in duplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-20-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-20-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

During the manufacture of wing rear spars for spare parts on Cessna Model 206 and 207 airplanes the manufacturer inadvertently failed to install a doubler on the inboard end. Static tests revealed that such spars could not hold the required ultimate load. Therefore, it is necessary to inspect and repair as necessary the rear spar on those affected aircraft that have had full spar or the inboard end of the spar replaced. Inspection and repair procedures are called out in Cessna Single Engine Service Bulletin SEB85-9 dated May 3, 1985. Since the condition described herein is likely to exist or develop in

other Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes of the same design, the AD would require inspection of replacement wings or rear spars (full spar or inboard end) of these airplanes for a missing doubler and repair, as necessary per Cessna Single Engine Service Bulletin SEB85-9.

There are approximately 3716 airplanes affected by the proposed AD. The FAA estimates that approximately 12 of these airplanes may have to be modified. The cost of accomplishing the proposed AD on these 12 airplanes is estimated to be $630 per airplane. The total cost of inspecting all 3716 airplanes and the modification of approximately 12 airplanes is estimated to be $137,620. The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the FAR as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new AD:

Cessna: Applies to the following Cessna airplanes certificated in any category:

Model	Serial No.
U206F/TU206F	S/N U20601071 through U20603521.
U206G/TU206G	S/N U20603522 through U20604649.
207/T207	S/N 20700001 through 20700315.
207A/T207A	S/N 20700316 through 20700767.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

To prevent a possible failure in the wing rear spar on airplanes that have had the full spar or inboard end of the spar replaced, accomplish the following:

(a) Visually inspect the airplane in accordance with Cessna Single Engine Service Bulletin SEB85-9 dated May 3, 1985. If the P/N 1222111-1 doubler is missing, prior to further flight repair the spar in accordance with SEB85-9.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used if approved by Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone 316-946-4400.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Cessna Aircraft Company, Post Office Box 1521, Wichita, Kansas 67201 or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 7, 1985.

Edwin S. Harris,

Acting Director, Central Region.

[FR Doc. 85-14527 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-4]

Proposed Alteration of Yuma, AZ, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the control zone and transition area at Yuma, Arizona. The realignment of the controlled airspace is required to contain all of civil and military IFR operations at Yuma Marine Corp Air Station (MCAS)/Yuma International Airport, a joint use airport, and correct reference points. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to the Airspace Docket No. 85-AWP-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after closing date for comments. A report summarizing each substantive public contact with the FAA

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide realignment of Yuma control and transition area to accommodate aircraft executing IFR arrival and departure operation at Yuma Marine Corp Air Station/Yuma International Airport. Sections 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Adminstration (FAA) proposed to amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

The authority of Part 71 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g); (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69; 49 CFR 1.47.

§ 71.171 [Amended]

Yuma MCAS/Yuma International Airport Control Zone, Yuma, AZ [Revised]

Within a 5-mile radius of Yuma MCAS/Yuma International Airport (lat. 32° 39'23.5" N., long. 114°36'18.7" W.); beginning at lat. 32°41'00" N., long. 114°31'20" W.; clockwise via the 5-mile radius circle to lat. 32°43'30" N., long. 114°38'20" to lat. 32°46'10" N., long. 114°38'20" W. to lat. 32°46'10" N., long. 114°34'10" W. to lat. 32°43'30" N., long. 114°34'10" W. to lat. 32°44'20" N., long. 114°32'50" W. to lat. 32°42'00" N., long. 114°30'00"; thence to the point of beginning.

§ 71.181 [Amended]

Yuma MCAS/Yuma International Airport Transition Area, Yuma, AZ [Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 32°41'00" N., long. 114°24'10" W.; clockwise via the 11-mile radius of the Yuma MCAS/Yuma International Airport (lat. 32°39'23.5" N. long. 114°36'18.7" W.) to lat. 32°29'40" N., long. 114°34'10" W. to lat. 32°28'00" N., long. 114°34'30" W. to lat. 32°28'00" N., long. 114°38'40" W. to lat. 32°29'40" N., long. 114°38'30" W.; thence clockwise via the 11-mile radius excluding that portion outside the United States to lat. 32°47'30" N., long. 114°42'00" W. to lat. 32°57'30" N., long. 114°42'00" W. to lat. 32°57'30" N., long. 114°15'00" W. to lat. 32°41'00" N., long. 114°15'00" W.; thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded by an area starting at a point lat. 33°02'00" N., long. 114°51'00" W. to lat. 33°05'30" N., long. 114°24'30" W. to lat. 32°23'00" N., long. 114°24'30" W. to lat. 32°29'30" N., long. 114°46'00" W.; thence to the point of beginning excluding that portion outside the United States, extending upward from 4,000 feet MSL, bounded by an area starting at lat. 33°22'30" N., long. 114°47'30" W. to a point lat. 33°03'00" N., long. 114°44'00" W. to lat. 33°02'00" N., long. 114°51'00" W. to lat. 32°50'00" N., long. 114°49'00" W. to lat. 32°49'30" N., long. 115°15'00" W. to lat. 32°56'20" N., long. 115°15'00" W. to lat. 33°04'00" N., long. 114°56'00" W. to lat. 33°24'00" N., long. 114°53'00" W.; thence to the point of beginning; that airspace extending upward from 9,000 feet MSL bounded by a point lat. 33°22'30" N., long. 114°38'00" W. to lat. 33°23'00" N., long. 114°34'00" W. to lat. 33°04'00" N., long. 114°34'00" W.; thence to the point of beginning.

Issued in Los Angeles, California on June 6, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-14525 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 851 0111]

InterNorth, Inc. and Houston Natural Gas Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require InterNorth, Inc. (INI), the Omaha, Neb. acquirer of the Houston Natural Gas Corporation, among other things, to divest within 12 months from the effective date of the order to a Commission-approved buyer, all the properties listed on Schedule A, and to terminate all rights and obligations it may have on the contracts listed on Schedule B. Should INI fail to complete the required divestiture within the allotted time, a trustee, appointed by the court or the Commission, will be given 18 months from the date of appointment to divest the remaining Schedule A properties. Until those properties are divested, INI would be required to use its best efforts to maintain them as ongoing, viable enterprises. The order would further prohibit the company, for a period of ten years, from acquiring any assets or interests of a company that is engaging in the gathering or transportation of natural gas in the Permian basin or the Panhandle whose acquisition price is $15 million or more, and from entering into any agreement or venture for the joint purchasing, gathering, or transportation of natural gas in the Permian basin or the Panhandle without prior Commission approval.

DATE: Comments must be received on or before August 19, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-908, Ronald B. Rowe, Washington, D.C. 20580, (202) 724-1441.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to

cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Natural gas, Stock acquisitions, Trade practices.

Before the Federal Trade Commission

[File No. 851-0111]

In the matter of Internorth, Inc., a corporation, and Houston Natural Gas Corporation, a corporation.

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of shares of Common Stock of Houston Natural Gas Corporation ("HNG") by InterNorth, Inc., ("INI"), and INI and HNG having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration, and which if issued by the Commission, would charge INI and HNG with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that INI and HNG are willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between INI and HNG, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. INI is a corporation organized under the laws of Delaware with its executive office at 2223 Dodge Street, Omaha, Nebraska 68102.

HNG is a corporation organized under the laws of Texas with its executive office at 1200 Travis Street, Houston, Texas.

2. INI and HNG admit all jurisdictional facts set forth in the attached draft of complaint.

3. INI and HNG waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act;

4. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify INI and HNG, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by INI or HNG that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to INI or HNG, (1) issue its complaint corresponding in form and substance with the draft of the complaint attached hereto and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to INI's and HNG's addresses as stated in this agreement shall constitute service. INI and HNG waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. INI and HNG have read the draft of complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. INI and HNG further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

ORDER

I

As used in this Order the following definitions shall apply:

(a) "Acquisition" means INI's acquisition of shares of the Common Stock of HNG.

(b) "Schedule A Properties" means the assets and businesses listed in Schedule A of this Order. "Schedule B Contracts" mean the contracts listed in Schedule B of this Order.

(c) "INI" means InterNorth, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by INI and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(d) "HNG" means Houston Natural Gas Corporation, as it was constituted prior to the acquisition, including its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by HNG, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(e) "Permian Basin" means the counties currently included in Texas Railroad Commission Districts 7C, 8 and 8A and that portion of the state of New Mexico currently defined as "New Mexico—East" by the United States Department of Energy for purposes of reporting on form EIA-23.

(f) "Panhandle" means the counties currently included in Texas Railroad Commission District 10 and the following counties in Oklahoma: Beaver, Beckham, Cimarron, Ellis, Harmon, Harper, Roger Mills, Texas, Woodward.

(g) "Texas Gulf Coast" means the counties currently included in Texas Railroad Districts 2, 3 and 4.

(h) "Texas Gulf Coast Pipeline Company" means a company, other than INI, that delivered, in the twelve months preceding the date of any agreement of the kind described in paragraph IV(D), a daily average of at least 100 million cubic feet/day of natural gas to the Texas Gulf Coast for consumption therein. For the purposes of this definition, the deliveries of any entity acquired by a company during the preceding twelve months shall be deemed to be deliveries of the company for the entire, preceding, twelve-month period.

II

It is ordered that:

(A) Within 12 months of the date this Order becomes final, INI shall divest, absolutely and in good faith, the Schedule A Properties.

(B) Within 12 months of the date this Order becomes final, INI shall terminate all rights and obligations it may have on the contracts listed on Schedule B.

(C) Divestiture of the Schedule A Properties shall be made only to an acquirer or acquirers, and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of the Schedule A Properties and the dissolution of the Schedule B Contracts is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same business in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) If INI has not divested the Schedule A Properties within the 12-month period, INI shall consent to the appointment of a trustee in any action that the Federal Trade Commission may bring pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, INI shall consent to the appointment of a trustee by the Commission pursuant to this Order. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by INI to comply with paragraphs II(B) through VI or this Order.

(E) If a trustee is appointed by a Court or the Commission pursuant to Paragraph II(D) of this Order, INI shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to INI's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the power and authority to divest any Schedule A Properties that have been divested by INI within the time period for divestiture in paragraph II(A). The trustee shall have 18 months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee was appointed by a court, subject also to the prior approval of the court. If, however, at the end of the 18-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court, if the trustee was appointed by a court.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities of any business that the trustee has the duty to divest, and INI shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. INI shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the Order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in paragraph II(C).

5. The trustee shall serve at the cost and expense of INI on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to INI and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust property.

6. Promptly upon appointment of the trustee and subject to the approval of the Commission, INI shall, subject to the Commission's prior approval and consistent with provisions of this Order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture.

7. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed.

8. The trustee shall report in writing to INI and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

(F) INI shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear. INI shall use its best efforts to ensure that the Schedule A Properties continue to be ongoing, viable enterprises engaged in the same business in which the Schedule A Properties are presently employed.

III

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty days thereafter until INI has fully complied with the provisions of paragraph II of this Order, INI shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. INI shall include in compliance reports, among other things are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in paragraph II of this Order, including the identity of all parties contacted. INI also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV

It is further ordered that for a period commencing on the date this Order becomes final and continuing for ten (10) years from and after the date this Order becomes final, INI shall cease and desist from (A) acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), any interest in or the whole or any substantial part of the stock or share capital of any company that is engaged in the gathering or transportation of natural gas in the Permian Basin or Panhandle (except, however, that, with respect to any particular transaction, INI may, without prior approval of the Commission, (i) acquire any such assets used in the gathering or transportation of natural gas in the Permian Basin or Panhandle so long as the acquisition price of such assets so used is less than $15 million, and (ii) acquire such stock of any such company so long as the fair market value—as computed in the manner contemplated by 16 CFR 801.10—of assets held by such company that are used in the gathering or transportation of natural gas in the Permian Basin or Panhandle is less than $15 million), (B) entering into, without prior approval of the Federal Trade Commission, any agreement or venture for the joint purchasing, joint gathering or joint transportation of natural gas in the Permian Basin or the Panhandle with any other party that owns natural gas transportation facilities in the same area, (C) entering into, without prior approval of the Federal Trade Commission, any agreement, pursuant to the April 10, 1985 agreement in principle between El Paso Natural Gas Company

and INI, for the purchasing, gathering or transportation of natural gas in the Permian Basin or the Panhandle, (D) entering into, without prior approval of the Federal Trade Commission, any agreement with a Texas Gulf Coast Pipeline Company for the joint marketing of natural gas sold in and to be consumed in the Texas Gulf Coast in connection with which the joint marketing effort contemplates in excess of three unrelated sales transactions, or (E) tendering to The Dow Chemical Company or to Tenngasco, Inc. or receiving from either of these any new gas purchase contracts under the terms of the Gas Supply Agreement dated February 1, 1972, between Intratex Gas Company, The Dow Chemical Company, and Tenngasco, Inc. The prohibitions of this Paragraph IV shall not apply to the (i) construction by INI, without any joint venture participants, of new facilities, or (ii) additions by INI, without any joint venture participants, to existing facilities, or (iii) additions to existing joint venture facilities under existing joint venture arrangements.

One year from the date of service of this Order and annually thereafter INI shall file with the Commission a verified written report of its compliance with this paragraph.

V

For the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to INI and HNG made to its principal office, INI and HNG shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers accounts, correspondence, memoranda and other records and documents in the possession or under the control of INI or HNG relating to any matters contained in this Order; and

B. Upon five days notice to INI or HNG and without restraint or interference from them, to interview officers or employees of respondents who may have counsel present, regarding such matters.

VI

It is further ordered that INI notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

Schedule A

1. Fifty percent (50%) of HNG's stock in Oasis Pipeline Company, a Delaware Corporation.

2. Fifty percent (50%) of Intratex's dedicated capacity under a certain Gas Transportation Agreement dated February 1, 1972 by and between Oasis and Intratex Gas Company, an HNG subsidiary.

3. The partnership interest held by HNG in Red River Pipeline, a Texas general partnership.

4. Llano, Inc.

5. The fifty percent (50%) undivided interest in the TransTexas Pipeline that was acquired pursuant to the Purchase Agreement, dated as of February 28, 1985 by and among Valero Energy Corporation, Valero Transmission Company, INI, Inc., and Northern Texas Intrastate Pipeline Company.

6. Rights and obligations under the following agreements:

a. Ownership Agreement, dated as of February 28, 1985 between Northern Texas Intrastate Pipeline Company and Valero Transmission Company.

b. Pipeline Operating Agreement, dated as of February 28, 1985 between Northern Texas Instrastate Pipeline Company and Valero Transmission Company.

c. Gas Transportation Agreement No. 5201-972, dated as of February 28, 1985 between Valero Transmission Company and Northern Natural Gas Company.

Schedule B

Rights and obligations under the Nor-Val Gas Company Partnership Agreement, dated February 1, 1985, as amended April 1, 1985.

Analysis To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from InterNorth, Inc. and Houston Natural Gas Corporation.

The consent order accepted for public comment has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation in this matter concerned the proposed acquisition by InterNorth, Inc. ("INI") of the stock of Houston Natural Gas Corporation ("HNG"). HNG operates a number of pipelines transporting natural gas out of the producting fields of the Permian Basin in West Texas ("the Permian Basin"), out of the producing fields of the Anadarko Basin in the Texas and Oklahoma Panhandle ("the Panhandle"), and into the consuming area of the Texas Gulf Coast. INI also operates pipelines transporting natural gas out of the Permian Basin and the Panhandle. In addition, INI is a competitor of HNG in the natural gas consuming area of the Texas Gulf Coast through INI's joint venture known as "Nor-Val." Nor-Val is a partnership created in February, 1985, by INI and Valero Transmission Company.

Because the Commission has accepted the consent order for public comment, the administrative complaint proposed by the Commission staff has not yet issued. That complaint charges that INI's acquisition of HNG violates section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The complaint alleges that there would be anticompetitive effects from the acquisition in the purchase and transportation of natural gas in and from the Permian Basin, in the purchase and transportation of natural gas in and from the Panhandle, and in the transportation and sale of natural gas in the Texas Gulf Coast.

The alleged anticompetitive effects resulting from increased concentration in each of these three markets include the elimination of actual competition between INI and HNG and the increased likelihood of collusion.

The order accepted for public comment contains provisions requiring divestiture of assets, termination of agreements and joint arrangements, and limitations on acquisitions of additional assets and on new joint arrangements. The order would require INI to divest certain pipelines located in Texas and New Mexico, and to terminate certain contracts. If INI does not complete the asset divestitures within twelve months of the date the order becomes effective, the Commission would be able to seek a court appointed trustee to complete the divestiture. Under the order, INI would have to divest the assets to an acquirer or acquirers approved in advance by the Federal Trade Commission. If INI were to fail to terminate its joint venture known as Nor-Val within twelve months of the effective date of the order, the Commission would be able to seek civil penalties or other relief.

For a period of ten (10) years from its effective date, the order would also prohibit INI from undertaking certain transactions. INI will not be permitted to make any asset acquisition in the business of the purchasing and transportation of natural gas in the

Permian Basin or the Panhandle without prior Commission approval. However, acquisitions of natural gas transportation assets with a fair market value of less than $15 million would not require prior Commission approval.

INI would be required to submit for prior Commission approval certain agreements for the joint purchasing, gathering or transportation of natural gas in the Permian Basin or the Panhandle. The Commission would also have to approve certain new INI joint marketing agreements for the sale of natural gas to be consumed in the Texas Gulf Coast. However, prior approval is only required for (1) joint marketing agreements with partners that average daily deliveries of natural gas of at least 100 million cubic feet per day over the twelve months preceeding the joint marketing agreement, and (2) joint marketing agreements that contemplate more than three unrelated sales.

In addition, INI would be prohibited from tendering or receiving gas supplies under a joint purchasing Gas Supply Agreement dated February 1, 1972, between Intratex Gas Company (an HNG subsidiary), The Dow Chemical Company, and Tenngasco, Inc. Gas supplied under this agreement was transported on the Oasis pipeline, a joint venture between HNG, The Dow Chemical Company and Tenngasco, Inc.

The provisions of the proposed order are expected to eliminate the anticompetitive effects alleged in the proposed complaint. Before the acquisition, both INI and HNG were significant purchasers and transporters of natural gas in and from the Permian Basin and the Panhandle. Based on ultimate capacity, the acquisition would have resulted in a substantial increase in two already concentrated markets, the Permian Basin, and the Panhandle. In another concentrated market for the transportation and sale of natural gas, the Texas Gulf Coast, HNG was already one of the largest transporters and sellers of natural gas. Although INI, through Nor-Val, was a smaller transporter and seller of natural gas in the Texas Gulf Coast, the acquisition would have resulted in an increase in an already concentrated market. Under the consent order accepted for public comment, post-divestiture concentrations in the purchase and transportation of natural gas in the relevant markets would decrease. This decrease in concentration following diverstiture, along with the termination by Commission order of long-standing and recent joint arrangements, should eliminate any possible adverse impact of the acquisition on natural gas producers in two markets, or natural gas consumers in a third market.

The purpose of this analysis is to invite public comment on the proposed order. The large number of gas producers and the limited number of transmission lines available to serve them in both the Panhandle and the Permian Basin complicate the logistics of gas production and transportation in these markets. The Commission particularly invites informed public comment addressing competitive conditions and the likely effects of the proposed consent order in these markets. This analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-14554 Filed 6-17-85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229 and 239

[Release Nos. 33-6585; 34-22119; 35-23718; IC-14562; File No. S7-26-85]

Technical Amendments to Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission today is publishing for comment proposed revisions relating to various rules and forms under the Securities Act of 1933 and the Securities Exchange Act of 1934. Such proposals would rescind obsolete or duplicative language and rules, clarify or conform certain language, and correct technical omissions and errors in the affected areas.

DATE: Comments must be received on or before August 19, 1985.

ADDRESSES: Five copies of comments should be submitted to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-26-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dorothy Walker or John W. Albert, Office of the Chief Accountant (202-272-2130), or Howard Hodges, Division of Corporation Finance, (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment proposed technical amendments to Regulation S-X, § 210.1-01 et seq., its rules relating to the form and content of and requirements for financial statements, and to various rules and forms under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. IV 1980)] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. IV 1980)]. The following rules and forms are affected by these proposed amendments: Rules 1-02(t), 3-01, 3-02, 3-03(d), 3-05, 3-10, 3-15(a), 4-08(g), 4-08(j)(2), 4-08(k), 4-08(*l*), 4-09, 5-01, 5-02(6), 10-01(a)(3), 10-01(b)(8), 11-01(a), 11-02(b), and Articles 5A and 8 of Regulation S-X [17 CFR 210]; Item 601(b)(11) of Regulation S-K [17 CFR 229]; and Item 21(c)(3) of Form S-18 [17 CFR 239-28].

Synopsis

This release describes the general nature of the technical changes which are proposed and the reasons therefor to provide a framework for understanding the proposed text of the technical amendments set forth below. Your attention is directed to the text of the proposals for a more complete understanding.

A. The following amendments are proposed to be made to the various rules and forms to clarify language or codify staff interpretations.

1. Rules 3-01 and 3-02 of S-X would be rewritten to codify the staff's interpretation that a company that has not yet been in business for its first full fiscal year must include in its registration statement an audited balance sheet as of an interim date within 135 days of the filing, as well as audited statements of income and of changes in financial position for the period from its inception to that same date.

2. Rule 3-05 would be amended to codify the staff's interpretation that when significant changes have occurred since a registrant's fiscal year-end, and if such changes have been fully reported on Form 8-K and appropriate financial information filed, it may be more appropriate to apply the tests to determine whether an acquisition is significant to that more recent financial information.

3. Rule 3-10(a) of S-X, "Financial statements of guarantors, and affiliates whose securities collateralize an issue registered or being registered," would be

rewritten to clarify that the phrase "whose securities constitute a substantial portion of the collateral for any class of securities registered" modifies only "each affiliate of the registrant." Financial statements are required for each guarantor of any class of securities of a registrant and financial statements are also required for each of the registrant's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered. In addition, paragraph (b) of the rule would be rewritten for clarity.

4. Rule 4–08(g) of S–X would be rewritten to clarify that summarized financial information of subsidiaries not consolidated and of 50%-or-less-owned persons must be provided if the requirements are met individually or in the aggregate. The criteria for inclusion of the information may not be applied to a "netted" aggregate wherein the losses of one significant subsidiary offset the income of another so as to obviate the presentation requirements.

5. Rule 5–02(6)(a) of S–X would be amended to codify the staff's practice of allowing registrants to present major classes of LIFO inventories at other than LIFO values when the method of calculating the LIFO inventory amounts does not allow for the practical determination of amounts by major classes.

6. Pro forma presentation requirements for certain real estate acquisitions are proposed in Article 11 of S–X, "Pro Forma Financial Information." These proposed requirements are a codification of the staff's interpretation of specific transactions that are presently included in § 210.11–01(a)(6) of the article as an "other event or transaction . . . for which disclosure of pro forma financial information would be material to investors." The proposal would also clarify Item 7(b)(1) of Form 8–K. That instruction presently requires pro forma financial information pursuant to Article 11 for any transaction required to be described in Item 2 of Form 8–K. Item 2 discusses the acquisition or disposition of a significant amount of assets. Instructions for the preparation of pro forma financial statements are also proposed for these real estate acquisitions.

B. The following amendments are proposed to delete rules in S–X that are duplicative of existing generally accepted accounting principles (GAAP), or otherwise no longer required.

1. Rule 4–08(j)(2) of S–X would be deleted because it is duplicative of the Financial Accounting Standard Board's Statement of Financial Accounting Standards (SFAS) No. 13, "Accounting for Leases."

2. Rule 4–08(k) of S–X on interest costs would be deleted as duplicative of SFAS No. 34, "Capitalization of Interest Cost."

3. Most of Rule 4–08(*l*) (to be renumbered 4–08(k)) of S–X would be deleted because it has become duplicative of SFAS No. 57, "Related Party Disclosures."

Although the disclosure requirements of SFAS No. 57 generally duplicate the Commission's rules set forth in present Rule 4–08(*l*), a minor difference exists with regard to the Commission's requirement to disclose the amount of investments in related parties. While this requirement was not adopted in SFAS No. 57, similar disclosure is required for significant investments under Rule 4–08(g).

The Commission is proposing to retain its rules relating to prominence of disclosure of related parties amounts. Because related party transactions cannot be presumed to have been conducted on an arms-length basis, the Commission believes it necessary to highlight the financial effect of these transactions by requiring specific disclosure on the face of the financial statements. The Commission also proposes to retain its requirements for disclosure of amounts eliminated or not eliminated in any related consolidated financial statements.

Rule 1–02(t) of S–X would be amended to conform the definition of related party to that in SFAS No. 57.

4. Rule 4–09 of S–X would be deleted in its entirety. This rule, requiring current replacement cost information, does not apply to financial statements ending on or after December 25, 1980.

5. Article 5–A of S–X would be deleted in its entirety as duplicative of SFAS No. 7, "Accounting and Reporting by Development Stage Enterprises." SFAS No. 7, however, is applicable only to a full set of financial statements purporting to present financial position, results of operations and changes in financial position in accordance with GAAP. Therefore, a new rule (§ 210.10–01(a)(7)) is being proposed for inclusion in Article 10, "Interim Financial Statements," to require an equivalent presentation for interim financial reporting by development stage enterprises.

6. Article 8 of S–X on Committees Issuing Certificates of Deposit would be deleted in its entirety since the forms prescribed for registering these securities have been rescinded.

C. The following amendments are proposed to conform requirements or definitions of different rules and forms.

1. Rule 3–03(d) of S–X, Rule 10–01(b)(8) of S–X, and Item 21(c)(3) of Form S–18 would be revised to conform the rules to each other. The rules pertain to statements and adjustments required in unaudited interim financial information.

2. Rule 3–15(a) of S–X would be revised to incorporate the presentation requirements of Real Estate Investment Trusts in the Rule and to eliminate a cross-reference to requirements presently contained in Article 6.

3. The income statement caption requirements in Article 10 of S–X would be conformed to those of Article 9; i.e., investment gains or losses would be shown separately regardless of size for interim as well as for annual financial statements for registrants reporting under Article 9.

4. Item 601(b)(11) of Regulation S–X would be amended to include the presentation guidance in Securities Act Release No. 5133 (February 18, 1971 [36 FR 44831]) that previously was only referred to in that item.

5. Rule 5–01 of Regulation S–X would be amended to reflect the elimination of Articles 5A and 8, and to correct typographical errors in reference to Article 9.

Regulatory Flexibility Act

John S. R. Shad, Chairman of the Commission, has certified that the proposed amendments will not have a significant economic impact on any entity subject to their provisions, and therefore, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments are consistent with GAAP and would merely codify present interpretations, and therefore, it is anticipated that the effects of the amendment will not be significant for any class of registrants because the compliance burden is not being changed.

Request for Comment

The Commission invites written comments on the proposed amendments as well as on other matters that might have an impact on these proposals. Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and it is not aware at this time of any burden that such proposals, if adopted, would impose on competition. However, the Commission specifically invites comments as to whether the proposed amendments would have an adverse effect on competition. Comments on this inquiry will be considered by the

Commission in complying with its responsibilities under the Act.

List of Subjects in 17 CFR Parts 210, 229, 230, and 239

Accounting, Reporting and record-keeping requirements, Securities.

Text of Proposals

The Commission hereby proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 would continue to read in part as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, as amended, 81, as amended, 85, as amended, 892, as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49 Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78o, 78w, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, * * *

2. By revising paragraph (t) of § 210.1-02 to read as follows:

§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR Part 210).

* * * * *

(t) *Related parties.* The term "related parties" is used as that term is defined in the Glossary to Statement of Financial Accounting Standards No. 57, "Related Party Disclosures."

* * * * *

3. By revising paragraph (a) of § 210.3-01 to read as follows:

§ 210.3-01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years. If the registrant has been in existence for less than one fiscal year, there shall be filed an audited consolidated balance sheet as of a date within 135 days of the date of filing the registration statement.

* * * * *

4. By revising paragraph (a) of § 210.3-02 to read as follows:

§ 210.3-02 Consolidated statements of income and changes in financial position.

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed. If the registrant (including predecessors) has been in existence for less than three fiscal years, there shall be filed audited statements of income and changes in financial position for the periods from inception to the date of the balance sheet presented under § 210.3-01(a).

* * * * *

5. By revising paragraph (d) of § 210.3-03 to read as follows:

§ 210.3-03 Instructions to income statement requirements.

* * * * *

(d) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

* * * * *

6. By revising paragraph (b)(1) introductory text of § 210.3-05 to read as follows:

§ 210.3-05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) Periods to be presented. (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form S-14. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 15 of Schedule 14A, (§ 240.14a-01 of this chapter) with respect to certain proxy statements or in a registration statement filed on Forms S-14, S-4 or F-4 (§ 239.23, 25 or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in Rule 1-02 of Regulation S-X (§ 210.1-02). The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition. However, if the registrant made a significant acquisition subsequent to the latest fiscal year-end and filed a report on Form 8-K which included audited financial statements of such acquired business for the periods required by Rule 3-05, (§ 210.3-05) and the pro forma financial information required by Article 11 of Regulation S-X, (§ 210.11) the tests specified may be made by using the pro forma amounts for the latest fiscal year in the report on Form 8-K rather than by using the historical amounts for the latest fiscal year of the registrant. The tests may not be made by "annualizing" data.

(i) * * *

* * * * *

7. By revising § 210.3-10 to read as follows:

§ 210.3-10 Financial statements of guarantors and affiliates whose securities collateralize an issue registered or being registered.

(a) For each guarantor of any class of securities of a registrant and for each of the registrant's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the guarantor or affiliate were a registrant and required to file financial statements. However, financial statements need not be filed pursuant to this provision for any person whose statements are otherwise separately filed with the registration statement, proxy statement or periodic report on an individual basis or on a basis consolidated with its subsidiaries.

(b) For the purposes of this provision, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value of the securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20 percent or more of the principal amount of the secured class of securities.

8. By revising paragraph (a) of § 210.3-15 to read as follows:

§ 210.3-15 Special provisions as to real estate investment trusts.

(a)(1) The income statement prepared pursuant to § 210.5-03 shall include the following additional captions between those required by § 210.5-03.15 and 16: (i) Income or loss before gain or loss on sale of properties, extraordinary items and cumulative effects of accounting changes, and (ii) gain or loss on sale of properties, less applicable income tax. (2) The balance sheet required by § 210.5-02 shall set forth in lieu of the captions required by 5-02.31(a)(3): (i) The balance of undistributed income from other than gain or loss on sale of properties and (ii) accumulated undistributed net realized gain or loss on sale of properties. The information specified in § 210.3-04 shall be modified similarly.

* * * * *

9. By revising paragraph (g) of § 210.4-08 to read as follows:

§ 210.4-08 General notes to financial statements.

* * * * *

(g) *Summarized financial information of subsidiaries not consolidated and 50 percent or less owned persons.* (1) The summarized information as to assets, liabilities and results of operations as detailed in § 210.1-02(aa) shall be presented in notes to the financial statements on an individual or group basis for subsidiaries not consolidated and for 50 percent or less owned persons accounted for by the equity method by the registrant or a subsidiary of the registrant, is such subsidiaries individually or in the aggregate, or such 50 percent or less owned persons individually or in the aggregate meet the criteria in § 210.1-02(v) for a significant subsidiary.

(2) Summarized financial information shall be presented insofar as is practicable as of the same dates and for the same periods as the audited consolidated financial statements provided and shall include the disclosures prescribed by § 210.1-02(aa). Summarized information or subsidiaries not consolidated shall not be combined for disclosure purposes with the summarized information of 50 percent or less owned persons, nor shall summarized information of loss entities be combined with that of entities with net income. If the above conditions are met on an aggregate basis by any combination of subsidiaries not consolidated and 50 percent or less owned persons, the summarized financial information required by paragraph (g)(1) of this section shall be provided for all such subsidiaries and persons.

* * * * *

9. By revising paragraph (j) of § 210.4-08 to read as follows:

§ 210.4-08 General notes to financial statements.

* * * * *

(j) *Leased assets and lease commitments of regulated enterprises subject to the rate-making process.*

(1) This section is applicable to all regulated enterprises subject to the rate-making process that do not record capital leases (as defined by Statement of Financial Accounting Standards No. 13) as assets with associated liabilities.

(2) The following information shall be provided for capital leases covered by this rule.

(i) As of the date for each required balance sheet, the aggregate amounts of the assets and liabilities that would have been recorded in the accounts had all leases meeting the definition of a capital lease been recorded.

(ii) For each period for which an income statement is required, the aggregate effect on expenses had all assets obtained through leases meeting the definition of a capital lease been recorded as assets with associated liabilities and any additional information management believes is necessary as to the rate-making process.

* * * * *

11. By removing paragraph (k) of § 210.4-08 and by redesignating paragraph (l) as paragraph (k).

12. By revising the heading and subparagraph (l) of newly designated paragraph (k), and by removing newly designated paragraphs (k)(3) and (4) as follows:

§ 210.4-08 General notes to financial statements.

* * * * *

(k) *Related party transactions which affect the financial statements.* (1) Related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of changes in financial position.

(2) * * *

* * * * *

§ 210.4-09 [Removed]

13. By removing § 210.4-09 in its entirety.

14. By revising § 210.5-01 to read as follows:

§ 210.5-01 Application of §§ 210.5-01 to 210.5-04.

Sections 210.5-01 to 210.5-04 shall be applicable to financial statements filed for all persons except—

(a) Registered investments companies (see §§ 210.6-01 to 210.6-10).

(b) Employee stock purchase, savings and similar plans (see §§ 210.6A-01 to 210.6A-05).

(c) Insurance companies (see §§ 210.7-01 to 210.7-05).

(d) Bank holding companies and banks (see §§ 210.9-01 to 210.9-07).

(e) Brokers and dealers when filing Form X-17A-5 [249.617] (see §§ 240.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

15. By revising pargraph 6(a) of § 210.5-02 to read as follows:

§ 210.5-02 Balance sheets.

* * * * *

(6) *Inventories.* (a) State separately in the balance sheet or in a note thereto, if practicable, the amounts of major classes of inventory such as: (1) finished goods; (2) inventoried costs relating to long-term contracts or programs (see (d) below and § 210.4-05); (3) work in process (see § 210.4-05); (4) raw materials; and (5) supplies. If the method of calculating a LIFO inventory does not allow for the practical determination of amounts assigned to major classes of inventory, the amounts of those classes may be stated under cost flow assumptions other than LIFO with the excess of such total amount over the aggregate LIFO amount shown as a deduction to arrive at the amount of the LIFO inventory.

* * * * *

16. By removing §§ 210.5A-01 and 210.5A-02 (Article 5A) in their entirety.

17. By removing §§ 210.8-01, 210.8-02 and 210.8-03 (Article 8) in their entirety.

18. By revising the last sentence of paragraph (a)(3) of § 210.10-01 to read as follows:

§ 210.10-01 Interim financial statements.

(a) * * *

(3) * * * Notwithstanding these tests, Rule 4-02 of Regulations S-X applies and de minimis amounts therefore need not be shown separately, except that registrants reporting under § 210.9 shall show investment securities gains or losses separately regardless of size.

* * * * *

19. By adding a new paragraph (a)(7) to § 210.10-01 to read as follows:

§ 210.10-01 Interim financial statements.

(a) * * *

(7) In addition to the financial statements required by paragraphs (a)(2), (3) and (4) of this section, registrants in the development stage shall provide the cumulative financial statements

(condensed to the same degree as allowed in this paragraph) and disclosures required by Statement of Financial Accounting Standards No. 7, "Accounting and Reporting by Development Stage Enterprises" to the date of the latest balance sheet presented.

* * * * *

20. By revising § 210.10-01(b)(8) to read as follows:

§ 210.10-01 Interim financial statement.

* * * * *

(b) * * *

(8) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

* * * * *

21. By redesignating paragraphs (a) (5) and (6) of § 210.11-01 as (a) (6) and (7) respectively, and by adding a new paragraph (a)(5) to read as follows:

§ 210.11-01 Presentation requirements.

(a) * * *

(5) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 210.3-01, the registrant has acquired one or more real estate operations or properties which in the aggregate are significant, or since the date of the most recent balance sheet filed pursuant to that section the registrant has acquired or proposes to acquire one or more operations or properties which in the aggregate are significant.

* * * * *

22. By redesignating paragraphs 5 and 6 of the Instructions to § 210.11-02(b) as 6 and 7 respectively; and by adding a new paragraph 5 to the Instructions to read as follows:

§ 210.11-02 Preparation requirements.

* * * * *

(b) * * *

Instructions. * * *

5. Adjustments to reflect the acquisition of real estate operations or properties for the pro forma income statement shall include a depreciation charge based on the new accounting basis for the assets, interest financing on any additional or refinanced debt, and other appropriate adjustments that can be factually supported. See also Instruction 4 above.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

23. The authority citation for Part 229 would continue to read as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a) * * *

24. By revising paragraph (b)(11) of § 229.601 to read as follows:

§ 229.601 Exhibits

* * * * *

(b) * * *

(11) *Statement re computation of per share earnings.* A statement setting forth in reasonable detail the computation or per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. The information with respect to the computation of per share earnings on both primary and fully diluted bases, presented by exhibit or otherwise, must be furnished even though the amount of per share earnings on the fully diluted basis is not required to be stated under the provisions of Accounting Principles Board Opinion No. 15. That Opinion provides that any reduction of less than 3% need not be considered as dilution (see footnote to paragraph 14 of the Opinion) and that a computation on the fully diluted basis which results in improvement of earnings per share not be taken into account (see paragraph 40 of the Opinion).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

25. The authority citation for Part 239 would continue to read in part as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq.* * *

§ 239.28 [Amended]

26. By revising Item 21 in Form S-18 in § 239.28 to read as follows:

(Form S-18 does not appear in the Code of Federal Regulations.)

§ 239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $7,500,000.

* * * * *

Item 21. Financial Statements

* * * * *

(c) * * *

(3) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

Statutory Authority

These amendments are being proposed pursuant to authority in Sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)] of the Securities Act of 1933; Sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)] of the Securities Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e(b), 79n, 79t(a)] of the Public Utility Holding Company Act of 1935; and Sections 8, 30, 31, and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-37(a)] of the Investment Company Act of 1940.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

June 6, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments to rescind obsolete or duplicative language and rules, clarify or conform certain language, and correct technical omissions and errors in the affected areas, contained in Securities Act Release No. 33-6585 will not have a significant economic impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification is that it is anticipated that the effects of the amendments will not be significant for any class of registrants because the proposed amendments are

consistent with generally accepted accounting principles so that the compliance burdent is not being changed.

John S.R. Shad

Chairman.

June 6, 1985.

[FR Doc. 85-14427 Filed 6-17-85; 8:45 am]

BILLING CODE 6010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-136 (Utah-5), RM79-76-137 (Utah-6)]

High-Cost Gas Produced From Tight Formations; Utah

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains an amended order from the State of Utah, Board of Oil, Gas and Mining (Utah) concerning the designation as tight formations the Dakota and Morrison Formations under § 271.703(d). On August 18, 1982, Utah submitted to the Commission a request that a portion of the Dakota Formation and the Morrison Formation located in Grand and Uintah Counties, Utah, each be designated as a tight formation. A Notice of Proposed Rulemaking was issued for each Docket on September 22, 1982. Utah held a hearing June 23 and 24, 1983, to receive supplemental evidence in response to questions raised by Commission staff and resubmitted its recommendation. A second Notice of Proposed Rulemaking was issued November 30, 1983, for each Docket from which a public hearing was requested. The Commission held a public hearing on March 29, 1984, and six parties participated. By letter the Commission staff submitted its comments in these matters to Utah for review. Utah held a public hearing on September 27, 1984. On December 24, 1984, Utah submitted to the Commission an amended order, dated October 25, 1984, which finds that the entire Morrison Formation and portions of the Dakota Formation do not satisfy the Commission's guidelines. On May 24, 1985, Utah submitted to the Commission an erratum order which corrected the county description in the order dated October 25, 1984.

DATE: Comments on the proposed rule are due on July 29, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on June 27, 1985.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: W. Thomas Rosemond, (202) 357-8144, or Victor Zabel, (202) 357-8616.

Issued: June 12, 1985.

I. Background

On August 18, 1982, the State of Utah, Board of Oil, Gas and Mining (Utah) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that a portion of the Dakota Formation and the Morrison Formation located in Grand and Uintah Counties, Utah, each be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, a Notice of Proposed Rulemaking was issued on September 22, 1982, to determine whether Utah's recommendations should be adopted. The United States Department of the Interior, Minerals Management Service, concurred with Utah's recommendation. Three comments were submitted for this notice, all in support of the recommendation and no requests for a hearing were made.

On April 4, 1983, Commission staff requested that Utah submit supplemental information to support all prestimulation flow rates submitted for those wells shown in Exhibit J and Exhibit K of the application since a sample of well completion reports reviewed by Commission staff at the Utah office indicated discrepancies with the data filed.

On June 23 and June 24, 1983, Utah held a hearing on the subject information's recommendations. After the hearing, however, Utah made no changes in its original recommendation although it did supplement the record before the Commission with additional data on September 19, 1983. Three parties appeared at the rehearing to protect the recommendation. The United States Department of the Interior, Bureau of Land Management, now charged with responsibility over the federal portion of the designated area, recommended to the Commission in a letter dated August 10, 1983, that the application be denied. In view of the protests and the additional data, a Notice of Proposed Rulemaking was again issued on November 30, 1983, for each Docket. Three comments were submitted in opposition to the recommendation and a public hearing was requested.

The Commission held a public hearing on March 29, 1984, and six parties participated. On August 8, 1984, a letter was submitted to Utah and the Bureau of Land Management outlining the FERC staff position with respect to the Dakota and Morrison Formations. On August 20, 1984, the BLM submitted to the Commission its concurrence to the Commission staff proposals. On September 7, 1984, the Utah Board by telephone requested the transcript and the prepared statements of the participants of the public hearing held by the Commission on March 29, 1984. A public hearing was held by Utah on September 27, 1984. On December 24, 1984, the Utah Board submitted to the Commission an amended order, dated October 25, 1984, which now finds that a portion of the Dakota Formation does not satisfy the Commission's guidelines and the entire Morrison area does not meet the guidelines and should not be designated as a tight formation. The order accurately describes the Township, Range, and Section, but only refers to Uintah county when in fact the subject property is located in Grand and Uintah Counties. On May 24, 1985, Utah submitted to the Commission an erratum order which corrected the county description in the order dated October 25, 1984. Utah's recommendation and the additional supporting data as well as the data presented by the parties in protest of the recommendation are on file with the Commission and are available for public inspection.

II. Description of Amended Dakota Formation Recommendation

Utah's original order, TGF-104(A), in Cause No. TGF-104 dated May 27, 1982, is amended to eliminate all Dakota acreage except Townships 12 through 15 1/2 South, Ranges 20 through 26 East, Grand and Uintah Counties, Utah, and to redesignate the area recommended

for approval as a tight gas formation as follows:

Township 12 South, Ranges 21 through 25 East
Township 13 South, Ranges 20 through 26 East
Township 14 South, Ranges 20 through 26 East
Township 15 South, Ranges 20, W/2 21, N/2 23, and 24 through 26 East
Township 15 1/2 South, Ranges 24 through 26 East

III. Discussion of Amended Dakota Formation Recommendation

Utah's amended order asserts that the permeability and production data submitted for portions of Townships 12 through 15½ South, Ranges 20 through 26 East satisfy the FERC permeability and production guidelines.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶30,180 (1980), the Director gives notice of the proposal submitted by Utah that the Dakota Formation, as described and delineated in Utah's amended recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Discussion of Morrison Formation Recommendation

Utah claims in its submission that based upon the entire record in Cause No. TGF–104, the entire Morrison Formation does not satisfy the guidelines. Order No. TGF–104(B), dated May 27, 1982, is amended to recommend that the Morrison Formation not be designated as a tight formation.

V. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 29, 1985. Each person submitting comment should indicate that the comment is being submitted in Docket No. RM79–76–136 (Utah–5), or Docket No. RM79–76–137 (Utah–6), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communcations concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than June 27, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Utah's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(136) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(136) *Dakota Formation in Utah.* RM79–76–136 (Utah–5).

(i) *Delineation of formation.* The Dakota Formation is located in Grand and Uintah Counties, Utah, designated as follows:

Township 12 South, Ranges 21 through 25 East
Township 13 South, Ranges 20 through 26 East
Township 14 South, Ranges 20 through 26 East
Township 15 South, Ranges 20, W/2 21, N/2 23, and 24 through 26 East
Township 15 ½ South, Ranges 24 through 26 East

(ii) *Depth.* The Dakota Formation's vertical limits are defined by the Dakota Silt Formation above and the Morrison Formation below. The average thickness throughout the proposed area is approximately 200 feet and the average depth to the top of the Dakota Formation is 8,925 feet.

[FR Doc. 85–14483 Filed 6–17–85; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Public Comment and Opportunity for Public Hearing on Modification of the Pennsylvania Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania as a modification to the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides for a reduction in the staffing level for the Pennsylvania Department of Environmental Resources, the State agency which administers the Pennsylvania program. This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m., on July 18, 1985 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on July 15, 1985 beginning at 10:00 a.m., at the location shown below under **ADDRESSES.**

ADDRESSES: Written comments should be mailed or hand delivered to: Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: The Office of Surface Mining, 101 South 2nd Street, Suite L–4, Executive House, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed modification to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101

Office of Surface Mining, Reclamation and Enforcement, 1100 L Street, NW., Washington, D.C. 20240

Pennsylvania Department of Environmental Resources, Third and Locust Streets, Harrisburg, Pennsylvania 17120

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business July 3, 1985. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under **ADDRESSES** by contacting the persons listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notice of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** notice (47 FR 33050).

III. Submission of Program Amendment

On May 7, 1985, Pennsylvania submitted to OSM pursuant to 30 CFR 732.17 a proposed amendment to the Pennsylvania program for OSM's review and approval (OSM Administrative Record PA–552).

The amendment provides for a reduction in the level of staffing of the Department of Environmental Resources (DER), the State agency which administers the Pennsylvania regulatory program. The program as approved by the Secretary on July 30, 1982, provides for a staffing level for DER of 405. The State proposes to reduce DER's staff level to 387.75.

In its amendment submission, Pennsylvania indicates that since the Secretary's approval of the State program, numerous changes to the program have been made to reduce the duplication of work effort, streamline administrative and clerical support, centralize administrative support and provide automated systems.

In November of 1984, Pennsylvania combined the coal mining program which was previously housed in two bureaus (Bureau of Mining and Reclamation and Bureau of Water Quality Management) into one bureau. Pennsylvania has indicated that as a result of this reorganization, the State requires fewer people to administer the program.

The Director is seeking public comment on whether the State's proposed amendment satisfies the criteria for approval of State program amendments at 30 CFR 732.15 and 17. The full text of the amendment submitted by the State is available for public review at the OSM offices listed above under ADDRESSES under Administrative Record No. Pa 552.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

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

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

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

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

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining Underground mining.

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

Dated: June 11, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-14600 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 938

Public Comment and Opportunity for Public Hearing on Modifications to the Pennsylvania Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania as a modification to the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides for the mandatory suspension or revocation of a blaster's license upon a finding by the Department of Environment Resources, the State agency which administers the Pennsylvania program, of an operator's willful conduct with respect to certain actions.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on July 18, 1985, will not necessarily be considered.

If requested, a public hearing on the proposed modification will be held on July 15, 1985, beginning at 10:00 a.m., at the location shown below under **ADDRESSES.**

ADDRESSES: Written comments should be mailed or hand delivered to: Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: The Office of Surface Mining, 101 South 2nd Street, Suite L-4, Executive House, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101, telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101

Office of Surface Mining, Reclamation and Enforcement, 1100 L Street, NW., Washington, D.C. 20240.

Pennsylvania Department of Environmental Resources, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business July 3, 1985. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of writtten statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** notice (47 FR 33050).

III. Submission of Program Amendment

On April 19, 1985, Pennsylvania submitted to OSM a program amendment in satisfaction of the requirement set forth under 30 CFR 938.16(a). On April 4, 1985, the Director announced his approval of an amendment to the Pennsylvania program which established a program for the training, examination and certification of blasters (50 FR 13315). The Director found the State's program to be consistent with the Federal standards for certification of blasters at 30 CFR 850 with one exception. The State program did not provide for mandatory license suspension or revocation upon a finding of willful conduct with respect to any of the following actions:

(1) Noncompliance with any order of the regulatory authority.

(2) Unlawful use in the work place of, or current addiction, to alcohol, narcotics or other dangerous drugs.

(3) Violation of any provision of State or Federal explosives laws or regulations

(4) Provisions of false information or misrepresentation for purpose of obtaining a license

Therefore, as set forth under 30 CFR 938.16(a), the Director required Pennsylvania to submit a program amendment by June 3, 1985, which would provide for mandatory license suspension or revocation in a manner consistent with the Federal regulation at 30 CFR 850.15(b).

In satisfaction of this requirement, Pennsylvania submitted to OSM a letter dated April 19, 1985, which sets forth the Department's policy with respect to mandatory suspension or revocation of a blaster's license (OSM Administrative Record No. PA–551). The letter states that in cases involving willful conduct it is DER's policy to suspend or revoke a blaster's license, following a hearing. The letter further states that this policy represents DER's application of section 210.2(f) of Chapter 210 of Title 25 of the Pennsylvania Code.

In its letter the Department indicated that it was preparing a program guidance memo which would state that in cases of willful conduct, the Department shall suspend or revoke a blaster's license following the conduct of a hearing.

The Director is seeking public comment on the adequacy of the State submittal in satisfying the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 and in satisfying the requirement set forth under 30 CFR 938.16(a). The letter submitted by the State is available for public review at the OSM offices listed above under ADDRESSES under Administrative Record No. PA–551.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

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

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

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

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

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 938

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

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

Dated: June 11, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–14601 Filed 6–17–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1 85–2R]

Special Anchorage Area; Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to reconfigure the Boston Inner Harbor Special Anchorage areas A, B and C identified in 33 CFR 110.30 (m)(1), (m)(2), and (m)(3). This proposal is in response to a request by the Boston Harbormaster and the developer of the Rowe's Wharf reconstruction project. Changes in the dock area at Rowe's Wharf and the use of the water area near the facility require the removal of the "B" area from the mouth of Fort Point Channel.

The total area of the newly defined special anchorage will not increase or decrease significantly from the area of the three presently defined areas.

DATE: Comments must be received on or before August 2, 1985.

ADDRESS: Comments should be mailed to: Commanding Officer, U.S. Coast Guard Marine Safety Office, 447 Commercial Street, Boston, MA 02109

The comments and other materials referenced in this notice will be available for inspection and copying at the above address during normal business hours, (7:30 AM to 4:00 PM Monday through Friday). Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: The Port Operations Officer at the above address or Phone (617) 223–1470.

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 by the docket number (CGD1–85–2R). Each comment should also note the specific section(s) of the proposal covered and the reasons for comment. Receipt of comments will be acknowledged if a stamped self-addressed post card 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 the 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 in the rule making process.

Drafting Information

The drafters of this regulation are LCDR Bradley N. Balch, Project Officer for the Captain of the Port, and LCDR Robert F. Duncan, Project Attorney, First Coast Guard District Legal Office.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the 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. The Rowe's Wharf redevelopment project has been the subject of intense review by the City of Boston and the Commonwealth of Masschusetts in concert with the U.S. Coast Guard, concerned citizens, and current and prospective users of the facility. The agreed upon use patterns for commercial and private vessels at the facility presume this reconfiguration of the Special Anchorage. 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.

Discussion of Proposed Regulation

The Coast Guard proposes to reconfigure the Boston Inner Harbor Special Anchorage areas A, B and C defined in Title 33 of the Code of Federal Regulations (CFR,) § 110.30, paragraphs (m)(1), (m)(2), and (m)(3). Changes in the configuration of the pier areas and approaches used by the commercial vessel operators at Rowe's Wharf make the continued use of the "B" anchorage area (33 CFR 110.30 (m)(2)) at the mouth of Fort Point Channel unacceptable.

The area of the "B" Special anchorage will be merged with areas "A" and "C" to provide the same total area as is presently available.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Part 110—[Amended]

Proposed Regulations

In consideration of the foregoing, The Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, as follows:

1. The authority of citation for Part 110 continues to read as follows:

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

2. In Part 110, § 110.30, paragraph (m) will be revised by removing present paragraphs (m)(1), (m)(2) and (m)(3) and adding a new paragraph (m)(1) to read as follows:

§ 110.30 Boston Harbor, Mass., and adjacent waters.

* * * * *

(m)(1) *Boston Inner Harbor A.* The waters of the western side of Boston Inner Harbor north of the entrance to the Fort Point Channel bounded by a line beginning at a point due east of the New England Aquarium, Latitude 42–21–31.62 North, Longitude 71–02–52.37 West. Thence ENE toward the Main Ship Channel to a point, Latitude 42–21–32.60 North, Longitude 71–02–47.30 West. Thence SE to a point due east of Harbor Towers, Latitude 42–21–26.40 North, Longitude 71–02–40.66 West. Thence W toward the Boston Shore to a point, Latitude 42–21–26.40 North, Longitude 71–02–56.31 West. Thence NE to the original point. NOTE: Administration of Special Anchorage areas is exercised by the Harbormaster, City of Boston pursuant to local ordinances. The City of Boston will install and maintain suitable navigational aids to mark the limits of Special Anchorage areas.

* * * * *

Dated: May 28, 1985.

R.A. Bauman,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 85–14455 Filed 6–17–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 205

General Administration—Public Assistance Programs; Quality Control System; Review Procedure Requirements

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation amends the rule defining "permissible State practice" as a criterion for the quality control (QC) review of sample cases under the Aid to Families with Dependent Children (AFDC) and adult assistance programs. This proposed regulation provides that QC will determine the correctness of an assistance payment made by a State in accordance with Federal requirements whenever the State plan or proposed plan amendment under which payment is made does not conform to Federal requirements.

DATE: Consideration will be given to written comments received on or before August 19, 1985.

ADDRESSES: Comments may be submitted to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B–442, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Love, Room B–442, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20201, telephone (202) 245–2637.

SUPPLEMENTARY INFORMATION:

Background

These regulations make changes in the quality control (QC) system for the State administered, Federally aided, financial assistance programs that are authorized by titles I, IV–A, X, XIV, and XVI (AABD) of the Social Security Act. The QC system is a management tool for monitoring the spending of public assistance funds under these titles. This monitoring involves the continuous review of a statistically valid and reliable sample of cases to:

(1) Determine the extent to which persons receiving assistance are eligible, and if eligible, are receiving the right amount of assistance.

(2) Determine the correctness of actions to terminate or deny assistance, and

(3) Reduce or eliminate the incidence of eligibility or payment errors and incorrect denials or terminations.

QC reviews are conducted in accordance with "permissible State practice." As defined in 45 CFR 205.40(a)(8), "permissible State practice" means:

> State written policy instructions that are consistent with the State plan or with plan amendments which have been submitted to, but have not been acted upon by the Department. In all instances where written instructions are not consistent with the State plan or proposed plan amendments, permissible State practice means the provisions of the State plan.

In determining "permissible State practice," QC looks to the approved provisions of a State plan or to the proposed amendments to a State plan to decide whether the States' implementing instructions are consistent with the State plan provisions or proposed amendments. This definition was incorporated into Federal regulations in 1975. From then until 1981, the approved State plans—with few, if any, exceptions—reflected the statutory and regulatory requirements and QC could accurately measure the correctness of payments solely against the State plan. However, beginning in 1981 with the Omnibus Budget Reconciliation Act (OBRA) and in 1982 with the Tax Equity and Fiscal Responsibility Act (TEFRA), considerable changes were made in the AFDC requirements for eligibility and payment requiring amendments to State plans. Not all States have amended their plans to comply with these requirements and the assumption that the State plan mirrors the Federal requirements is often not true. In light of these circumstances, we want to make clear that we do not intend the definition of "permissible State practice" to imply

that practices contrary to Federal statute and regulations are permissible for purposes of Federal financial participation (FFP) in erroneous assistance payments.

Provisions of the Proposed Regulations

This proposed rule redefines "permissible State practice" to require that QC reviews will be conducted against rules and practices which are in accordance with the State plan or proposed plan amendments, except where the plan or proposed plan amendment does not conform to Federal requirements. Where the plan or proposed plan amendment does not conform to Federal requirements, Federal regulations will prevail. Additionally, in infrequent instances where a State implements a practice based on a new statutory provision prior to issuance of Federal regulations, QC would review against the State plan, if amended, or to operating instructions, as long as they are consistent with the statute.

This change in the definition of "permissible State practice" will conform AFDC/QC review procedures to those of Food Stamps QC (FSQC) and ensure that all States are monitored against the same Federal standard in the AFDC and adult assistance programs.

We recognize, as practical matter, that State QC reviewers will continue to use State operating instructions on a day-to-day basis in conducting their reviews. However, States have responsibility for ensuring that their operating instructions as well as their State plans are consistent with Federal regulations since Federal regulations will be the standard in the QC system.

The proposed rule will ensure that future QC determinations on the correctness of assistance payments are made in accordance with the Federal requirements. QC will review against the rules and practices that are in accordance with the State plan or proposed plan amendment except where the plan or proposed plan amendment does not conform to Federal requirements. Where the plan or proposed plan amendment is not in conformance with Federal requirements, QC will review against pertinent Federal requirements.

Anticipated Results

This proposed regulation ensures adherence to Federal regulations in the QC monitoring process by eliminating the anomaly caused by the existing definition of "permissible State practice" through which QC could find a payment correct (and eligible for Federal financial participation) in terms of the State plan or proposed plan amendment when, in fact, the payment should not be matchable since it was not made in accordance with Federal statute and regulations. Also, the proposed amendment will eliminate the inconsistency between AFDC–QC and FSQC in terms of the standard against which QC reviews are conducted.

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule. Therefore a regulatory impact analysis is not required. We view this change as a technical modification in the existing review procedures; it affects only the computation of the States' error rate and FFP.

The impact of this change will depend on State performance. We therefore have no basis for projecting either costs or savings to the States. Where a State has failed to modify income maintenance operating procedures (State practice) to conform with already effective Federal requirements, the State error rate may increase at some cost to the State. However, we would not anticipate the increase in costs to be significant.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of "small entities" because the rules involve minor changes in State agency procedures. These regulations amend the existing Federal quality control system as it applies to the determination of the correctness of payments made by States in the AFDC and adult assistance programs. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.808 Assistance Payments—Maintenance Assistance (State Aid))

List of Subjects in 45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family Assistance Office, Grant programs—social programs, Public assistance programs, Reporting requirements.

Dated: October 9, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 8, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 205—[AMENDED]

For the reasons set out in the preamble, Part 205 of Chapter II, Title 45, of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 205 continues to read as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

2. Section 205.40 is amended by revising paragraph (a)(8) as follows:

§ 205.40 Quality control system.

(a) * * *

(8) *"Permissible State practice"* means those State rules and practices which are in accordance with the State plan *except* where the plan does not conform to Federal requirements. In instances where the State plan is not consistent with Federal regulation, permissible State practice means the provisions of the Federal regulations. Where a State submits a proposed plan amendment which has not been acted upon by the Department, permissible State practice means the State rules and practices which are in accordance with the proposed plan amendment, except where the proposed plan amendment does not conform to Federal regulations. For instances where the proposed plan amendment is not consistent with the Federal regulation, permissible State practice means the provision of the approved State plan.

* * * * *

[FR Doc. 85–14574 Filed 6–17–85; 8:45 am]

BILLING CODE 4190–11–M

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On January 4, 1985, the Legal Services Corporation republished Part 1614 of its regulations for comment. (50 FR 509). Since that time, the Operations and Regulations Committee of the Corporation's Board of Directors, has begun the process of revising the regulation. At its May 23, 1985, meeting,

the Committee directed the Corporation staff to publish the current draft in the Federal Register to allow for wide distribution of before the next Committee meeting. This draft is published to inform interested parties of the progress that the Corporation has made in revising this regulation to date. The regulatory process is not complete. Comment is welcome; however this notice is not meant to replace formal publication of proposed amendments to the regulation. When the Board of Directors reaches a decision regarding proposed amendments, they will be published for formal comment. In this draft, language in the existing regulation that is recommended to be deleted is enclosed in brackets. New language recommended by the Corporation's staff is enclosed by arrows.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: Part 1614 of the Corporation's regulations, which concerns private attorney involvement, was adopted by the Corporation's Board of Directors on April 28, 1984. It was published in final form in the Federal Register on May 21, 1984, 49 FR 21328. Since September of 1984, the Corporation received comments concerning both substantive and procedural issues involving the adoption of this regulation. After deliberation, the Corporation's Board of Directors, at its December 20, 1984, meeting, decided to republish, for comment, certain regulations, including Part 1614. Part 1614 was republished in the Federal Register on January 4, 1985, 50 FR 509. Comments were received and reviewed. Changes were recommended in response to the comments received. Since that time, the Board's Operations and Regulations Committee has been considering proposed amendments to the regulation. At the Committee's May 23, 1985, meeting, the Committee directed the Corporation staff to published the recommendations which had been proposed. The purpose of this publication is to provide wide distribution of this proposal.

The entire regulation is being published with brackets around sections that are recommended for deletion and arrows showing sections that are recommended for addition. The changes shown are not proposed amendments. They have not been adopted by either the Committee or the full Board. Currently, the staff of the Corporation is working to further refine the language in the recommended amendments. However, since, previously, the changes that have been recommended have, been distributed only with materials relating to Board and Committee meetings, they are now being published to ensure a wider distribution. When the Board adopts proposed amendments, the amendments shall be published for formal comment prior to finalization.

While this publication is informational in nature, comments are welcome and will be reviewed and considered. There is no deadline for comments, however, the regulation will be considered by the Committee at its June 27, 1985 meeting.

List of Subjects in 45 CFR Part 1614

Legal service.

For the reasons stated in the preamble, notice is given of recommendations of the staff of the Legal Services Corporation for amendments to 45 CFR Part 1614 as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.

Authority: Sec. 1007(a)(2)(C) and Sec. 1007(a)(3); 42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3).

§ 1614.1 Purpose.

(a) This part is designed to ensure that [provide direction to] recipients of Legal Services Corporation funding [on allocating] ►allocate◄ a substantial amount of the recipient's financial support from the Legal Services Corporation to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients. At least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award shall be devoted to the involvement of private attorneys in such activities. Funds received from the Corporation as one-time special grants shall not be considered in determining the private [bar] ►attorney◄ involvement ►(PAI)◄ requirements. [The Corporation may in exceptional circumstances grant a waiver from the 12½% requirement upon application by a recipient and a demonstration to the satisfaction of the Office of Field Services that, because of the nature of the population served, and the available attorney population, the recipient is unable to comply with the requirement.] ►A recipient shall be deemed to have complied with this Part if it delivers at least twenty per cent (20%) of its cases through private attorneys, regardless of the level of expenditures for such purposes.◄

(b) Recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this part.

§ 1614.2 General policy.

(a) This part implements the policy adopted by the Board of Directors of the Corporation on October 2, 1981, and ratified and modified by the Board on November 21, 1983, requiring that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economical and efficient manner.

[(b) Effective January 1, 1985 recipients of national and state support grant awards shall apply the percentage requirement to that portion of their programs related to any direct advocacy activities on behalf of eligible clients.]

►(b) In the case of recipients whose service areas are coterminous or overlapping, the recipients may enter into joint efforts to involve the private attorneys in the delivery of legal services to eligible clients, subject to the following conditions:

(1) The joint venture plan must be approved by the Office of Field Services.

(2) The joint venture must expend at least twelve and one-half percent (12½%) of the aggregate of the LSC Basic Field awards of the recipients involved in the joint venture.

(3) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture.

(4) The joint PAI venture must involve private attorneys throughout the entire joint service area(s).◄

(c) Private attorney involvement [(PAI)] shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Deacisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of this Part [might] ►must◄ include ►the◄ [, but are not limited to:]

[(1) D] ►d◄irect delivery of legal assistance to eligible clients through ►programs such as◄ organized *pro bono*-plans-, reduced fee plans, judicare panels, private attorney contracts, ►or◄ [and] those [modified *pro bono*] plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that ►payment of attorneys' fees through◄ "revolving litigation fund" systems, as described in § 1614.5 of this Part, shall neither be used nor funded under this Part nor funded with any LSC support;

►(b) Activities undertaken by recipients to meet the requirements of this Part may also include, but are not limited to◄

[(2)] ►(1)◄ Support provided by private attorney to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee of *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and,

[(3)] ►(2)◄ Support provided by the recipient in furtherance of activities undertaken pursuant to this section including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

[(b)] ►(c)◄ The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient ►'s◄ taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economical delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts or interest between specific participating attorneys and individual eligible clients; and,

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

[(c)] ►(d)◄ Systems designed to provide direct services to eligible clients by private attorneys on either ►a◄ *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

►(4) Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers, that provide back-up on substantive and procedural issues of the law.◄

[(4) Support and technical assistance procedures which are appropriate and, to the extent feasible, provide provision of access for participating attorneys to materials, training opportunities, and back-up on substantive law and practice considerations.

(d) The recipient shall utilize financial systems and procedures to account for costs allowable in meeting this Part. Such systems shall have the following characteristics:

(1) They shall meet the requirements of the Corporation's *Audit and Accounting Guide for Recipients and Auditors;*

(2) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to private attorney involvement activities;

(ii) Payments to private attorneys for support or direct client services rendered;

(iii) Contractual payments to individuals or organizations which will undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this Part; and

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(3) Income and expenses relating to the PAI effort must be reported separately in the year-end audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule of income and expenses related to the PAI effort as part of the audit.

(4) Auditors will be required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this Part.

(5) Programs must maintain internal records necessary to demonstrate that funds have been utilized for private attorney involvement consistent with this Part. Internal records should include:

(i) Contracts on file which set forth payment systems, hourly rates, maximum allowable fees, etc.;

(ii) Bills/invoices which are submitted before payments are made;

(iii) Job descriptions, program directives or provisions included in collective bargaining agreements which set forth specific program staff PAI requirements; and

(iv) Staff time records.

(6) If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to private attorney involvement, such costs must be documented by detailed timesheets accounting for all of those employees' time, not just for the time spent on private attorney involvement activities. This time-keeping requirement does not apply to such employees as receptionists, secretaries, in-take persons or bookkeepers.

(7) Direct payments to private attorneys shall be supported by invoice and internal procedures performed by the program to ensure that the services billed have actually been delivered.

(8) Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating funds shall be clearly documented.

(9) Contracts concerning transfer of LSC funds for PAI activities shall indicate that such funds will be accounted for by the recipient in accordance with LSC guidelines. The organization receiving funds will be considered a sub-recipient or sub-grantee and will be bound by all the accounting and audit requirements of the Audit Guide and 45 CFR Part 1627. These grants shall be accounted for on a cost-reimbursable basis so that the primary recipient will be responsible for unspent funds. This part does not pertain to contracts with individual lawyers or law firms who only provide legal services directly to eligible clients.

(10) Each recipient which utilizes a compensated private bar mechanism, whether judicare, contract, or some other form, shall develop a system which includes:

(i) A schedule of uniform encumbrances for similar cases;

(ii) A procedure to determine net encumbrances;

(iii) A mechanism to relate specific encumbrances to specific cases; and

(iv) A way to determine whether encumbrances assigned are an accurate estimate of actual costs incurred.

(11) Encumbrances shall not be included in the calculation of whether a program has met the requirements of this Part, nor should they be recorded as an expense for audit purposes. Only actual expenditures or those amounts shown as accounts payable or accrued liabilities according to generally accepted accounting principles at the end of the fiscal period may be utilized to determine whether or not the program has met the requirements of this Part.

(12) In private attorney models, attorneys may be reimbursed for actual costs and expenses, but attorney fees may not be paid at a rate which exceeds 50 percent of the local prevailing market rate for that type of service.]

►(e) The recipient shall demonstrate compliance with this Part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit and Accounting Guide for Recipients and Auditors, and have the following characteristics:

(1) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by timesheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers;

(ii) Payments to private attorneys for support or direct client services rendered. The recipient should maintain contracts on file which set forth payment systems, hourly rates, maximum allowable fees, and so forth. Bills and/or invoices from private attorneys should be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this Part;

(iii) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this Part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit Guide and 45 CFR Part 1627;

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(2) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund to account for the entire PAI allocation. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(3) In private attorney models, attorneys may be reimbursed for actual costs and expenses, but attorney fees may not be paid at a rate which exceeds 50% of the local prevailing market rate for that type of service.

(4) All records pertaining to a recipient's PAI requirements shall be made available for inspection and review by LSC auditors and monitors during regular business hours.◄

§ 1614.4 Procedure.

(a) The recipient shall [incorporate the] ►develop a- plan and budget [required by Instruction 83-6] to meet the requirements of this Part ►which shall be incorporated as a part◄ of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this Part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients.

§ 1614.5 Prohibition of revolving litigation funds.

(a) The Office of Field Services shall not endorse or approve revolving litigation fund systems which systematically encourage the acceptance of fee-generating cases by advancing funds to private attorneys for [costs, expenses and/or] attorney fees.

(b) This prohibition does not prevent reimbursement or payment of costs and

expenses incurred by private attorneys [in normal situations in which litigation may result in attorney fees, such as case assignments through a judicare or *pro bono* panel] ►where the private attorney is representing an eligible client in a matter in which representation by the recipient would be appropriate under the Act and Regulations.◄

►§ 1614.6 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by the Office of Field Services (OFS) when the recipient shows to the satisfaction of OFS that

(1) Because of the unavailability of qualified private attorneys, an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by OFS when the recipient shows to the satisfaction of OFS that

(1) The population of qualified attorneys available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified attorneys are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts—including, but not limited to, communicating its problems expending the required amount to OFS and requesting and availing itself of assistance and/or advice from OFS regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose encumbrances would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances.

(5) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12½% of Corporation funds on PAI activities, provided that:

(i) The recipient has received substantial contributions from the private bar and/or other sources, and, consequently, the recipient has handled and expects to continue to handle at least 12½% of its cases through its PAI program(s); or

(ii) The recipient has been unusually efficient in the use of its PAI resources, and, consequently, the recipient has handled and expects to continue to handle at least 12½ % of its cases through its PAI program(s).

(d)(1) A waiver of the special accounting and bookkeeping requirements of this Part may be granted by the Audit Division with the concurrence of OFS, if the recipient shows to the satisfaction of the Audit Division and OFS that such waiver will advance the purpose of this Part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by the Audit Division with OFS concurrence; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Waivers of any requirement under this Part may be for the current, or next fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to the Office of Field Services (OFS). OFS shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. Should OFS fail to so respond, the request shall be deemed to be granted.◄

►§ 1614.7 Failure to Comply.

(a) If a recipient fails to comply with the expenditure required by this Part, the corporation shall withhold from the recipient's support payments an amount to be calculated as follows:

(1) The difference between the amount expended on PAI and twelve and one-half percent (12½%) of the recipient's basic field award; or

(2) If the recipient has received a waiver of all or part of the PAI expenditure requirement, the difference between the amount expended and the amount required to be expended.

(b) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation to be used by private attorneys in the recipient's service area to provide legal services to eligible clients in the recipient's service area.◄

Dated: June 13, 1985.

Richard N. Bagenstos,
Acting General Counsel.

[FR Doc. 85-14578 Filed 6-17-85; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 78-174]

Inflatable Life Jackets and Hybrid PFD's

Correction

In FR Doc. 85-12589 beginning on page 21878 in the issue of Wednesday, May 29, 1985, make the following corrections:

1. On page 21891, in the first column in § 160.076-13(t)(1), in the sixth line, "(9.4 psig)" should read "(0.4 psig)".

2. On page 21896, in the first column, in § 160.077-1(d), in the first line, "hybird" should read "hybrid" and the word "by" should be removed.

3. On page 21900, in § 160.077-23, Table 160.077-23A, in the first column, in the fifth line under "Tests", remove the "4" after "Retention".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 74, and 90

[Gen. Docket No. 85-171; FCC 85-288]

Technical Flexibility in the Mobile Communications Services

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and of proposed rule making.

SUMMARY: This Notice proposes an alternative to the normal type acceptance procedures that could be used to expedite the approval of new mobile radio technologies. At present, such technologies require *ad hoc* rule making and their developers must publicly disclose technical details years before normal marketing is allowed.

The proposed approach would deal with new technologies in a nonpublic equipment authorization procedure which would give the power derating needed to ensure that the new technology did not cause interference.

This alternative could both expedite the approval of new technology and remove disincentives to technical innovation under present procedures.

DATES: Comments must be filed by December 16, 1985. Reply comments must be filed by February 28, 1986.

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

FOR FURTHER INFORMATION CONTACT: Michael J. Marcus, Office of Science and Technology, Washington, D.C. 20554, Telephone: (202) 632-7040.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 22

Radio.

47 CFR Part 74

Radio broadcasting.

47 CFR Part 90

Radio.

Notice of Inquiry and Proposed Rule Making

In the matter of technical flexibility in the Mobile Communications Service, Rules Parts 2, 22, 74, and 90, Gen Docket No. 85-171; FCC 85-288.

Adopted: May 31, 1985.
Released: June 11, 1985.

By the Commission.

Introduction and Summary

1. On November 8, 1984, the Commission adopted a Report and Order in General Docket 83-114, *A Re-Examination of Technical Regulations* [1] (R&O) which reviewed the fundamental need for and basis of our technical regulations. Four principles were stated that we would use as guidance future proceedings.[2] These principles reaffirmed our commitment to the control of harmful interference in the various radio services and stated that we would strive to make interference control rules so that "they are not unnecessarily restrictive in areas unrelated to interference control" and that we would "attach a low priority to mandating system interoperability."

2. The purpose of this notice is to put forth for public comment specific proposals in the land mobile radio services that would implement these principles. The fundamental hypothesis behind the proposals in this notice is that new technology is not an intrinsic cause of interference in bands with existing users using a traditional technology; rather, the real cause of interference is excessive undesired signal power in the victim receiver. Thus, by controlling the transmitter power of systems using new technologies, we can allow new technology to be introduced into existing bands while at the same time prevent harmful interference to users of standard technologies. In this notice we propose a specific power control approach which we believe is flexible enough to handle new mobile radio technologies without rule making for each new development.[3] We hope that by eliminating the need for lengthy public rulemakings we can facilitate research, development, and marketing of new types of radio technology. We believe that innovative approaches such as this one are necessary to meet our statutory mandate in Sections 7(a) and 303(g) of the Communications Act of 1934, as amended.

History of Technical Flexibility

3. While the Commission has classically specified modulation types for radio services, there has been a long, consistent trend towards technical flexibility for licensees. The first major milestone in this direction was in the Fixed Satellite Service. Section 25.202 of our Rules, first adopted in 1965, authorized frequencies for this service without specifying the modulation type required. In 1969 the Commission authorized subscription television (STV). Rather than setting technical standards for STV emissions, we took an "equivalent interference" approach. The governing rule for STV modulation is given in § 73.644(b)(5).[4]

> Interference to reception of conventional television and subscription television and subscription television programs, co-channel and adjacent channel, monochrome and color, shall not significantly, in the judgment of the Commission, exceed that occurring from conventional broadcasting in compliance with the television technical standards set forth in this part.

4. The next major milestone towards technical flexibility was taken in 1982 with the adoption of the Second Report and Order in PR Docket 79-191 allocating 806-821 MHz and 851-866 MHz for private land mobile uses.[5] In this proceeding the Commission gave technical flexibility to users in these requirements that necessitate innovative systems." [6] We stated that,

> Technical flexibility will enable licensees to engineer their communications systems without being constrained to use a specific emission mode or bandwidth. By taking this action, we recognize that the best combination of emission mode and bandwidth differs for various users and geographic areas. We also believe that technical flexibility will provide equipment manufacturers with the opportunity to develop more efficient technology.[7]

Technical flexibility included both the capability of subdividing a channel into smaller channels as well as the option for multiple channel licensees to use adjacent channels as one large channel without regard to the normal rolloff near the channel edges. (This permits the use of wideband technologies such as time division multiple access and packet radio).

5. In the Docket 79-191 Report and Order, we did not give detailed technical standards to be used by narrowband or wideband equipment. Our only specific requirement was that "where a licensee chooses to use more than a single emission within the authorized bandwith, the sum of the emission may not exceed the . . . limits on ERP." [8] However, we also recognized that this was not adequate to prevent possibility of interference and stated,

> Nothing we are doing here is intended to increase the potential for adjacent channel and co-channel interference between current and new technology users. We assume, however, that manufacturers involved in the development and sale of two-way land mobile communications equipment are fully cognizant of technical issues concerning adjacent channel and co-channel interference when dissimilar emissions are involved and will take precautions to assure that current technology users are not adversely affected.

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[1] *Report and Order* in General Docket 83-114, FCC 84-521, 49 Fed. Reg. 48305 (December 12, 1984). — FCC 2d —

[2] *Id.* at para. 27.

[3] The approach only applies to licensees who are eligible and have received licenses under existing rule provisions. In particular, the wide band provisions of this proposal can only be used by licensees who have licenses for multiple channels.

[4] While the wording of this section has been changed slightly since 1969, the basic concept has not.

[5] *Report and Order* in PR Docket 79-191, 90 FCC 2d 1320 (1982).

[6] *Id.* at para. 156.

[7] *Ibid.*

[8] *Id.* at para. 159.

We recognize that there is some risk involved, yet we believe that this risk is offset by the potential benefits derived from the introduction of innovative technology. Furthermore, the current rules for type acceptance will require manufacturers to request waivers of § 90.203 of our rules to market equipment occupying more than one channel.[9]

6. This absence of technical standards both raises the possibility of Interference between new technology and existing technologies and creates a "regulatory risk" for potential manufacturers of new technologies as they must seek waivers in order to market their systems. This new proceeding is intended to alleviate these concerns by proposing a specific interference control approach and type acceptance procedure for new technologies.

7. The next major decision dealing with technical flexibility was in the Report-and Order of Docket 80–57 [10] dealing with Revision and Update of Part 22. Some comments in this proceeding advocated a removal of most emission limitations, but since we have already been conservative concerning interference in common carrier radio service and since the only specific data available at the time dealt with amplitude compandored single side band (ACSB), we authorized only ACSB. The technical standards associated with this use of ACSB consisted of 1) a requirement that the out of band emissions of the ACSB transmitters not exceed those allowed for FM (§§ 22.106, 22.501, 22.600, and 22.1000), and 2) that a study be submitted showing "that the proposed facilities will not cause harmful electrical interference to known pending and licensed ACSB and FM stations in excess of the ratio of desired-to-undesired field strengths as is presently required for FM co-channel interference".[11] All other types of emissions not enumerated in § 22.104(a) are forbidden but may be considered for secondary status with a developmental license.[12]. Although one commenting party proposed allowing wideband emissions on adjacent channels similar to that permitted in § 90.645, we chose not to authorize this due to an incomplete record but stated that within the limits of our resources, we hope to undertake further evaluation of this approach.

8. In the Report and Order of Docket 84–280, we authorized ACSB for the Broadcast Remote Pickup Service in a general approach that permitted a variety of technologies. We stated that our intent was to be sufficiently flexibility to allow broadcasters to choose any technology best suited to their needs without further Commission action [13] and permitted "stacking" of 5kHz channels. This approach is possible for this service because of the small number of licensees and the active role of local coordinators on a daily basis. Other services generally need a more detailed framework.

9. Thus, the Commission has a history of twenty years of trying to give its licensees flexibility to use the technology of their choice. This proceeding seeks to bring the technical standards of Parts 22, 74, and 90 as close as is practicable recognizing the operational differences involved. We propose below a specific technical approach to prevent interference by the use of technical flexibility which we believe is general enough to allow new narrowband *and* wideband technologies with *ad hoc* rulemaking in each case of new technology.

10. We recognize that there are significant differences in the operating environments for Part 22 and Part 90 licensees. Generally in Part 22, a relatively small number of licensees operate in any geographic area, and their systems are designed and engineered to provide high flexibility and quality of service to the general public. Licensees generally have technicians either as employees or on call. In contrast, Part 90 licenses generally are granted on a shared basis with no guaranteed grade of service. Most Part 90 licensees are not in the communications business are therefore many do not employ their own technical staff. Thus, the Part 90 radio environment is much more complex and it would be much more difficult to rectify interference problems once they occur. For these reasons, different treatment of Part and Part 22 may be necessary and we invite comment on this point.

Overview of Proposals

11. The approach taken in this Notice is to define a new procedure to be called "Alternative Type Acceptance (ATA)" for land mobile transmitter authorization. ATA would be used for equipment which does not meet the conventional technical standards of existing mobile radio rules, such as Subpart I of Part 90. ATA consists of two basic steps. First, the manufacturer (or the distributor in the case of imported equipment) would perform specified tests to determine the interference potential of the equipment to conventional equipment. These tests would determine a power derating which would determine how much power had to be reduced compared to a conventional modulation type so that it did not cause more interference to co-channel and adjacent channel users. In the second step, the test data is sent to the Commission for review and possible replication. When the Commission is satisfied with the derating factors, it issues an ATA grant which includes the derating factors and the conditions of the test such as emission frequency relative to channel center frequency .

12. All Part 22 licensees (except in the Cellular Radio Telephone Service), those Part 90 licensees meeting the eligibility requirement discussed below in Paragraph 20 and all Part 74 licensees in the Remote Pickup Broadcast Service would have the option of using ATA equipment provided they use it with the emission spacing specified in the ATA grant and that they adjust the power of the transmitter(s) by applying the derating factor specified in the ATA grant. Since the ATA process determines the conditions under which the transmitters would not cause more interference than conventional equipment, the application of the derating factors should ensure that conventional users get no more interference than they would from conventional equipment.

13. The ATA application process would be generally similar to existing equipment authorization procedures. No public announcements of applications would be made until a grant is given. Thus, an applicant does not have to reveal the details of his technology to potential competitors at an early stage as he would have to do it in a rulemaking process. The technical information, which is needed for the ATA application, is modeled on testing information which we have developed in the past for rulemakings dealing with new technology. We have generalized this experience in the proposed ATA rules.

Alternative Type Acceptance Testing

14. The specific ATA testing proposal determines the power derating needed for a new modulation by first measuring the new modulation signal level needed to cause interference to the signal using the standard modulation. That new modulation signal level is then compared to the level of an undesired standard modulation signal needed to

[9] *Id. at para. 161.*

[10] *Report and Order* in CC Docket 80–57, 95 FCC 2d 769 (1983).

[11] *Id.* at para. 130.

[12] Section 22.104(a)(3).

[13] Report and Order in MM Docket 84–280, 49 FR 45155 (November 15, 1984). ___ FCC 2d ___ .

cause interference. In the case of new modulations which are narrowband (i.e. more than one emission can occupy an standard channel) a group of transmitters using the new modulation are tested together as a unit using specified relative emission spacing. This is a worst case scenario with respect to a possible interference victim as it assumes all the new transmitters are on simultaneously at the closest possible distance to the victim.

15. The general testing setup to be used in ATA testing is shown in Figure A of the proposed of § 2.1101 (see Appendix A). It involves three conventional systems (two transmitters and one receiver) as well as the new system, the equipment under test (EUT), which may be composed of more than one transmitter. (This discussion assumes that the equipment to be tested has a bandwidth less than a conventional channel width. The case in which the new equipment is wider is discussed in paragraph 18.) A switch in the setup selects one of two basic test conditions. We will discuss the first position initially. This position is used to determine the amount of co-channel conventional modulation which is needed to disrupt a communication path. The victim receiver is given a combination of two signals: a desired conventional signal which is attenuated to the level specified in the proposed rules and an undesired conventional signal which is attenuated by a variable attenuator. In the first part of the test, the variable attenuator is decreased until the victim receiver receives interference, which is defined as a 12 dB SINAD ratio. The undesired transmitter power that corresponds to this is noted as P_s.

16. In the next phase of the tests, the switch is moved to the second position to measure the interference potential of the EUT. Before the tests are started, the multiple transmitters are adjusted to different frequencies within the standard channel and to possibly different relative powers. The relative powers and frequencies are the choice of the manufacturer and are stated in his application for ATA. Analogous to the first part of the test, the variable attenuator is decreased until interference is observed. The interfering signal is actually composed of power from each of the transmitters within the EUT, so it is necessary to determine their individual powers, P_i, by now turning them on one at a time and measuring their power. Now the ratios P_i/P_s are the amount of decrease from the standard power from the standard modulation which are needed to ensure that the EUT causes no more interference than the standard modulation. These are a function of the frequency difference, f_i, of each transmitter with respect to the center of the channel. If a licensee with a current license which allows P_L watts of power on a channel with conventional technology were to switch to a new technology with several transmitters at frequencies, f_i, within his channel, he would not increase his interference to co-channel users if he adjusts the power of each f_i such that it is less than $P_L \times P_i/P_s$.

17. So far we have not discussed limits for emissions outside of the conventional channel or inband emissions that may cause interference to adjacent channel users. Existing rules for the mobile radio services, such as § 90.209 and §22.106, already cover out channel emissions and a generalization of these standards is included in the proposed § 2.1102(f). However, inband emissions near the channel edges may also affect adjacent channel interference. In order to address this problem, we propose two alternatives for the applicant. First, he can show compliance with existing in channel roll off standards for conventional transmitters. Alternatively, he could repeat the tests done previously but with the desired transmitter and victim receiver first tuned one channel above the original channel then tuned one channel below. In this option, the final P_i/P_s should be the *lowest* of the three frequencies for the victim and desired. This is a conservative measure in order to avoid interference to both co-channel and adjacent channel users.

18. A numerical example of using this procedure is given in Appendix B. This example assumes that the equipment proposed for ATA consists of 3 narrowband transmitters that would be spaced at 6 kHz intervals. Based on the ATA test results, a power derating for each of the transmitters is derived.

19. For wide band system a similar approach is used. The major difference is that there is only one emission from the EUT, but that emission is wider than the bandwith of the victim receiver. Therefore, the conventional equipment must be sequentially tested at each channel within the bandwith of the EUT as well as at the channels adjacent to the wide band emission (if the EUT can not be shown to comply with the existing near channel edge roll-off standards). The most conservative power derating found on any channel would then become the overall derating.

20. In order for this type of tests to be reproducible, several technical parameters must be defined precisely. In doing this, we have tried to model our testing procedure after existing voluntary standards as much as possible. The specific sources of reference have been Electronic Industries Assocation RS–204–C (1/81) and ANSI C63.2–1982. The proposed rules, thus, give details in § 2.1102(e) for input signals to all the transmitters, input signal levels, desired signal level to the receiver, receiver sensitivity, and receiver adjacent channel rejection.

21. While we have proposed specific test procedures and standards for this process, we recognize that none of these were originally developed for exactly the purpose for which we now propose to utilize them. Accordingly, we specifically invite comment on the suitability of these aspects of this proposal. Furthermore, if the comments indicate that significantly different standards or procedures would be preferable, we would expect to issue further proposals to ensure that the user public can comment fully on the standards prior to adoption. Obviously, these standards and procedures are critical to the success of this approach and they will receive our most careful consideration.

Eligibility

22. It is proposed that permission to use ATA equipment be given to all licensees in the Domestic Public Mobile Service (Part 22), except in the Domestic Public Cellular Radio Telecommunications Service, and to all Part 74 Broadcast Remote Pickup licensees. Private Land Mobile Radio Service Licensees (Part 90) may use ATA equipment if they are the exclusive licensee of a channel (only bands above 470 MHz have exclusive licensees or if they have written consent of all co-channel licensees within a 75 mile radius. Nonexclusive licensees must notify the Commission of their intent to use ATA equipment and of the fact that they have the consent of all co-channel licensees. Whether ATA use will also require approval of frequency coordinating committees will be determined in PR Docket 83–737. Upon receiving this notification, the Commission will amend the license to specify that ATA equipment may be used. ATA users would receive the same protection that licensees with others emission modes receive. We recognize that several adjacent channels are needed for wideband systems and that in almost all cases multiple channel licensees have nonadjacent channels. Therefore, if we adopt the wideband aspects of the proposals, we will try to

accommodate licensees trading channels among themselves, as they now can under §90.645(g).

Notice of Inquiry

23. We specifically seek comment on several aspects of the ATA test procedure and on the possible application of this approach to other radio services:

1. *Characteristics of victim receiver.* The victim receiver in the testing configuration should be typical of conventional receivers in the band in question. The sensitivity and bandpass of the receiver will have an impact on the results of tests. The proposed rules are based on the Electronic Industry Association's RS–204–A and require the receiver to have sensitivity and adjacent channel rejection within 3 dB of the standard. It this the appropriate standard? Should more receiver parameters be specified in order for the tests to be both representative and reproducible? If so, what standards are needed? Would a receiver whose intermediate frequency processing was implemented as a digital filter be a practical way of standardizing receiver performance for the purposes of this testing?

2. *Standard Signal Levels.* In the testing procedure, the standard transmitter is attenuated to 3 dB above the EIA recommended minimum sensitivity level for that band before its signal is mixed with the undesired signal. While it would be convenient to use only one attentuation for all tests, it may not be representative of all interference situations. How may desired standard signal levels should be tested? What shoud these levels be?

3. *EUT Signal Power Measurement.* We have not specifically proposed how to define the EUT power measured, P_t. While constant envelope technologies such as FM are well defined by average power, other technologies are better characterized in other ways such as with peak envelope power. We request comments on whether we should specify a power measurement approach, and if so, what approach should be used.

4. *Definition of Interference.* The proposed rules describe tests where power is adjusted until interference is noticed, as defined by a 12 dB SINAD measurement with a 1 kHz desired modulation signal. The SINAD measurement is a well recognized method of measuring FM receiver performance in general and we request comment on the adequacy of this approach. However, it may not be optimal for other technologies. Therefore, we request comment on the best approach for interference measurement. For example, a more complex objective measurement of performance such as "articulation index" [14] or "speech communication index" [15] could be used. Does the increased accuracy of these tests justify their complexity in this context?

5. *Fading Simulation.* All the ATA tests specified above use steady signal strengths and laboratory test conditions. Actual mobile equipment use involves fading signal strengths. While it is well known that this type of desired/undesired interference testing is very difficult under field condition to do reproducibly, it is possible to simulate fading in the laboratory with appropriate equipment. How much of a difference in power level ratios, such as P_iP_s, should be expected under fading conditions? Is it necessary to require fading simulation as part of the ATA testing procedures? If so, what combination of fading rates and depths should be tested?

6. *Use of Wideband Emissions by Radio Common Carriers.* In order to assure high quality service in the Domestic Public Land Mobile Radio Service, we have not generally permitted interstitial channel use between existing channels as we have in the private land mobile services. New narrowband equipment, such as ACSB, may in some cases be able to provide a useful new service on interstitial channels without causing harmful interference to previous licensees. If we were to allow licensees to use wideband, multichannel emissions, they might do so in order to block new entrants on interstitial channels without providing more service themselves. We seek comment on how we can allow licensees the flexibility to use wideband emissions without encouraging anticompetitive conduct. Possible regulatory approaches could include a diligence requirement for implementing the wideband system and a minimum spectrum efficiency standard for wideband systems. Are such controls needed and, if so, what form should they take?

7. *Use of ATA in the Private Land Mobile Services.* In the Private Land Mobile Services, unlike Remote Pickup and Domestic Public Services, there are literally thousands of systems co-existing in an extremely limited amount of spectrum. In addition to being space relatively close together in relation to adjacent channel systems, in the vast majority of cases, private users share the frequency with numerous cochannel licensees in a given operating area. Even when all users operate with type-accepted equipment, interference problems arise because of the sheer volume of transmissions. Allowing licensees to use equipment which may not provide the same amount of interference protection could have severe impact on these services. On the other hand, it may be in crowded Private Land Mobile bands where added flexibility and spectrum efficient technologies are most needed. Therefore, we specifically request comments on whether the ATA procedures put forth here should be applied to Part 90 of the Commission's Rules.

8. *Role of Coordinators in the Private Land Mobile Radio Services.* The role of coordinators in the private land mobile frequency selection process is currently under review in Docket No. 83–737. In order for coordinators to recommend the best possible frequency they must be fully apprised of the actual operating environment, including the technology used. We request comments on how the rules proposed herein would affect the frequency coordination process services and what steps, if any, need to be taken to ensure that coordinators are aware of entities using ATA equipment.

9. *Less Complex Alternatives.* This proposal was drafted in order to minimize the *a priori* risk of interference to FM licensees. It does so by subjecting new types of equipment to a rigid testing program and limiting transmitter powers to very conservative values. We seek comment on whether less complex alternatives might be preferable.

Consider, for example, a type acceptance program that rated equipment as to peak output power, occupied bandwidth and frequency stability. Licensees might be authorized to utilize any combination of this type accepted equipment so long as the resulting system met the following conditions:

1. The stability of all transmitters was not less than that required of standard communications equipment.

2. No portion of any transmitter's occupied bandwidth could be outside the channel's authorized bandwidth.

3. The sum of the peak powers of all base station transmitters could not exceed the maximum currently permitted. The peak power of mobile transmitters must be reduced from that

[14] *See* K. D. Kryter, "Methods for the Calculation and Use of the Articulation Index," J. Acoust. Soc. of Am. *34*, 1689–1697 (1962) and K. D. Kryter, "Validation of the Articulation Index, "J. Acoust. Soc. of Am. *34*, 1689–1702 (1962).

[15] *See* K. D. Kryter and J. H. Ball, "A Meter for Measuring the Performance of Speech Communications Systems, "Report No. ESD–TDR–64–674, Electronic Systems Division, Air Force Systems Command (1964), AD 611 082.

currently permitted by a factor equal to the ratio of non-standard to standard base station transmitters[16]

Some system authorized under this type of scheme might have the potential to create more interference than similarly powered standard communications systems. In other situations, non-standard systems could operate with substantially higher powers than authorized without causing any interference. Rather than providing absolute certainty that all systems would operate in harmony, this scheme would establish a framework within which affected parties could fine tune their systems' design to their mutual benefit. We seek comment on whether it, or some other similar approach, would provide a better balance between encouraging technical innovation and interference protection than the more complex procedure proposed above.

How To File Comments

24. We are setting a lengthy comment period for this Notice (6 months for comments, 2 months for replies) in order to stimulate thorough discussion on these proposals and their implications. We urge existing voluntary standards organizations to use this time to develop coordinated viewpoints on the proposals and the questions in the inquiry. Our staff is ready to work closely with such groups to explain the proposals here and to carry on a dialog subject to the *ex parte* provisions given in paragraph 32.

25. In accordance with the procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before December 16, 1985, and reply comments on or before February 28, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, providing that such information or a writing indicating the nature and source of such information, is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

26. In accordance with the provisions of § 1.419 of the Commission's Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a copy of their comments should file an original and 10 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All comments should be clearly marked General Docket No. ———, and will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street NW., Washington, D.C. All written comments should be sent to: Secretary, Federal Communications Commission, Washington, D.C. 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Small Business Division at (202) 632-7000. For further information on this proceeding, contact Dr. Michael J. Marcus at (202) 632-7040.

Initial Regulatory Flexibility Analysis

27. *Reason for Action.* The Commission believes that its rules and policies should be reviewed in the context of current social, technological and financial environments in which licensees and applicants operate, so that service to the public may be facilitated while the least regulatory cost is imposed. It is in this light that it is considering modification of its Parts 2, 22, and 90 rules.

28. *The objectives.* The Commission proposes to accomodate new mobile radio technology systems by reducing regulation to the maximum extent feasible. The Commission believes that such action will lead to a more rapid development of mobile radio technology.

29. *Legal basis.* Action proposed herein is taken pursuant to Section 4(i) and 303 of the Communications Act of 1934, as amended.

30. *Description, potential impact and number of small entities affected.* We do not believe that this NPRM will have a detrimental impact upon small entities. Indeed, insofar as our action permits new technology, it is likely that it will benefit both small and large entities which seek to enter the new markets that this action will create. Also, since the action is deregulatory in nature and no new, more restrictive regulations are being proposed, it should provide expanded business opportunities for all vendors and users of communications equipment, both small and large. Beyond this, we are unable to quantify the potential effects of this action on small entities. Comments are requested on this point by interested parties.

31. *Recording, record keeping and other compliance requirements.* The proposed modifications to Part 2 of the Rules would require only record generation by the manufacturer sufficient to meet type acceptance standards for the equipment. The option of using existing procedures is retained.

32. *Federal rules which overlap, duplicate or conflict with this rule.* None.

33. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective.* None.

Other Procedural Matters

34. *Ex Parte Considerations.* For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that ex parte contacts are permitted, from the time the Commission adopts a notice of proposed rulemaking, until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission whichever is earlier. In general, an ex parte presentation is any written or oral communication (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 present a copy of that presentation to 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 comments for the proceeding, must present a written summary of that presentation to the Commission's Secretary for inclusion in the public file on the day that the presentation is made. A copy of the summary must also be presented to the Commission official who receives that oral presentation. The written presentation and summary, described above, must state the docket number of the proceeding to which they relate. For further information, see § 1.1231 of the Commission's Rule (47 CFR 1.1231). A summary of the Commission's procedures govering ex parte presentations in formal rule making proceedings is available from the FCC Consumer Assistance and Small Business Division, Federal Communications Commission, Washington, D.C. 20554.

[16] For example, if a non-standard system used twice as many base station transmitters as a standard system, peak power of mobile units would be 50% of that permitted for standard systems.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A—Proposed Changes for FCC Rules and Regulations, Parts 2, 22, 74, and 90

PART 2—[AMENDED]

The authority citation for Part 2 continues to read:

Authority: Sec. 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 4 U.S.C. 154(i), 154(j) and 303(r) and sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

1a. A new center heading and §§ 2.1100 through 2.1104 are added to the Table of Contents for Subpart J to read as follows:

Alternative Type Acceptance

Sec.
2.1100 Alternative type acceptance (ATA) grant.
2.1101 Applying for ATA grant.
2.1102 Tests for ATA grant.
2.1103 Submission of ATA grant application.
2.1104 Transmitter submission for ATA grant.

1b. New § 2.1100 is added to read as follows:

§ 2.1100 Alternative type acceptance (ATA) grant.

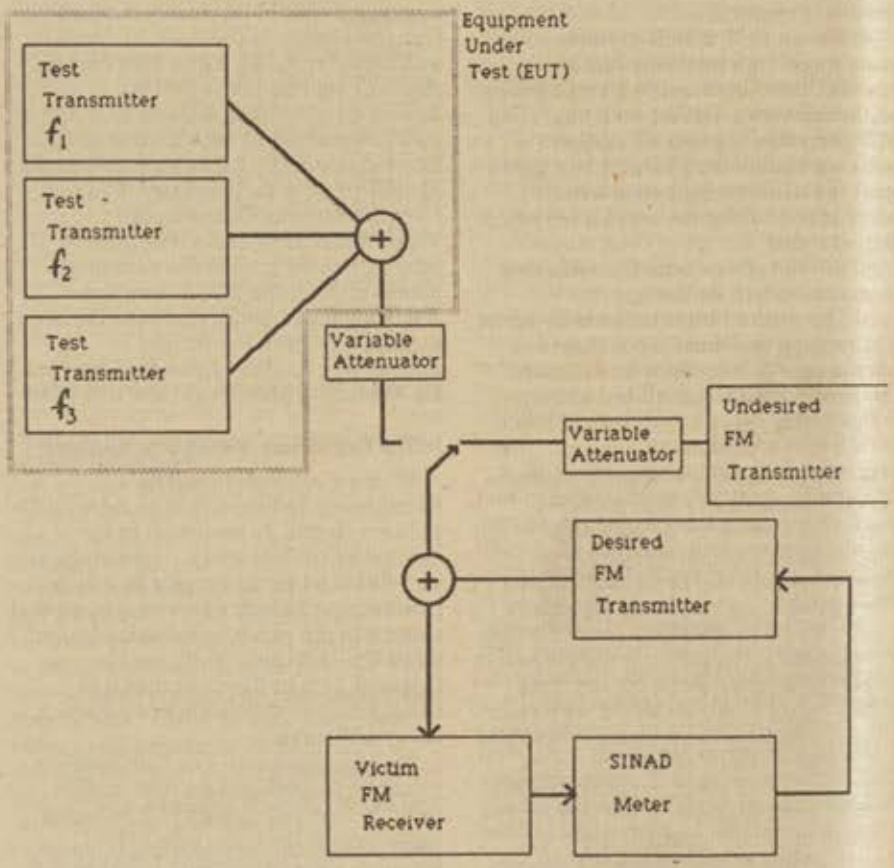
Alternative type acceptance (ATA) is intended as an expeditious alternative for manufacturers who wish to market new mobile radio technologies that do not comply with existing technical standards and channelization plans. Under this program licensees have an alternative option to use unconventional equipment with the understanding that they must adjust their transmitted power according to the manufacturer's instructions as indicated in the ATA grant in order to prevent interference to other licensees. While the alternative type acceptance procedures are more complicated for the manufacturer than regular type acceptance, under many circumstances they are simpler and faster than petitioning the Commission for a rule change—an option which remains open to the maufacturer.

2. New § 2.1101 is added to read as follows:

§ 2.1101 Applying for ATA grant.

(a) The general provisions of this subpart, §§ 2.901, *et seq.* and of § 2.983(a)–(g) shall apply to applications for and grants of alternative type acceptance.

(b) An applicant for an ATA grant must test the proposed equipment in the configuration shown in Figure A. The proposed equipment is shown as the equipment under test (EUT) and may consist of more than one transmitter for systems that are narrower in bandwidth than a conventional channel in the band involved. For the tests, the applicant proposes a relative power for each transmitter and a frequency offset from the channel center frequency f_t.



§2.1101 Figure A. Test Setup

3. New § 2.1102 is added to read as follows:

§ 2.1102 Tests for ATA grant.

The applicant must perform the following tests:

(a) With the standard desired transmitter, standard undesired transmitter, and victim receiver all tuned to the same channel, adjust the output level of the undesired transmitter until interference as defined in paragraph (e) of this section is noted at the victim receiver. The undesired received power is defined as P_s.

(b) With the EUT connected in place of the standard undesired transmitter and the transmitters within the EUT adjusted to their relative frequencies and powers, the EUT combined output signal level is adjusted to also cause interference at the victim receiver. This signal level is defined as the power contribution of each transmitter, P_t. The ratios P_t/P_s determine the power derating needed to limit co-channel interference. If the equipment can meet in-channel roll-off characteristics for the service in which it is intended to be used no additional tests are needed. However, if transmitter bandwidth standards for the proposed band and service can not be met the following test must be performed to show adjacent channel protection.

(c) Adjust the EUT first to the channel immediately above the channel of the other equipment and then to the channel

immediately below it keeping the relative frequencies and powers of its internal equipment the same. At each channel perform the same tests as in paragraphs (a) and (b) of this section. For each transmitter i, pick as the power derating the lowest P_i/P_s of each of the three test conditions.

(d) For an EUT which is proposed to cover more than one conventional channel, the tests must be performed on all the conventional channels that the EUT proposes to cover as well as the adjacent channels if the EUT can not meet the near channel edge within channel roll-off for the service for which it is intended.

(e) For the above tests the following procedures shall be used:

(1) The desired transmitter shall be an FM transmitter whose deviation is normal for the frequency at which the test is performed. It shall be modulated with a 1 kHz sinusoid whose applitude is such that 60% of maximum deviation is obtained. The signal level from the transmitter shall be attenuated such that it is 6 dB stronger than the minimum sensitivity given in section 7.3 of EIA–RS–204–C (⅛₂) for the receiver type being used.

(2) The victim receiver shall have an adjacent channel rejection within 6 dB and sensitivity within 3 dB of that given in EIA–RS–204–C (⅛₂) for the band being tested.

(3) The undesired standard transmitter shall be an FM transmitter with the normal deviation for the band being used. It shall be modulated with a 1.7 kHz sinusoid whose amplitude results in 60% of maximum deviation.

(4) Each EUT transmitter shall have as an input either a 1.7 kHz sinusoid or if it is not a voice radio, typical input signals. The input signal levels to the transmitters shall be typical of expected use.

(5) The definition of interference at the receiver for the purpose of this test shall be a SINAD ratio, defined in EIA–RS–204–C (⅛₂), of 12 dB.

(f) The EUT must be shown to meet the emission bandwidth limits for the band in which it is proposed to be used. For systems that produce a line spectrum for the test signals described in § 2.985, those input signals shall be used. In other cases a typical input signal shall be used and compliance with the emission bandwith limits shall be shown by measuring the power within a 100 kHz bandwidth and comparing it to the maximum 100 kHz bandwidth measurement on the inband signal. For frequencies below 1 GHz the quasi-peak detector described in ANSI C63.2—1980 shall be used. For frequencies above 1 GHz peak power shall be used with an instrument bandwidth appropriate to the existing service.

4. New § 2.1103 is added to read as follows:

§ 2.1103 Submission of ATA grant application.

The applicant for ATA will submit with his application a description of the above test results, a table of derating factors for each transmitter in the EUT along with its frequency relative to the center frequency, and test results showing that the EUT as a whole complied with the out of emission bandwidth standards for the service for which it is intended.

5. New § 2.1104 is added to read as follows:

§ 2.1104 Transmitter submission for ATA grant.

The Commission staff will review the application and may request the applicant to furnish a set of transmitters in order to reproduce the tests. If the application is acceptable to the Commission, an ATA grant which gives the power derating which must be used by a licensee in order to use the equipment will be issued.

PART 22—[AMENDED]

5a. The authority citation for Part 22 continues to read:

Authority: Sec. 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r) and sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

6. New § 22.120(e) is added to read as follows:

§ 22.120 Alternative type acceptance.

* * * * *

(e) *Alternative Type Acceptance.* In addition to type accepted transmitters, licensees, except those the Cellular Radiotelephone Service, may use transmitters granted alternative type acceptance under § 2.1100 *et seq.* provided that the transmitted power is decreased as provided in the alternative type acceptance grant.

PART 74—[AMENDED]

6a. The authority citation for Part 74 continues to read:

Authority: Secs. 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r) and sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

7. Section 74.451(a) is revised to read as follows:

§ 74.451 Type acceptance of equipment.

(a) *Type Acceptance of Equipment.* Applications for new remote pickup broadcast stations or systems or for changing transmitting equipment of an existing station will not be accepted unless the transmitters to be used have been type accepted by the FCC pursuant to the provisions of this subpart, or have been type accepted for licensing under Parts 21 or 90 of the FCC rules and do not exceed the output power limits specified in § 74.461(b), or have been granted alternative type acceptance under § 2.1100 *et seq.* and the output power does not exceed the limits in § 74.461(b) decreased in accordance with the alternative type acceptance grant conditions.

PART 90—[AMENDED]

7a. The authority citation for Part 90 continues to read:

Authority: Secs. 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r) and sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

8. In § 90.203, (a) is revised and a new (e) is added to read as follows:

§ 90.203 Type acceptance required.

(a) *Type Acceptance Required.* Except as specified in paragraphs (b) or (e) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 (of Part 2) must be of a type which is included in the Commission's current Radio Equipment List as type accepted for use under this part; or, be of a type which has been type accepted by the Commission for use under this part in accordance with the procedures in paragraph (a)(2) of this section.

* * * * *

(e) Licensees may use transmitters granted alternative type accepted under § 2.1100 *et seq.* provided that the transmitted power is decreased from the licensed power as provided in the alternative type acceptance grant and the following eligibility criteria are met:

(1) Licensee is an exclusive licensee of the channel or

(2) Licensee furnishes the written consent of all co-channel licensees within a 75 mile radius and receives a licensed modification allowing use of alternative type acceptance equipment.

Note.—Apendix B will not be shown in the Code of Federal Regulations.

Appendix B—Numerical Example of Alternative Type Acceptance and Transmitter Derating

1. For this example, we assume that a licensee is presently authorized a 16K0F3E (formerly 16F3) FM transmission with 10 dBw mobile power and 20 dBw repeater power. The hypothetical proposed equipment for Alternative Type Acceptance (ATA) is a 6 kHz channel system. It is proposed to put one of the subchannels on the center of an existing 25 kHz channel and to center each of two others 6 kHz away from the center channel. The manufacturer proposes to attenuate the side channels 2dB relative to the center channel.

2. In the first ATA test, the desired FM signal level is set to −107 dBm. The undesired FM level is increased until a 12 dB SINAD is reached. This is found to be −100 dBm, which is P_s. The switch is moved for the EUT test and the attenuation is decreased until 12 dB SINAD is reached again. The following individual transmitter power are then noted:

Frequency relative to channel center (f_i)	P_i (dBm)	P_i/P_s (dB)
−6 kHz	−46	−6
0 kHz	−44	−4
+6 kHz	−46	−6

The same test is repeated for the FM equipment adjusted to the lower adjacent channel and P_s is found to be −41 dBm. The switch is moved again and the following values are found for P_i.

Frequency relative to channel center (f_i)	P_i (dBm)	P_i/P_s (dBm).
−6 kHz	−46	−5
0 kHz	−44	−3
+6 kHz	−46	−5

The largest values fund for P_i/P_s were in the second test and this will be used for the derating in the ATA grant. Thus, the grant will have the following condition:

Frequency relative to channel center (f_i)	Derating from licensed power (dB)
−6 kHz	−6
0 kHz	−4
+6 kHz	−6

For the hypothetical licensee described above, this leads to the following permitted powers:

Frequency relative to channel center (f_i)	Repeater power (dBw)	Mobile power (dBw)
−6 kHz	−14	−4
0 kHz	−16	−5
+6 kHz	−14	−4

[FR Doc. 85-14589 Filed 6-17-85; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1241

[Docket Ex. Parte No. 460]

Certification of Railroad Annual Report R-1 by Independent Accountant

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking.

SUMMARY: In this proceeding the Commission is proposing a reporting revision that would require Class I railroads to submit a certified statement from an independent public accountant attesting to the conformity of the primary financial statements and selected schedules in the Annual Report Form R-1 with the Commission's accounting and reporting rules. The proceeding was opened for comments at 50 FR 18539, May 1, 1985 (served April 30, 1985). The due date for comments was specified as June 17, 1985. This notice extends the time for filing comments for 30 days and clarifies the extent of the independent accountant's attestation.

DATE: Comments must be received by July 17, 1985.

ADDRESS: Send comments (original and 15 copies) to: Docket Ex Parte No. 460, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR) has requested the Commission to hold the proceeding in abeyance until the Railroad Accounting Principles Board (RAPB) develops standards regarding the audit of financial data submitted by the railroad industry to the Commission; or, to clarify the minimum content within the supporting schedules to be covered by the independent accountant's attestation with a revised comment deadline; or, to grant a 60-day extension of the comment deadline to August 16, 1985.

With respect to the request to hold the proceeding in abeyance, the AAR contends that the RAPB will issue standards within the next year regarding the audit of financial data submitted by the railroad industry to the Commission. While it appears that interim standards may be developed by the RAPB within the next year, the finalization of the standards and their subsequent implementation by the Commission would extend further the amount of time the instant proceeding would be delayed. Therefore, the Commission will consider any necessary changes at such time as those standards are issued by the RAPB.

The NPR included a list of schedules in the R-1 annual report that the Commission uses in fulfilling its current responsibilities. The AAR avers it is not economically feasible to have the independent accountants attest to the individual amounts in Schedule 410 (Railway Operating Expenses), and it further requests clarification of the intended use and distribution of the amounts in the audited schedules. In general, the data in the listed schedules is used as a whole and cannot be separated into audited and non-audited segments. However, the extent of the independent accountant's attestation may vary according to the type of data audited. It is our intent to receive positive assurance [1] on the financial statements, Schedules 200, 210 and 240 including footnotes, as to their conformity with the Uniform System of Accounts. We do not envision requiring an attestation with respect to each and every individual amount contained in the supporting schedules (including Schedule 410). Rather, positive assurance would be required, under Generally Accepted Auditing Standards,[2] on the other financial information reported in the supplemental schedules (including Schedule 410) in relation to the financial statements taken as a whole. As to the statistical data in Schedule 755, a negative assurance [3] would be required, based on procedures agreed upon by the Commission and the railroads' independent auditors. Such assurance would state either, that no material errors came to their attention as a result of performing the procedures or, that material errors were found.

Having clarified the requirement of the independent accountant's attestation, a 30-day extension is

[1] As defined in Generally Accepted Auditing Standards.

[2] Statements on Auditing Standards are issued by the Auditing Standards Board of the American Institute of Certified Public Accountants.

[3] See note 1, *supra*.

warranted to give parties an opportunity to provide comments on this action without unduly delaying the Commission's consideration of the proposal.

It is ordered: The date for filing comments is extended to July 17, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: June 12, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-14550 Filed 6-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reopening and 6-Month Extension of the Comment Period on the Proposed Rule for the Fish Creek Springs Tui Chub (Gila Bicolor Euchila)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening and extension of comment time.

SUMMARY: The U.S. Fish and Wildlife Service reopens and extends the 1-year period on the proposed rule (49 FR 23409) to determine the Fish Creek Springs tui chub to be a threatened species with critical habitat for 6 additional months as provided for under section 4(b)(6)(B)(i) of the Endangered Species Act of 1973, as amended. Considerable data was received during the open comment period which contradicted with the threats outlined in the proposed rule.

Data submitted by the Endangered Fishes Research Center at the University of Nevada, Las Vegas (UNLV) suggested that threats from overgrazing cattle exposing soil to erosion has had little to no impact on fish habitat. UNLV biologists also submitted information suggesting populations of the tui chub to be higher in number and more widespread than originally proposed in the rule as a result of less predation by introduced trout. This time extension will allow the U.S. Fish and Wildlife Service further opportunity to assess the data on the status of the tui chub.

DATES: With the 6-month reopening and extension, the new deadline for the final rule will be December 6, 1985.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 500 NE., Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Fish Creek Springs tui chub (*Gila bicolor euchila*) was proposed for listing as a threatened species with critical habitat in the June 6, 1984, Federal Register. This species is only known to occur in the Little Smoky Valley of southeastern Eureka County, Nevada. The factors affecting the species, as cited in the proposed rule (49 FR 23409), are predation by introduced trout and overgrazing of nearby lands.

In the spring and summer of 1984, biologists from the UNLV conducted field investigations which suggested that there was little or no direct impact to tui chub habitat from cattle grazing in the area. Documentation was also given that stated a westernmost springhead and outflow channel of Fish Creek do contain tui chubs and are not fishless as suggested in the proposed rule. Trout stocking records have been analyzed by Service personnel which support UNLV reports of higher population numbers of tui chubs and an increase in their distribution.

Future actions on the proposed listing of this species are being postponed until this additional information can be analyzed. After the analysis is complete, the Service will decide whether to continue with the final listing of the species or to withdraw the proposal as provided under section 4(b)(6)(B)(ii) of the Act. The authority for this extension is provided in section 4(b)(6)(B)(i) of the Endangered Species Act of 1973, as amended.

Literature Cited

Deacon, J.E. 1984. Population status and distribution of *Gila* in Fish Creek Springs. Rpt. to Nevada Department of Wildlife. Contact E-1-1, Job 1. July 29, 1984. University of Nevada, Las Vegas. Department of Biological Sciences, Endangered Fishes Research Center.

Hardy, T. 1980a. Interbasin report to the Desert Fishes Council. 1978. Proc. Desert Fishes Council 10:68-70.

Hardy T. 1980b. The interbasin area report—1979. Proc. Desert Fishes Council 11:5-21.

Author

The primary author of this notice is Dr. Randy McNatt, U.S. Fish and Wildlife Service, Great Basin Complex, 4600 Kietzke Lane, Reno, Nevada 89502 (702/784-5227 or FTS 470-5227).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 11, 1985.

William F. Shake,

Acting Regional Director.

[FR Doc. 85-14538 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 117
Tuesday, June 18, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement; Management of Historic Properties on National Forests in Arizona

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation has initiated consultation with the U.S. Department of Agriculture, Forest Service, Region 3, and the Arizona State Historic Preservation Officer on a Programmatic Memorandum of Agreement covering all Forest Service activities in the State of Arizona. The agreement, authorized by 36 CFR 800.8 of the Council's regulations implementing section 106 of the National Historic Preservation Act, will establish mechanisms to ensure that historic properties are identified and considered in Forest Service planning, land management, resource management, permitting, and other activities on the National Forest of the state.

Comments Due: July 18, 1985.

ADDRESS: Advisory Council on Historic Preservation, 730 Simms Street Room 450, Golden, CO 80401, Attn. Mr. Alan Downer.

Dated: June 13, 1985.

Robert R. Garvey,

Executive Director.

[FR Doc. 85-14622 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 14, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (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 provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extention

- Agricultural Stabilization and Conservation Service

ASCS-155, Data for Farm Reconstitution—ASCS-155-1, Data for Farm and Producer Records Change

ASCS-155, ASCS-155-1

On occasion

Individuals or households; Farms; 900,000 responses; 450,000 hours; not applicable under 3504(h)

Alex King (202) 447-4542

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85-14616 Filed 6-17-85; 8:45 am]

BILLING CODE 3410-01-M

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act System of Records.

SUMMARY: Notice is hereby given that USDA proposes to create a new Privacy Act system of records, USDA/ES-1, entitled "International Extension Applicant Roster, USDA/ES."

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on August 19, 1985, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before August 19, 1985.

FOR FURTHER INFORMATION CONTACT: International Program Specialist, International Programs, Extension Service, U.S. Department of Agriculture, Room 332-A, Administration Building, 14th & Independence Avenue, SW, Washington, DC 20250, (202-447-3801).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records to be maintained by the Extension Service (ES). The purpose of this notice is to announce the creation and character of this system of records. The system contains data on cooperative extension service (CES) (as defined in section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, Pub. L. No. 95-113) personnel and ES personnel who are interested in overseas assignments. One of the goals of the ES is to increase involvement of the CES and the ES in the international arena. This system of records will serve to facilitate the placement of qualified individuals in CES projects overseas.

A "Report on New System," required by 5 U.S.C. 552a(o), as implemented by Transmittal Memoranda 1 and 3 to OMB Circular A-108, was sent to the President of the Senate, the Speaker of the House of Representatives and the Director of the Office of Management and Budget on May 30, 1985.

Signed at Washington, DC on May 30, 1985.
John R. Block,
Secretary of Agriculture.

USDA/ES–1

SYSTEM NAME:

International Extension Applicant Roster, USDA/ES.

SYSTEM LOCATION:

Extension Service, International Programs, USDA, Room 332–A, Administration Building, 14th & Independence Avenue, SW, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cooperative extension service and Extension Service personnel interested in overseas assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Personal data identifying the individual such as name, address, university, social security number and telephone number. (2) Summary background information categorized under headings such as subject matter experience, commodity experience, functional experience, clientele experience, ecosystems experience, production systems experience, scope of experience, international experience, education and language proficiency. (3) Preferred length of assignment (short-, mid- or long-term). (4) Personal resume or SF–171.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 296 and 297 of the Foreign Assistance Act of 1961, Pub. L. No. 87–195, 75 Stat. 424, as added by Section 312 of the International Development and Food Assistance Act of 1975, Pub. L. 94–161, 89 Stat. 849; and Section 1458 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, 7 U.S.C. 301 et seq., as amended by Section 1436 of the Agriculture and Food Act of 1981, Pub. L. No. 97–98, 95 Stat. 1213.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Extension Service staff will have access to all records within the system for the purpose of identifying qualified candidates for overseas assignments. (2) Information may be referred to international organizations seeking cooperative extension service and Extension Service personnel for placement in overseas projects and assignments. (3) Referral may be made to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

International Extension Applicant Roster records are stored on disk files and in file folders.

RETRIEVABILITY:

Records can be accessed on the computer by individual name, social security number, university affiliation, preferred length of duty or keywords and phrases under any of the experience categories. Resumes and SF–171 forms will be filed by name in alphabetical order in file folders.

SAFEGUARDS:

On-line access to International Extension Applicant Roster data is controlled by password protection. Information stored in file folders will be stored in locked file cabinets.

RETENTION AND DISPOSAL:

Applicant information will remain on the system for a period of one year. At the end of each year the applicant will have the option to remain on the system for the following year, and make any needed changes in his/her file, or be dropped from the roster. At anytime during the year, the applicant may request that his/her files be removed from the system. Data for disposal is deleted from the computer memory.

SYSTEM MANAGER(S) AND ADDRESS:

International Program Specialist, International Programs, Extension Service, U.S. Deartment of Agriculture, Room 332–A, Administration Building, 14th & Independence Avenue, SW, Washington, DC 20250.

NOTIFICATION PROCEDURE:

An individual may request information as to whether the system contains records pertaining to him or her from the International Program Specialist, International Programs, Extension Service, U.S. Department of Agriculture, Room 332–A, Administration Building, 14th & Independence Avenue, SW, Washington, DC 20250. A request for information regarding an individual should include the individual's full name and address. Before any information about an individual is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

An individual who wishes to request access to records in the system relating to that individual should submit a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Same as notification procedure. (The regulations for contesting contents of records and appealing initial determinations are set forth at 7 CFR 1.110–1.123.)

RECORD SOURCE CATEGORIES:

Records in this system come from documents submitted by the individual directly or through a cooperative extension service to the Extension Service, USDA, for the purpose of inclusion in the International Extension Applicant Roster.

[FR Doc. 85–14567 Filed 6–17–85; 8:45 am]
BILLING CODE 3410–18–M

Rural Electrification Administration

Alaska Electric Generation and Transmission Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Alaska Electric Generation and Transmission Cooperative, Inc. (AEG&T), of Palmer, Alaska. The project consists of constructing a new 37.4 MW generating unit (ISO Rating) and related facilities. The related facilities consist of a step-up transformer, air filter, exhaust gas stack, fuel storage facilities, waste water treatment facilities, prefabricated building to house equipment, water storage and treatment facilities, and air compressor, receiver and dryer.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) may be reviewed at or obtained from Mr. William E. Davis, Director, Western Area—Electric, REA,

South Agriculture Building, Washington, D.C. 20250, telephone (202) 382–8848, or may be reviewed/obtained from the office of Alaska Electric Generation and Transmission Cooperative, Inc. (Mr. B. Kent Wick, Interim Manager), 3977 Lake Street, Homer, Alaska 99603, telephone: (907) 235–8167, during regular business hours.

SUPPLEMENTARY INFORMATION: REA has reviewed the Borrower's Environmental Report (BER) submitted by AEG&T and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project consists of constructing a new 37.4 MW generating unit and related facilities at the Soldotna Substation about 4 km (2.5 miles) east of the City of Soldotna, Alaska. The related facilities include a step-up transformer, oil filter, exhaust gas stack, waste water treatment facilities, fuel storage facilities, prefabricated building to house equipment, water storage and treatment facilities, and air compressor, receiver and dryer. REA may provide financing assistance to AEG&T for the proposed project.

The BER and EA adequately consider potential impacts of the proposed project to resources including cultural resources, threatened and endangered species, prime farmland, prime rangeland, prime forest land, floodplains, wetlands, air quality, and water quality.

Alternatives discussed in the EA include no action, use of alternative forms of energy, improving existing facilities, building new transmission facilities, and alternative sites. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative that meets AEG&T's needs with a minimum of adverse impact. Based upon the BER and other related data, REA prepared an EA and FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that the approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, AEG&T advertised the availability of its BER in the Peninsula Clarion, a local newspaper of general circulation. No comments were received.

This program is listed in the Catalog of Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: June 12, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85–14564 Filed 6–17–85; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

West Fork of Mayfield Creek Watershed, KY

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Fork of Mayfield Creek Watershed, Graves and Carlisle Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2749.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This project concerns a plan for watershed protection and flood prevention. The original work plan called for 51 floodwater retarding structures, one multi-purpose structure, and 81,400 linear feet of channel improvement. Twenty-six floodwater retarding structures have been completed. At the request of the sponsors, 81,400 linear feet of channel improvement and one floodwater retarding structure will be deleted from the project. The multi-purpose structure will be changed to a floodwater retarding structure. The planned action is to complete 25 remaining floodwater retarding structures. This planned action will reduce upland erosion, downstream flooding and sedimentation.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: June 6, 1985.

Randall W. Giessler,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

[FR Doc. 85–14563 Filed 6–17–85; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Plant Capacity Utilization
Form number: Agency—MQ–C1; OMB–0607–0175
Type of request: Extension of a currently approved collection
Burden: 9,000 respondents; 13,500 reporting hours
Needs and uses: This survey is needed to measure inflationary pressures and capital flows; understand productivity determinants; and analyze and precast economic and industrial trends.
Affected public: Business or other for-profit institutions
Frequency: Annually
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census
Title: Special Population and Enumeration Book
Form number: Agency—SC 19, 19A; OMB—0607–3068
Type of request: Revision of a currently approved collection
Burden: 90,000 respondents; 74,700 reporting hours

Needs and uses: The special census provides population and housing counts for local governments between decennial censuses.
Affected public: Individual or households
Frequency: As requested
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census
Title: Applicant Background Questionnaire
Form number: Agency—BC–1431; OMB—N/A
Type of request: New collection
Burden: 50,000 respondents; 1,667 reporting hours
Needs and uses: This questionnaire will be used to test applicants for Schedule A noncompetitive positions in the Bureau of the Census. The data will be analyzed to determine the effectiveness of recruiting sources and to determine the validity of the test content for various segments of the population.
Affected public: Individuals
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20203.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 12, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–14595 Filed 6–17–85; 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: NOAA
Title: Deep Sea Bed Mining—Proposed Regulations for Commercial Recovery
Form number: Agency—N/A; OMB—N/A
Type of request: Notice of Proposed Rulemaking
Burden: respondent; 1 reporting hours
Needs and uses: Information is required from private industry, in accordance with Pub. L. 96–283, to enable NOAA to issue permits for commercial recovery of deep seabed mining resources.
Affected public: Businesses or other for-profit, Federal agencies or employees.
Frequency: On occasion, annually
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785

Agency: NOAA
Title: Social and Economic Surveys of Fisheries
Form number: Agency—N/A; OMB—0648–0093
Type of request: Revision of a currently approved collection
Burden: +200 respondents; +275 reporting hours
Needs and uses: A stratified random sample of charter boat anglers will be surveyed to collect information needed to estimate the effects of bag limits on recreational angler and charter boat operations and to permit evaluations of alternative estimation techniques.
Affected public: Individuals or households
Frequency: One-time with follow-up
Respondent's obligation: Voluntary
OMB desk officer: Sheri Fox, 395–3785.

Agency: NOAA
Title: Dealer Purchases and Trip Interviews—Amendment 3
Form number: Agency—Pending; OMB—0648–0013
Type of request: Revision of a currently approved collection
Burden: +95 respondents; +129 reporting hours
Needs and uses: This proposal will amend the currently approved information collection to include mandatory reporting of landings data by swordfish vessels operating in the Caribbean area and a requirement that a sample of recreational and commercial swordfish fishermen in the Mid-Atlantic area complete a simple questionnaire. These data are needed to evaluate the need for time/area closures to reduce fishing effort during periods when excessive members of small immature fish are caught and to determine the impact of fishing effort on the stock.
Affected public: Individuals or households, businesses or other for-profit, small businesses or organizations
Frequency: Monthly; once per trip
Respondent's obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785

Agency: NOAA
Title: U.S. Geostationary Operational Environmental Satellites (GOES) Data Collection System (DCS)
Form number: Agency—N/A; OMB—N/A
Type of request: Existing collection in use without an OMB Control Number
Burden: 8 respondents; 24 reporting hours
Needs and uses: Private collectors of environmental data, e.g. wave height readings, can use NOAA satellite system to transmit data if government agency needing data sponsors collector. Collector must describe benefits to sponsor and lack of alternative communications.
Affected public: State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions.
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395–3785

Agency: NOAA
Title: Oil Spill Tracking Studies—Drift Card Deployment
Form number: Agency—N/A; OMB—0648–0126
Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
Burden: 250 respondents; 37.5 reporting hours
Needs and uses: Drift cards are used to track the movement of ocean currents and are useful in predicting the landfall of major accidental oil spills. Individuals who find these cards are requested to send information on where the card was found. This information is used to enhance our knowledge of ocean currents.
Affected public: Individuals or households.
Frequency: One time only
Respondent's obligation: Voluntary
OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 12, 1985

Edward Michals,

Department Clearance Officer.

[FR Doc. 85-14594 Filed 6-17-85; 8:45 am]

BILLING CODE 3510-CW-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Canada

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 title 17, United States Code, 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 44517-9 and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On June 12, 1985, the Patent and Trademark Office received petitions for the issuance of an interim order from the Canadian Manufacturers' Association, the Electrical and Electronics Manufacturers Association of Canada, the Canadian Business Equipment Manufacturers Association, and the Canadian Advanced Technology Association complying with the guidelines. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding with respect to Canada 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 for the submission of comments in accordance with paragraph F(a).

DATES: Comments must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 P.M. on June 25, 1985.

ADDRESS: Address written comments to: Attention: Assistant Commissioner for External Affairs, Box 4, Washington, D.C. 20231.

Materials submitted will be available for public inspection 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 t (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 title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined 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 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. To encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may exend 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 June 12, 1985, a petition for the issuance of an interim order under title 17 of the United States Code section 914 was received from the Canadian Manufacturers' Association, the Electrical and Electronics Manufacturers Association of Canada, the Canadian Business Equipment Manufacturers Association, and the Canadian Advanced Technology Association (hereinafter the petitioners). The petition, including the supplemental information provided by the Government of Canada, is sufficient to permit the initation of proceedings under the guidelines and is reproduced as part of this notice.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919 and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggest 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 subject 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 shoud bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

I am considering issuing an interim order on an expedited basis extending the protection of chapter 9 of title 17 of the United States Code to the nationals, domiciliaries, and sovereign authorities of Canada. Public comment on the requests of the petitioners will be considered if received in the Office of the Commissioner of Patents and Trademarks on or before 5:00, p.m., June 25, 1985.

Dated: June 12, 1985.

Donald J. Quigg,

Acting Commissioner of Patent and Trademarks.

June 5, 1985.

Acting Commissioner of Patents and Trade Marks,

Box 4, Washington, D.C. 20231, U.S.A.

Re: Petition to the Secretary of Commerce of the United States of America Pursuant to Section 914 of the Semiconductor Chip Protection Act of 1984 ("the Act").

1. The Canadian Manufacturers' Association is a broad-based business organization representing more than 4,000 manufacturing companies of all sizes and all sectors in Canada. CMA member companies account for approximately 75 percent of all manufactured goods in Canada.

2. Members of The Canadian Manufacturers' Association are involved in the design and production of semiconductor chips. As well, many members use semiconductor chips in their commercial activities.

3. The Canadian Manufacturers' Association believes that the Canadian government should take appropriate legislative steps to explicitly protect mask works as fixed in semiconductor chip products consistent with the provisions of S. 902(a)(2) of the Act.

4. The Canadian Manufacturers' Association submits that the Canadian government is making good faith efforts and reasonable progress in dealing with this recent issue, especially in the context of the current stage of omnibus copyright revision.

5. Accordingly, The Canadian Manufacturers' Association hereby requests that the Secretary of Commerce, pursuant to S. 914(a) of the Act, extend the privilege of obtaining interim protection under the U.S. Act to nationals, domiciliaries, and sovereign authorities of Canada, effective from the date of this application.

6. The Canadian Manufacturers' Association submits that the granting of such protection would not only promote the purposes of the Act and of achieving international comity toward mask work protection, but would be in furtherance of the statement issued by the Prime Minister of Canada and the President of the United States on March 18, 1985 following the Quebec Summit with respect to:

- Elimination or reduction of tariff and non-tariff barriers to trade in *high-technology goods and related services,* such as computers, data flow and computer-assisted design and manufacturing technology; and
- Co-operation to protect *intellectual property rights* from trade in counterfeit goods and other abuses of copyright and patent law.

7. The Canadian Manufacturers' Association states that, to their knowledge, no nationals, domiciliaries, or sovereign authorities of Canada, or persons controlled by them, are or have been engaged in the misappropriation, or unauthorized distribution or commercial exploitation, of mask works.

8. In support of this application, The Canadian Manufacturers' Association submits a joint statement by the Deputy Ministers of Consumer and Corporate Affairs Canada and the Department of Communications.

9. The Canadian Manufacturers' Association respectfully requests that this application be given earliest possible consideration in order that Canadian firms may, if advised, make appropriate application for registration of mask works prior to July 1, 1985.

Respectfully submitted,

J. Laurent Thibault,

President.

Graeme C. Hughes,

Senior Executive Vice President and Secretary.

June 5, 1985.

Acting Commissioner of Patents and Trade Marks,

Box 4, Washington, DC, 20231

Petition to the Secretary of Commerce of the United States of America Pursuant to S. 914 of the Semiconductor Chip Protection Act of 1984 ("the Act")

1. The Electrical and Electronic Manufacturers Association of Canada ("EEMAC") represents the firms listed on schedule "A", which are engaged in the manufacturing and/or distribution of high technology equipment containing semiconductor chips.

2. EEMAC is the voice and forum of more than 215 Canadian manufacturers of electrical and electronic equipment, systems, apparatus, and components, many of which firms are subsidiaries of U.S. parents. These companies employ approximately 155,000 Canadians in manufacturing. In 1983 Canada's electrical and electronic sector served a domestic market of $17 billion and an export market of $4 billion.

3. EEMAC believes that the Canadian government should take appropriate legislative steps to explicitly protect mask works as fixed in semiconductor chip products consistent with the provisions of S. 902(a)(2) of the *U.S. Act.*

4. EEMAC submits that the Canadian government is making good faith efforts and reasonable progress in dealing with this recent issue, especially in the context of the current stage of omnibus copyright revision.

5. Accordingly, EEMAC hereby requests that the Secretary of Commerce, pursuant to S. 914(a) of the U.S. Act, extend the privilege of obtaining interim protection under the U.S. Act to nationals, domiciliaries, and soverign authorities of Canada, effective from the date of filing this petition for a minimum of two (2) years.

6. EEMAC submits that the granting of such protection would not only promote the purposes of the U.S. Act and of achieving international comity toward mask work protection, but would also be in furtherance of the statement issued by the Prime Minister of Canada and the President of the United States on March 18, 1985 following the Quebec Summit with respect to:

- Elimination or reduction of tariff and non-tariff barriers to trade in *high-technology goods and related services,* such as computers, data flow and computer-assisted design and manufacturing technology; and
- Cooperation to protect *intellectual property rights* from trade in counterfeit goods and other abuses of copyright and patent law.

7. EEMAC states that, to its knowledge, neither Canada nor its nationals, domiciliaries and sovereign authorities or persons controlled by them are engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works.

8. In support of this application, EEMAC submits a joint statement by the Deputy Ministers of Consumer and Corporate Affairs Canada and the Department of Communications.

9. EEMAC respectively requests that this application be given the earliest possible consideration in order that Canadian firms may, if advised, make appropriate application for registration of mask works prior to July 1, 1985.

Electrical and Electronic Manufacturers Association of Canada.

Per Ernie Welling,

Manager, Electronics Divisions.

Schedule A Listing the Members of the Association Is Available for Inspection in the Patent and Trademark Office

June 5, 1985.

Acting Commissioner of Patents and Trade Marks,

Box 4, Washington, D.C. 20231, U.S.A.

Dear Sir:

Re: Petition to the Secretary of Commerce of the United States of America Pursuant to S. 914 of Semiconductor Chips Protection Act of 1984 ("the Act")

1. The Canadian Business Equipment Manufacturers Association ("CBEMA")

represents the firms listed on Attachment I, which are engaged in the manufacturing and distribution of high technology equipment containing semiconductor chips. CBEMA also represents a number of companies who manufacture office and contract furniture.

2. CBEMA believes that the Canadian government should take appropriate legislative steps to explicitly protect mask works as fixed in semiconductor chip products consistent with the provisions of s.902(a)(2) of the U.S. Act. Attachment II is an excerpt from a recent submission by CBEMA which recommends statutory protection for semiconduction chips.

3. CBEMA submits that the Canadian government is making good faith efforts and reasonable progress in dealing with this recent issue, especially in the context of the current stage of omnibus copyright revision.

4. Accordingly, CBEMA hereby requests that the Secretary of Commerce, pursuant to S. 914(a) of the U.S. Act, extend the privilege of obtaining interim protection under the U.S. Act to nationals, domiciliaries, and sovereign authorities of Canada, effective from the date of this application.

5. CBEMA submits that the granting of such protection would not only promote the purposes of the U.S. Act and of achieving international comity toward mask work protection, but also be in further of the statement issued by the Prime Minister of Canada and the President of the United States on March 18, 1985 following the Quebec Summit with respect to:

- Elimination or reduction of tariff and non-tariff barriers to trade in *high technology goods and related services*, such as computers, data flow and computer-assisted design and manufacturing technology; and
- Cooperation to protect *intellectual property rights* from trade in counterfeit goods and other abuses of copyright and patent law.

6. CBEMA states that, to its knowledge, neither Canada nor its nationals, domiciliaries, and sovereign authorities or persons controlled by them, are engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works.

7. In support of this application, CBEMA submits a joint statement by the Deputy Minister of Consumer and Corporate Affairs Canada and the Department of Communications.

8. CBEMA respectfully requests that this application be given earliest possible consideration in order that Canadian firms may, if advised, make appropriate application prior to July 1, 1985.

Sincerely,

Canadian Business Equipment Manufacturers Association.

Per James Tapsell,

Secretary.

Canadian Business Equipment Manufacturers Assocation, Corporate Member Firms

AES Data Inc.
AT&T Canada Inc.
All-Steel Canada Ltd.
Ambiant Systems Ltd.
Amdahl Limited
Apollo Computer (Canada) Ltd.
Arconas Corporation
Burroughs Canada
Canon Canada Inc.
Compugraphic Canada Limited
Control Data Canada, Ltd.
Cray Canada Inc.
Data General (Canada) Inc.
Datapoint Canada, Inc.
Delphax Systems
Dictaphone Canada Ltd.
Digital Equipment of Canada Limited
GBC Canada Inc.
General Datacomm Ltd.
Global Upholstery Company Limited
Grid Systems Canada Inc.
Harter Furniture Ltd.
Haworth Office Systems Ltd.
Henderson Furniture (1982) Ltd.
Hewlett-Packard (Canada) Ltd.
Honeywell Limited
IBM Canada Ltd.
iil limited/iil international inc.
Joyce Furniture Inc.
Kodak Canada Inc.
Lanier Business Products Canada Inc.
MAI Canada Ltd.
Micos Computer System Inc.
Monroe Systems for Business
NCR Canada Ltd.
NTI Inc.
Nashua Canada Limited
National Advanced Systems
Nienkamper
Olivetti Canada Limited
Olympic Business Machines Canada Ltd.
Paradyne Canada Ltd.
Philips Information Systems Ltd.
Pitney Bowes of Canada Ltd.
Prime Computer of Canada Limited
Ram Partitions—A Division of Indal Ltd.
Recognition Equipment (Canada) Ltd.
Rolm Canada Inc.
STC Canada Inc.
Sand Technology Systems (Canada) Inc.
Sperry Inc., Computer Systems
Steelcase Canada Limited
Sunarhauserman Ltd.
Tandem Computers
Tektronix Canada Inc.
3M Canada Inc.
Wang Canada Ltd.
Westinghouse Furniture Systems Canada Inc.
Westinghouse Canada Inc., Data Communication Products
Xerox Canada Inc.

Submission by Canadian Business Equipment Manufacturers Association on Copyright Law (excerpt)

* * * * *

2. *Masks*

The second area of concern is silicon chips. Silicon Chips are made by creating "masks" which permit the diffusion of certain carefully chosen materials to be diffused into, or placed on the surface of, a layer of silicon in carefully specified places. After silicon has been exposed to one material through a first mask, that mask, is removed, and the silicon is then exposed to another material through a second mask, which usually has its holes in different places. Often, 12 to 20 such masks are used in the making of one chip. The result is a chip having certain electrical properties in various parts, which give it the desired characteristics.

It is possible, by analyzing the chip, to determine the shape of the masks which have been used. It is then possible to design similar masks, to make the same sort of chip.

In the United States, a law has been passed to protect "mask works" from copying for a set period of time. A mask work is defined as being the two dimensional and three dimensional features of shape, pattern and configuration of the surface layers of a semiconductor chip. These features arise from the shape of the masks used. The only mask works protected are those of U.S. nationals or domiciliaries or mask works of stateless persons. Provision is made for reciprocal protection of the works of other nations by treaty, but no such treaty yet exists. However, the U.S. President has the power under certain conditions to extend protection to mask works of nationals or domiciliaries of another country, or works first exploited in such country. The conditions generally require that the other country protect mask works in some way, and that U.S. nationals can avail themselves of such protection. Under the transitional provisions of the law, the protection can be extended to a nation when the Secretary of Commerce finds that the nation in question is making "good faith efforts and reasonable progress" towards protection of mask works.

It would be useful to have some statutory provision protecting semi-conductor chips from copying by having their mask work analyzed and duplicated. This could be accomplished (as in the United States) through a separate statute, or it could be done by the suitable amendment to the Copyright Act. On balance, we would prefer the copyright approach (provided a satisfactory amendment can be drafted) because it could eventually permit Canadians to obtain international protection through the existing copyright conventions. The fact of protection in Canada would have the additional benefit that Canadian companies should then qualify for inclusion in the U.S. statutory protection.

* * * * *

June 4, 1985.

Acting Commissioner of Patents and Trade Marks,

Box 4, Washington, D.C., 20231

Re: S. 914 of Semiconductor Chips Protection Act of 1981 ("the Act")

1. The Canadian advanced Technology Association ("CATA") represents the firms listed on Schedule "A" including designers and manufacturers of mask works and semiconductor chips in Canada and companies engaged in the manufacturing of high technology equipment containing semiconductor chips.

2. CATA believes that the Canadian government should take appropriate legislative steps to explicitly protect mask works as fixed in semiconductor chip products consistent with the provisions of s.902(a)(2) of the U.S. Act.

3. CATA submits that the Canadian government is making good faith efforts and reasonable progress in dealing with this recent issue, especially in the context of the current stage of omnibus copyright revision.

4. Accordingly, CATA hereby requests that the Secretary of Commerce, pursuant to s.914(a) of the U.S. Act, extends the privilege of interim obtaining protection under the U.S. Act to nationals, domiciliaries, and sovereign authorities of Canada, effective from the date of this application.

5. CATA submits that the granting of such protection would not only promote the purposes of the U.S. Act and of achieving international comity toward mask work protection, but would be in furtherance of the statement issued by the Prime Minister of Canada and the President of the United States on March 18, 1985 following the Quebec Summit with respect to:

- Elimination or reduction of tariff and non-tariff barriers to trade in *high technology goods and related services*, such as computers, data flow and computer-assisted design and manufacturing technology, and;
- Cooperation to protect *intellectual property rights* from trade in counterfeit goods and other abuses of copyright and patent law.

6. CATA states that, to its knowledge, the nationals, domiciliaries, and sovereign authorities of Canada, and persons controlled by them, are not engaging in and have not in the recent past engaged in chip piracy or the sale of products containing infringing semiconductor components.

7. In support of this application, CATA submits a joint statement by the Deputy Minister of Consumer and Corporate Affairs Canada and the Department of Communications.

8. CATA respectively requests that this application be given earliest possible consideration in order that Canadian firms may, if advised, make appropriate application prior to July 1, 1985.

Canadian Advanced Technology Association.

Per Herbert H. LaPier,

Chairman.

Schedule A Listing the Members of the Association Is Available for Inspection in the Patent and Trademark Office

June 11, 1985

In the Matter of a Petition to the Secretary of Commerce of the United States of America Pursuant to S.914 of Semiconductor Chip Protection Act of 1984 ("The U.S. Act")

1. Within the Government of Canada, the Department of Consumer and Corporate Affairs ("CCAC") is responsible for legislation respecting copyright, patents, trademarks, and industrial designs. Presently, responsibility for revision of the *Copyright Act* is shared with the Department of Communications ("DOC"). Under the Canadian parliamentary system, final policy determination and proposed legislation are normally subject to Cabinet approval and not announced until such approval has been obtained.

2. In the current copyright revision process, DOC has the lead role in overall carriage of the new legislation, while CCAC is responsible for policy development relating to computer programs and related areas of high technology, including semiconductor chip protection.

3. Canada is currently actively working towards omnibus revision of its *Copyright Act*. The Ministers of the aforesaid Departments referred the provisions government's White Paper on Copyright "From Gutenberg to Telidon" ("The White Paper"), published May 2, 1984, to the Parliamentary Standing Committee on Culture and Communications on January 24, 1985 for consideration in the context of overall copyright revision. Public hearings by this Committee have now commenced and a report has been requested from the Committee, if possible, prior to the end of June 1985.

However, the Committee must consider some 300 briefs. The report may not be available before Parliament recesses at the end of June, 1985 and accordingly might be delayed until the subsequent session of Parliament in the fall of 1985.

4. The Minister of Communications has stated to the Committee that:

"It is my firm intention, as soon as I have received your report, to present the necessary recommendations to Cabinet immediately, so that a bill may be introduced in Parliament without delay".

5. On May 30, 1985 I made the following statement to the Committee as part of my speech on copyright revision:

"Semiconductor Chip Protection

The issue of semiconductor chips is relatively recent, but it is rapidly becoming very important. They're tiny devices which somehow manage to incorporate hundreds of thousands of electronic components into a housing the size of a penny. They're used in a wide range of products, from wrist watches to computers.

Recently, the United States passed an amendment to its Copyright Act which explicitly protects the design of these devices. It is drafted in such a way that it is incumbent upon Canada to pass similar legislation in order to protect the Canadian semiconductor chip industry. As this American initiative may require a quick response on our part, it is an issue that CCAC is looking at very closely.

I would ask that you specifically consider the issue of whether and how Canada should pass legislation to protect the design of semiconductor chips in the context of copyright law."

6. It is to be noted that this omnibus revision process has precluded any ad hoc amendments to the Copyright Act or any announcements respecting government policy on particular issues pertaining to copyright. Any other course of action could be seen to be unfair to those interest groups not favoured by such amendments or announcements and could delay ultimate passage of a revised copyright law. Moreover, the level of activity resulting from the current phase of omnibus revision as well as possible amendments to the Patent Act has required CCAC to deploy policy development resources on a very wide range of intellectual property issues. CCAC considers that the development of a specific policy with respect to the protection of mask works is of high priority within the framework of the copyright revision process, along with that of a policy for the protection of computer programs.

7. To date, the following progress has been made with respect to enacting legislation that would be consistent with subparagraph [A] or [B] of section 902(a)(2) of the Act:

(a) CCAC has consulted with the Patent and Trademarks Institute of Canada ("PTIC"), which is the leading organization representing intellectual property practitioners in Canada and which has gone on record to favour the explicit protection of mask works. CCAC has a liaison member on a special subcommittee of the PTIC which is examining this particular issue and is now preparing a report.

(b) CCAC has consulted with other government Departments interested in this issue, including the Department of Communications, the Department of External Affairs, the Department of Finance, and the Ministry of State for Science and Technology, all of which agree as to the importance of the semiconductor chip protection issue.

(c) CCAC is continuing to consult with leading Canadian organizations representing businesses which use or produce semiconductor chips in Canada, as well as directly with leading businesses in this sector, or their representatives.

(d) CCAC is initiating the procurement of outside independent studies which will furnish, inter alia, a legal analysis as to whether Canadian law is currently consistent with S. 902(a)(2) [A] or [B], and if the answer is negative, options for ensuring such consistency. It is intended to incorporate the results of these studies into a discussion paper which will form the basis of consultation with Canadian industry involved in the design, production or use of semiconductor chip products.

8. Although it would not be appropriate for me to indicate a specific government policy on semiconductor chip protection at this time, I can, however, state that on the basis of consultations, research and data obtained to date, the working opinion of CCAC officials responsible for this issue is that Canada should adopt explicit legislation consistent with S. 903(a)(2) of the U.S. Act. It is currently envisaged by these officials that such legislation, although part of a revised *Copyright Act*, could accommodate the needs of the semiconductor chip industry by providing a relatively short period of protection and explicity condoning, if necessary, the practice of "reverse engineering".

9. A significant number of briefs from important associations and enterprises involved in the general manufacturing, high technology, and computer sectors have been sent to the Committee, referred to in paragraph 3, recommending explicit protection of mask works.

10. In view of the foregoing, CCAC and DOC expect to be able to announce government policy and, quite possibly, to table draft legislation if indicated with respect to semiconductor chip protection in late 1985 or the first half of 1986.

11. I submit that all of the foregoing constitutes evidence of good faith efforts and reasonable progress towards developing and

enacting appropriate explicit legislation with respect to semiconductor chip protection. The Government of Canada specifically reserves its position at this time as to entitlement to a Presidential proclamation pursuant to S. 902(a) of the U.S. Act.

12. To my knowledge, neither Canada nor its nationals, domiciliaries, and sovereign authorities or persons controlled by them are engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works.

13. I believe that the granting of an expeditious Order pursuant to S. 914 of the U.S. Act in favour of Canadian nationals would:

(a) Promote the purposes of the U.S. Act and of achieving international comity toward mask work protection; and

(b) Be in furtherance of the statement issued on March 18, 1985 by the Prime Minister of Canada and the President of the United States following the Quebec Summit meeting.

Michel Cote,

Minister, Consumer and Corporate Affairs, Canada.

[FR Doc. 14572 Filed 6-17-85; 8:45 am]

BILLING CODE 3510-16-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Survey of Persons Reporting Childhood Ingestions of Prescription Medicines to Poison Control Centers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3601 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a survey of persons reporting ingestions of prescription medicines by children to poison control centers. Such persons will be asked if the container from which the child obtained the medicine was already open or was opened by the child. If it was opened by the child, the persons will be asked if they would be willing to mail the container, in a postage-paid mailing bag to be provided, to the Consumer Product Safety Commission.

By examining the containers of prescription drugs that are mailed to the Commission, the Commission will be able to determine whether the containers were faulty or failed to conform to the child-resistant packaging requirements under the Poison Prevention Packaging Act.

Additional Details About the Requested Approval for Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 18th Street, Washington, D.C. 20207.

Title of Information Collection: Poison Control Center Container Survey.

Type of Request: Approval of new plan.

Frequency of Collection: One time.

General Description of Respondents: Persons reporting childhood ingestions of prescription drugs to poison control centers.

Estimated Number of Respondents: 5,900.

Estimated Number of Hours for All Respondents: 295.

Comments: Comments on this request for approval for collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395-7513. Copies of the request for approval of collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: June 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-14648 Filed 6-17-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows.

DATE: 3 July 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202-373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on Intelligence Communications Architecture.

Dated: June 12, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-14559 Filed 6-17-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 25 and Related Clauses in Part 52.225.

Information principally concerns certain data required to enable processing of duty free entry certificates, report expenditures in the U.S. by foreign firms performing under DoD contracts; and country of origin information for petroleum products.

Reporting is required to obtain clearance certificates, report expenditures in U.S., and assure knowledge of source country for petroleum products.

Businesses or others for profit/small businesses or organizations.

Responses: 58,317
Burden hours: 18,927

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk

Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301–3060, telephone (202) 697–8334. This is a revision of an existing collection.

Dated: June 12, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–14557 Filed 6–17–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Proposal for a Pre-development Advertising Copy Survey

The purpose of this collection is to develop qualified research techniques for the pre-development of recruitment advertising copy. A pre-development system is needed for qualitative research, integral to the idea-forming stage (hypothesis development), prior to actual quantitative copy testing. Pre-development improves the chances of testing relevant rather than irrelevant ideas about the market.

Individuals, age 17–28

Responses 1,200

Burden hours 900

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. O. F. Stumbaugh, USAFRS/RSAANR, Randolph AFB, TX 78150–5001, telephone (512) 652–4701.

Dated: June 12, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of defense.

[FR Doc. 85–14558 Filed 6–17–85; 8:45 am]

BILLING CODE 3810–01–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Thursday, June 27, 1985, beginning at 1:30 p.m. in the Madison Room of the Roosevelt Hotel, at Madison Avenue and East 45th Street, New York, New York. The hearing will be a part of the Commission's regular business meeting which is open to the public.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article II and/or Section 3.8 of the Compact

1. *Pennsylvania Department of Environmental Resources D–80–7 CP (RENEWAL).* Renewal of an approved ground water withdrawal in the Ground Water Protected Area of Southeastern Pennsylvania is sought for French Creek State Park located in Union Township, Berks County, and in Warwick Township, Chester County, Pennsylvania. The Commission's five year approval of Wells the applicant received approval to pump up to 8.0 million gallons (mg)/30 days, maximum usage has been approximately 30,000 gpd during a holiday weekend—a rate of 900,000 gallons/30 days. The wells are located northwest of Hopewell Lake and southeast of Scotts River Lake in Union Township, within the French Creek Watershed (Schuylkill River Basin).

2. *City of Allentown D–84–16 CP.* A surface water withdrawal project for the applicant's public water supply system, which supplies the City of Allentown and four nearby townships in Lehigh County, Pennsylvania. The applicant proposes to withdraw up to 28 mgd from the Lehigh River at a new intake to be located in Boyle Park. The City currently obtains its water supply by withdrawing up to 37 mgd from the Little Lehigh Creek and from Shantz and Crystal Springs. Use of these sources will continue and a total surface water allocation of 39 mgd is requested. The applicant maintains emergency interconnections with the cities of Bethlehem and Emmaus and South Whitehall Township.

3. *County of Montgomery D–85–22 CP.* A sewage treatment project to serve the new Montgomery County Prison in Lower Providence Township, Montgomery County, Pennsylvania. The new treatment facility will be designed to provide tertiary treatment to an average waste flow of 0.53 mgd. Treated effluent will discharge to an unnamed tributary of Skippack Creek in Lower Providence Township.

4. *Pocono Lake Preserve D–85–40.* An application for a hydroelectric generating project to be located at the existing Pocono Lake Dam on Tobyhanna Creek in Tobyhanna Township, Monroe County, Pennsylvania. The facility will operate in a "run-of-river" mode, and will have a total generating capacity of 293 kilowatts (KW). Total annual power generation is expected to average 1.4 million kilowatt hours. The project will include construction of a steel siphon intake and penstock to convey water from the reservoir over the existing spillway to the power house, which will contain three turbines (two 115 KW and one 63 KW), each capable of independent operation. Generated power will be sold to Pennsylvania Power and Light Company.

5. *County of Bucks—Neshaminy Manor Complex D–85–CP.* An application to increase existing ground water withdrawals from an average of 0.085 mgd to 0.165 mgd from four existing wells. The project will supply the additional needs of the new Bucks County prison and existing water supply requirements for the complex. The existing wells are located near U.S. Route 611 and the Neshaminy Creek in Doylestown Township, Bucks County, Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request.

Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

The Commission will hold a public hearing on Tuesday, June 25, 1985, at 7:00 p.m. in Room 803 of the Lehigh County Courthouse, 455 Hamilton Street, Allentown, Pennsylvania to consider the following application:

South Whitehall Township Authority D–85–15 CP. An application for approval of withdrawal from proposed Well No. 10 (Luther Crest) of 9.8 mg/30 days (0.33 mgd) and from proposed Well No. 11 (Dorney Pack) of 6.6 mg/30 days (0.22 mgd). The total withdrawal from the proposed wells and existing Well Nos. 1–9 is limited to 60 mg/30 day (2.0 mgd). The project is located in Lehigh County, Pennsylvania.

Documents relating to this application may be examined at the Commission's offices. A copy of the preliminary docket is available upon request to David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

The Commission will hold a public hearing on Wednesday, July 3, 1985, at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey to consider the following application:

Philadelphia Electric Company D–69–210 CP (Final) Revision No. 2. An application to temporarily, during 1985, revise portions of the Limerick electric generating project as included in the Comprehensive Plan and to approve the temporary changes under Section 3.8 of the Compact. The proposed revision is to transfer the current consumptive use of water at existing operating generating stations to new consumptive use at the Limerick Generating Station. The approval of the transfer is requested for such periods during 1985 when current flow or dissolved oxygen constraints would otherwise prevent the withdrawal of water for consumptive use of Limerick Unit I. The application requests that 3.5 mgd be transferred from Titus Generating Stations Units 1, 2 and 3 and 1.7 mgd from the Cromby Generating Station Unit No. 2 to allow the consumptive use of 5.2 mgd at Limerick Generating Station. This 5.2 mgd could allow the Limerick Unit I to operate up to approximately 25 percent of full power.

Documents relating to this application may be examined at the Commission's offices. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

June 11, 1985.

[FR Doc. 85–14560 Filed 6–17–85; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Adult Education; Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: July 7, 1985, 6:30 p.m. to 9:30 p.m., Executive Committee Meeting; July 8–10, 1985, 9:00 a.m. to 5:00 p.m., Full Council Meeting.

ADDRESS: Capitol Holiday Inn, 550 C Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 2000 L Street, NW., Washington, D.C. 20036, 202/634–6300.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The meeting of the Council is open to the public. The proposed agenda includes: Adult Literacy Initiative, Federal Legislative Update, Standing Committee Meetings and Reports, Review of S.J. Res. 102, National Commission on Illiteracy, Annual Report, Election of Council Officers.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, D.C. 20036, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C. on June 13, 1985.

Rick Ventura,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 85–14592 Filed 6–17–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals; Supported Employment

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of Fiscal Year 1985 New Applications.

Applications are invited for new projects to establish statewide systems of supported employment under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals.

Authority for this program is contained in section 31(a)(1) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777a(a)(1)).

Applications may be submitted by States and public and other nonprofit agencies and organizations.

The purpose of Supported Employment demonstration projects is to stimulate the development and provision of supported employment services on a statewide basis for severely handicapped individuals.

Closing date for transmittal of applications: Applications for new projects must be mailed or hand-delivered by August 19, 1985.

Applications delivered by mail: An application must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.128A, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered

postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building, #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program information: This new supported employment initiative is being implemented in Fiscal Year 1985 in order to increase competitive employment opportunities for severely handicapped individuals who are generally ineligible for traditional vocational rehabilitation services because of the severity of their disabilities. Supported employment is wage-generating work, made possible by ongoing publicity-financed services. Supported employment is an alternative to programs which do not give severely handicapped persons the opportunity to earn wages.

On February 28, 1985, the Secretary published in the Federal Register a notice of proposed rulemaking (50 FR 8300) to implement the development and provision of supported employment services on a statewide basis. Final regulations for this initiative are published in this issue of the Federal Register.

The purpose of projects assisted under this announcement is to assist states to develop supported employment options for severely disabled persons. Grant funds can be used for program development, including start-up costs for new or existing community organizations and employers; staff training; program evaluation; and program reorganization to convert existing programs to programs that offer supported employment services. Applicants must provide funding for on-going supported employment services to individuals. Applicants must present preliminary strategies for implementing a statewide supported employment program, including the ability to achieve lasting statewide change.

Available funds: The total amount of funds available under this program in Fiscal Year 1985 is $9,635,000. Of this amount the Secretary has reserved approximately $4,200,000 for new supported employment projects in Fiscal Year 1985. Through an interagency agreement, an additional $500,000 will be provided by the Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services. An estimated 9 new projects will be funded at an average cost of approximately $500,000.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by the statute or regulations.

It is expected that new projects funded under this program in Fiscal Year 1985 will be approved for project periods of up to 60 months.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, Room 3329, Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty-five (25) pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1820-0018).

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (34 CFR Part 369 and 373); and

(b) Education Department General Administrative Regulation (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

Further information: Dr. James Moss, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, Room 3030, Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732-1286.

(29 U.S.C. 777a(a)(1))

(Catalog of Federal Domestic Assistance No. 84.128, Rehabilitation Services—Special Projects)

Dated: June 13, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-14598 Filed 6-17-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP85-555-000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

Take notice that the following filings have been made with the commission:

1. ANR Pipeline Company

[Docket No. CP85-555-000]

June 10, 1985.

Take notice that on May 31, 1985, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-555-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to implement a take-or-pay relief program (TOPR) to make sales of gas to off-system customers on a self-implemented basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has a substantial surplus of gas deliverability on its system, caused mainly by large sales losses suffered by its customers and that it has been forced to make substantial take-or-pay prepayments to domestic producers of gas and to pay carrying charges on additional sums to suppliers of Canadian gas, and is exposed to additional gas oversupply burdens. Applicant contends that if off-system discount sales programs of others, such as Trunkline Gas Company's (Trunkline) off-system sales program (STOPR) filed in Docket No. CP84-577000 are permanently approved,

or if temporary authorization continues for extended periods, Applicant would suffer a decrease in sales occasioned by such discount off-system sales. It is claimed that this would result in an increase in take-or-pay costs to Applicant's customers.

Applicant specifically seeks:

(1) A limited-term blanket certificate authorizing interruptible off-system sales of existing gas supplies on a self-implementing best-efforts basis. It is claimed that these supplies are surplus to the current and near term projected requirements of Applicant's customers and to persons which are not now being served directly or indirectly by Applicant.

(2) A limited term blanket certificate authorizing any third party transportation necessary to make the proposed sales; and

(3) Authority for the construction of minor facilities as required to make the proposed sales.

It is averred that such sales would result in a net benefit to Applicant's existing customers in two ways:

(1) By a reduction of take-or-pay carrying costs, through avoidance of new take-or-pay obligations and/or by allowing reduction of currently outstanding obligations. It is alleged that these savings would be promptly realized by Applicant's customers since Applicant claims it is directed under its presently effective rate case settlement to track, through Account 191, take-or-pay carrying costs.

(2) By a credit to Account No. 191, for the benefit of all of Applicant's resale customers, of all revenues received from such sales which are in excess of the sum of the following: (1) the minimum permissible price for such sales, (2) the cost of any applicable third party transportation, and (3) any reimbursement for the cost of facilities needed to effectuate the sales.

Applicant asserts that its proposal for off-system sales is closely modeled after Trunkline's STOPR proposal and that Applicant has filed objections to that proposal and does not believe that off-system discount rate proposals of that type are the desirable norm for the gas industry. Applicant states, however, that it cannot in the interests of its customers be without authorization for such sales if other pipelines, and particularly those which are situated so as to be able to make off-system discount sales which displace Applicant's sales to its existing customers, are authorized to make such sales.

Applicant therefore requests that if the Commission approves the settlement in Docket No. CP84-577-000, as amended, or continues temporary authorization for a significant period, or if the Commission plans to or does approve other such off-system discount rate proposals of others that the Commission at the same time and without hearing approve Applicant's application. It is claimed that if the Trunkline settlement is approved, there would be no question open relative to this proposal, since the proposals are virtually identical, with the exception of the fact that Applicant agrees to credit all net revenues for the benefit of its customers, whereas Trunkline proposes to retain all revenues, after having made a purchased gas adjustment credit earlier.

Applicant explains it would be unfair to delay approval of its comparable proposal if Trunkline continues to be, or some other pipeline becomes a privileged competitor of Applicant because it is authorized to make such off-system sales at rates with which Applicant cannot compete under current Commission regulation.

Applicant seeks a certificate of public convenience and necessity for a limited term, through December 31, 1985, or such other date as is authorized for others under similar programs, to make off-system best-efforts interruptible sales subject to certain conditions and subject to the extention of the foregoing term upon application by Applicant and approval by the Commission. Such sales would be made to purchasers other than Applicant's traditional on-system customers. Applicant requests authorization to make sales at rates to be established by contract between Applicant and the off-system purchaser. Such sales in any month would not be made at a rate less than the minimum permissible rate for such month, plus any applicable third party transportation costs related to such sales, plus facilities reimbursement, it is stated. Applicant states it would seek to add to the amount set forth in the preceding sentence as high an additional margin as would be feasible and still allow each sale to be made. Applicant claims it would be reimbursed fully by the affected off-system sales customer for the cost of all facilities necessary to effectuate the sale and that the costs of such facilities would not be reflected in the rates or in the cost of service to be charged for sales or transportation services for traditional on-system customers.

It is indicated that all contracts for off-system sales would contain a provision allowing Applicant to terminate or suspend such sale for such time as the sales rate provided in such contract, as amended, is less than the minimum permissible rate, and that Applicant would terminate or suspend such sales if such an eventuality occurs. It is stated that the minimum permissible rate for a month would be the sum of (i) Applicant's actual weighted average cost of gas (WACOG) for the applicable month; (ii) the GRI surcharge, if applicable, as it may change from time to time; and (iii) twelve cents per dekatherm equivalent of gas for variable costs. It is further stated the applicable month would be the latest month, prior to the month for which the minimum permissible rate is being calculated, for which actual cost of gas figures would be available at the start of the month for which such rate is being calculated, and that the WACOG would be the average cost of gas per million Btu of sales for gas supplies purchased from Applicant's gas suppliers in the applicable month, exclusive of accounting adjustments, corrections, and refunds for any prior month. Applicant explains that the twelve-cent figure to cover variable costs is the figure which the Commission prescribed for use as a variable cost figure for Applicant's Rate Schedule DF-1.

Applicant states it would credit to Account No. 191 all revenues received from the proposed sales which are in excess of the sum of the following: (1) The minimum permissible rate for the month in which each sale was made, (2) the cost of any applicable third party transportation, and (3) any reimbursement for the cost of facilities needed to effectuate such sales.

Applicant proposes that a thirty-day prior notice and protest procedure be in effect which would be applicable to each proposed sale and that within two days of the filing of an application to initiate a sale Applicant would serve its application upon all interested parties, including pipelines and distributors directly or indirectly serving the proposed customer, and upon all of Applicant's customers and the Commission's staff. As part of its filing it is stated Applicant would provide a complete form of notice to be used by the Commission for publication in the Federal Register. It is asserted that such notice would include all information required by Sections 157.205 and 157.209 of the Commission's regulations and such additional information as the Commission may require.

Applicant requests that authority to make the sale, and any necessary third-party transportation and/or construction as is not otherwise self-implementing under the Commission's regulations, be automatically authorized 32 days after

the filing of Applicant's application if no protest is filed.

Applicant claims its reduced sales have resulted in its having substantial volumes of surplus gas which are currently deliverable and available on its system for sales and that the proposed sales would be made from excess deliverability attributable to committed reserves which are not required by existing customers.

Applicant states its natural gas sales have declined substantially in the last few years. It is claimed that between 1977 and 1979, sales averaged about 730,000,000 Mcf per year, but that for the years 1982 and 1983, Applicant's sales dropped to approximately 550,000,000 Mcf annually, a decline of about 25 percent in three years. It is also stated that in 1984, sales increased to 592,000,000 Mcf, but are expected to fall below the 1982–83 level in 1985. Applicant explains that the reduced gas sales over these years have been primarily due to the economic recession which took place in Michigan and Wisconsin, resulting in a large number of permanent plant closings; competition by available alternate fuels; increased conservation; and natural gas price increases as a result of the Natural Gas Policy Act of 1978.

It is averred that Applicant's sales difficulties have worsened greatly in recent months. Applicant states Michigan Consolidated Gas Company (Mich Con), a partial requirements customer of Applicant which, Applicant claims has historically comprised almost 50 percent of Applicant's sales market, purchased 274,000,000 Mcf of natural gas in 1984. Applicant claims it anticipated that Mich Con's purchases would be at a similar level for 1985, but it has now been informed that Mich Con would purchase substantial amounts of spot-market gas to be transported by another pipeline. Applicant now estimates that Mich Con would purchase a maximum of 200,000,000 Mcf in 1985 and claims such figure could well be significantly less than 200,000,000 Mcf. In addition, it is claimed warmer than normal weather in spring 1985 has decreased sales to Applicant's customers. It is contended these sales losses can not be absorbed by increases in other on-system sales and that this reduction, coupled with the overall decline in Applicant's sales in the past few years, result in Applicant's having a substantial volume of surplus gas on its system which surplus would be available for the TOPR program. Applicant avers that if off-system discount sales program of others are approved or if Trunkline's STOPR program is finally approved or its temporary operation is authorized for an extended period Applicant would sustain a further decrease in sales, and this would further increase take-or-pay costs to Applicant's customers.

Applicant asserts that before proposing the implementation of the TOPR program, it took several other steps to increase on-system sales, to lower the cost of gas to its customers, and to reduce its gas volume purchase obligations. It is claimed however that despite these efforts a serious oversupply problem continues to exist, resulting in substantial take-or-pay payments and liabilities. Applicant states it has a current domestic take-or-pay balance of about $70 million, resulting in approximately $14 million per year of carrying costs. In addition, it is claimed that Applicant's Canadian take-or-pay carrying costs are approximately $16 million per year.

Applicant asserts that despite its efforts its projected sales continue to be less than its gas purchase obligations. It is also claimed that if on-system markets decline further, under the pressure of off-system discount sales programs of others, Applicant's gas surplus would increase. Applicant believes that under these circumstances, it must seek a program to try to lessen the impact of its take-or-pay burden on its customers.

Applicant proposes that both quarterly and upon expiration of its authorization to sell gas it would report to the Commission, relative to the proposed program (1) volumes and revenues by customer, (2) cost of any facilities, and (3) amount of credits to its Account No. 191.

Comment date: June 24, 1985, in accordance with Standard Pargraph F at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85–510–000]

June 12, 1985.

Take notice that on May 15, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85–510–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texas Eastman Company (Texas Eastman) under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla proposes to transport up to 28,500 Mcf of gas per day for use in Texas Eastman's industrial plant near Longview, Texas. Arkla indicates that the gas to be transported would be purchased from Mid Continental Gas Company (Mid Continent) in Pittsburg, Haskell, Custer and Latimer Counties, Okahoma, and would be used for boiler fuel. It is indicated that Arkla has released certain gas supplies of Mid Continent and that these supplies are subject to the ceiling price provisions of Sections 103 and 105 of the Natural Gas Policy Act of 1978.

Arkla states that it would charge the currently applicable transportation rate in accordance with its ECOSHARE Transportation Rate Schedule or Rate Schedule No. TRC–1, FERC Gas Tariff, First Revised Volume No. 2. Arkla also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points in the market area. Arkla will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: July 29, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company

[Docket No. CP 85–337–005]

June 13, 1985.

Take notice that on May 28, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85–337–005 an amendment to their pending applications filed in Docket Nos. CP85–337–000 and CP85–337–004 pursuant to Section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Consolidated Aluminum Corporation (Conalco), all as more fully set forth in the application, as amended, which is on file with the Commission and open to public inspection.

Columbia Transmission's and Columbia Gulf's applications in Docket Nos. CP85–337–000 and CP85–337–004 request authority to transport up to

14,000 dt equivalent of natural gas per day through June 30, 1985, or any later date which may be established by the Commission under § 157.209(e)(2) of the Commission's Regulations, specifying the expiration date of the authorization for certain transportation services to end-users under the Commission's blanket certificate program, and provide Applicants with flexible authority to add and delete delivery/receipt points into Applicants' systems.

By the instant filing in Docket No. CP85-337-005, Applicants request that the termination date of the transportation be changed to November 8, 1985, which is the termination date of the gas transportation agreement filed in Docket No. CP85-337-000, Exhibit P.

Comment date: July 3, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP85-539-000]

June 13, 1985.

Take notice that on May 24, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-539-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish additional points of delivery to existing wholesale customers under the certificate issued in Docket No. CP 83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate certain facilities necessary to provide six additional points of delivery to existing wholesale customers, Columbia Gas of Kentucky, Inc. (CKY), 1 point, Columbia Gas of Ohio, Inc. (COH), 3 points, Mountaineer Gas Company (MGC), 1 point, and Waterville Gas and Oil Company (WGO), 1 point. It is explained that the customers have received authorization from their state regulatory agency to attach or provide service to new customers and that the additional gas to be provided through the proposed new points of delivery are within Columbia's currently authorized level of sales and that such gas would not affect Columbia's peak day and annual deliveries to which the existing wholesale customers are entitled. It is also indicated that four of the points of deliveries proposed herein would be utilized by Columbia s wholesale customers to provide residential service, and one point of delivery would supply a new COH distribution system which would initially serve 46 residential consumers and four commercial consumers in the village of Walnut Creek, Ohio. It is further asserted that the sixth point of delivery to COH would be utilized by COH to provide industrial service to London Correctional Institute (London) for hot water boiler, space heating boiler and standby generator usage. London plans to convert coal fired boilers to natural gas and install additional gas fired boilers as part of a major expansion of its prison facilities at a separate location.

Comment date: July 29, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket No. CP85-537-000]

June 13, 1985.

Take notice that on May 22, 1985, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-537-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities, all as more fully set forth in the application on file and open to public inspection.

Columbia Gulf states that the wells connected to the two 385 horsepower compressors and appurtenant facilities on a platform in Block 142, South Marsh Island area, offshore Louisiana, no longer need compression to enable the produced gas to flow into Columbia Gulf's pipeline. Consequently, Columbia Gulf seeks permission and approval to abandon them. It is stated that the facilities to be abandoned were constructed under Columbia Gulf's budget-type authorization in Docket No. CP78-154. It is further stated that the original cost of the facilities was $222,170.

Comment date: July 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gulf Transmission Company, Texas Gas Transmission Corporation

[Docket No. CP85-486-000]

June 13, 1985.

Take notice that on May 6, 1985, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owesboro, Kentucky 42301, filed in Docket No. CP85-486-000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file and open to public inspection.

Applicants propose to abandon certain measurement facilities and appurtenances, which were constructed to take gas for the account of Texas Gas and Columbia Gulf's affiliate, Columbia Gas Transmission Corporation, from certain property in offshore Louisiana, more fully described as

Columbia Gulf's measurement station 601 (dual 8-inch); deck piping; riser (from an insulating flange 20 feet above the water upward); and 0.394 mile of 10-inch pipeline from platform A in Eugene Island (EI) Block 292 to an underwater tap valve on a 26-inch pipeline owned by Columbia Gulf and Texas Gas in EI Block 293.

Applicants submit that Forest Oil Corporation, the producerplatform operator, has determined there are no longer any economical reserves to be recovered from the EI Block 292 platform A and that it is no longer using or maintaining the platform. However, it is explained that at this time the various producers, Forest Oil Corporation, Columbia Gas Development Corporation and Texas Gas Exploration, are not filing for authorization to abandon their sales, as there is still production in other parts of the field being produced from other facilities.

It is stated that the estimated total cost of removing the facilities from service is $175,400. Applicants further state that the measuring station and appurtenant facilities would be removed and that the 0.394 mile of 10-inch line would be filled with water, plugged and abandoned in place. The pipeline is in 215 feet of water and is not a detriment to the environment nor an obstruction to maritime activity. Applicants submit.

Comment date: July 3, 1985, inaccordance with Standard Paragraph F at the end of this notice.

7. KN Energy, Inc.

[Docket No. CP85-514-000]

June 11, 1985.

Take notice that on May 17, 1985, KN Energy, Inc., (KN), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP85-157-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate three new sales taps to its jurisdictional pipelines under the certificate issued in Docket Nos. Cp83-140-000 and CP83-140-001, as amended, pursuant to Section 7 of the

Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is asserted that the three sales taps would supply Coastal Oil & Gas Corporation (Coastal Oil) in Rawlins County, Kansas, Ervin H. Kuhlmann (Kuhlmann) in Cheyenne County, Kansas, and Eleonora Hindman) in Sheridan County, Nebraska. Coastal Oil's tap would provide an estimated annual 600 Mcf of gas for small commercial usage. The Kuhlmann's and Hindman's taps are estimated to provide approximately 120 Mcf of gas annually each for domestic purposes.

K N also indicates that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: July 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP85-518-000]

June 13, 1985.

Take notice that on May 20, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-518-000 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon approximately 24.5 miles of its Amarillo No. 1 line in Illinois, eight horizontal engine-compressors and one Allison turbine unit at compressor station No. 110 in Illinois, and for a certificate of public convience and necessity authorizing the construction and operation of approximately 11.1 miles of 36-inch replacement pipeline in Illinois and four vertical engine-compressors at compressor station No. 110 in Illinois, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states it seeks authorization to continue the ongoing program of upgrading its Amarillo line by using a combination of larger diameter pipeline, coupled with the abandonment of certain segments of its old existing No. 1 line, and abandonment or replacement of outdated compressor units as has been previously authorized in Docket Nos. CP83-194-000, CP84-16-000 and CP84-466-000. Applicant plans in its long range, upgrade program to replace the No. 1 line from Beatrice, Nebraska, to Joliet, Illinois, and certain of the compressor units along that segment of the Amarillo line.

Applicant proposes herein to retire approximately 24.5 miles of the existing No. 1 line in Bureau and La Salle Counties, Illinois, and eight horizontal engine-compressors and one Allison turbine unit totalling 16,745 horsepower at compressor station No. 110 located in Henry County, Illinois. When practical, the line and all above ground compressor facilities would be salvaged, it is asserted. Applicant proposes to install approximately 11.1 miles of 36-inch replacement pipeline located in La Salle County, Illinois, all as part of its Amarillo line and four vertical engine-compressors each rated at 4,000 horsepower at compressor station No. 110. Applicant states that the capacity of the Amarillo System would be unchanged by the proposal.

Applicant states that the estimated cost of retirement and installation of replacement facilities (including $3,205,000 in nonjurisdictional facilities) is $27,256,000, which cost would initially be financed with funds on hand, existing or negotiated lines of credit or short-term financing.

Comment date: July 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP85-520-000]

June 11, 1985.

Take notice that on May 20, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-520-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales delivery point and to deliver volumes of natural gas for the account of the Peoples Gas Light and Coke Company (Peoples), under the certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that Peoples has requested that Natural provide a new sales delivery point in close proximity to an existing sales delivery point to Northern Indiana Public Service Company known as Natural's 134th Street meter station in Chicago, Illinois. Northern further states that peak daily flow initially to Peoples would be expected to be 985 Mcf with the potential of an additional 358 Mcf being added in the future. Natural indicates that the proposed deliveries would enable Peoples to serve the residential natural gas needs of a mobile home community nearby. Natural asserts that the delivery would have no effect on Peoples' total entitlements or contract quantity from Natural. Natural states that it would be required to construct and operate a 2-inch tap connection and measuring station plus appurtenant facilities at an estimated cost of $50,100, which cost would be reimbursed by Peoples.

Natural states that the proposed action is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the proposed change in deliveries to Peoples without detriment or disadvantage to its other customers. Natural further states that the proposed delivery would effectively have no impact on Natural's systemwide peak day and annual deliveries.

Comment date: July 29, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company, Division of InterNorth Inc.

[Docket No. CP85-533-000]

June 13, 1985.

Take notice that on May 21, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-533-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Carbide Corporation (Shipper) under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 5,000 Mcf of natural gas per day and up to 1,095,000 Mcf of natural gas per year on behalf of Shipper. It is stated that Shipper is purchasing gas from Northern Gas Marketing, Inc., and would cause the natural gas to be delivered to Northern at the discharge side of the Natural Gas Products processing plant in Ellsworth County, Kansas. Northern proposes to transport and deliver thermally equivalent volumes to a point on Northern's system located in Pecos County, Texas. Northern states it would then deliver or cause to be delivered thermally equivalent volumes to Shipper's refinery located in Galveston County, Texas. Northern states that it would charge Shipper for volumes delivered to Pecos County at a rate 15.02 cents per Mcf. Northern explains that his rate is derived from its Rate Schedule EUT-1 and is calculated using 602 miles of back-haul. Northern further

asserts that there would be no added incentive charge; however, Northern would assess 1.25 cents per Mcf for funding the Gas Research Institute.

Northern also requests flexible authority to add or delete receipt/delivery points associated with sources of natural gas acquired by the Shipper and deliveries of natural gas to Shipper. Northern asserts that any changes in receipt and/or delivery points would be on behalf of Shipper at same end-use location and under the same terms and conditions as would be authorized, herein. The flexible authority applies only to points related to sources or gas supply, not delivery points in the market area. Northern would file a report providing certain information with regard to the addition or deletion of receipt and/or delivery points as further detailed in the request and any additional sources of gas would be obtained to constitute the transportation quantities herein and not to increase those quantities, it is stated.

Shipper would utilize the natural gas transported for boiler fuel and process heating, it is asserted. Northern further states that it would not construct or add to its existing facilities to provide this transportation service. Northern proposes to perform this service for a term not to extend beyond June 30, 1985, or such date as the Commission may extend the current end-user transportation program, whichever is later.

Comment date: July 29, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP85-515-000]

June 11, 1985.

Take notice that on May 17, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-515-000 a request pursuant to § 157.205 of the Regulations under Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Rock-Tenn Company, Mill Division (Rock-Tenn), under the blanket certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to the public inspection.

Applicant states that it entered into a gas transportation agreement (agreement) with Rock-Tenn on April 11, 1985. Pursuant to the terms of the agreement, Applicant proposes to transport up to 1,500 Mcf of gas per day, less a four percent reduction for fuel, which Rock-Tenn purchases from Entrade Corporation. Applicant states that it would receive, on an interruptible basis, the gas purchased by Rock-Tenn at an existing receipt point in Ellis County, Oklahoma. Applicant indicates that it would transport the gas to Indiana Gas Company (Indiana Gas) an existing point of interconnection between the facilities of Applicant and Indiana Gas in Grant County, Indiana. Indiana Gas would then deliver the gas to Rock-Tenn's facilities in Eaton, Indiana, it is indicated.

Applicant states that, pursuant to § 157.209(a)(2) of the Regulations, the transportation service was commenced April 12, 1985. It is further stated that Applicant requests authority to perform such service until the earlier of (1) 18 months from the effective date of the agreement, (2) termination of authorization as provided by Subpart F of Part 157 of the Regulations, or (3) termination of the agreement by either of the parties. Applicant proposes a transportation charge based upon its currently effective OST tariff, it is explained.

Applicant also requests flexible authority to add or delete receipt/delivey points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: July 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

Panhandle Eastern Pipe Line Company

[Docket No. CP85-516-000]

June 13, 1985.

Take notice that on May 17, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-516-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of a qualified end-user under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport gas on behalf of Central Illinois Light Company (CILCO) as end-user pursuant to a transportation agreement dated April 16, 1985, among Panhandle, Central Illinois Light Company (CILCO) as shipper, and CILCO as end-user (agreement). It is explained that the agreement provides for Panhandle to receive up to 2,500 Mcf per day of natural gas on an interruptible basis at existing points of interconnection between Panhandle and Consolidated Fuel Supply, Inc. (Seller), or Seller's designee in Custer, Beckham, and Dewey Counties, Oklahoma. Panhandle states that it would transport and redeliver such gas, less a four percent reduction for fuel usage, to CILCO, which in turn would make ultimate delivery for its use at its facilities located at Peoria, Illinois. CILCO, it is stated, is an existing resale customer of Panhandle and supplies gas for its own use in offices and offices and generating facilities.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by CILCO. The flexible authority requested would apply only to points related to sources of gas supply not to delivery points in the market area. Panhandle would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not increase those quantities.

Comment date: July 29, 1985, in accordance with Standard Paragraph G at the end of this notice.

13. Sabine Pipe Line Company

[Docket No. CP64-97-001]

June 13, 1985.

Take notice that on May 14, 1985, Sabine Pipe Line Company (Petitioner), P.O. Box 52332, Houston, Texas 77052, filed in Docket No. CP64-97-001 a petition to amend the order issued March 25, 1964, in Docket No. CP64-97, as amended, pursuant to Section 7(c) of the Natural Gas Act so as to authorize acquisition of 100,000 Mcf of natural gas for linepack for the operation of its onshore pipeline system, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection

Petitioner seeks authorization permitting it to acquire up to 100,000 Mcf of uncommitted, nonjurisdictional natural gas at a price not to exceed $3.00 per million Btu from unspecified sources. Petitioner asserts that it would be less

expensive to acquire the gas through a flexible spot market purchase program rather than to acquire the gas through a negotiated purchase and then seek the Commission's approval after negotiation of the contract. In addition, Petitioner requests that the Commission adopt one of the following positions:

(1) Since the gas would ultimately be sold by Petitioner prior to termination of the operations of the pipeline, the gas could be considered "system supply for resale" and the Commission could confirm that the newly-acquired linepack is for "system supply for resale;" or

(2) The Commission could issue blanket authority to any intrastate or interstate pipeline to transport any gas acquired by Petitioner for linepack. The blanket authority, it is explained, would constitute the prior authorization necessary for an intrastate pipeline to transport gas under the provisions of Subpart C of Part 284 of the Commission's Regulations and for an interstate pipeline to transport gas under the provisions of Subparts G and B of Part 284 of the Commission's Regulations.

Petitioner states that the linepack would be for Petitioner's on-shore system which extends from vermilion Parish, Louisiana, to Jefferson County, Texas. Petitioner states that initially it transported natural gas only for its parent company, Texaco Inc. (Texaco), and, as shipper, Texaco provided the linepack. Subsequently, Texaco and Petitioner mutually agreed that Texaco's gas should not be used as linepack since Petitioner currently provides service for others, it is stated.

Comment date: July 3, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Southern Natural Gas Company

June 13, 1985

[Docket No. CP85-529-000]

Take notice that on May 20, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP85-529-000 an application pursuant to Section 7(c) of the Natural Gas Act, for a limited-term certificate of public convenience and necessity authorizing Southern to render a transportation service on behalf of Columbia Nitrogen Corporation and Nipro, Inc. (jointly CNC) and to construct and operate the facilities necessary therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it has entered into a transportation agreement with CNC dated April 3, 1985 (agreement), pursuant to which it has agreed to transport up to 70 billion Btu per day of gas purchased by CNC from Mid Continent Gas Company on an interruptible basis for a primary term not to exceed one year from the date of commencement of deliveries and for successive terms of one month each thereafter, unless cancelled by either party at the end of the primary or any successive term. Southern requests that the Commission issue it a limited term certificate expiring one year from the date of commencement of deliveries.

The agreement provides that CNC would cause the gas to be delivered to Southern for transportation at: (1) The existing point of interconnection between the pipeline systems of United Gas Pipeline Company and Southern located near Perryville, Ouachita Parish, Louisiana; (2) the existing point of interconnection between the pipeline systems of Transcontinental Gas Pipe Line Corporation and Southern located near Frost, Livingston Parish, Louisiana; and (3) such additional point(s) on Southern's system where, in Southern's sole discretion, gas may be delivered for CNC's account.

Southern states that CNC has advised Southern that it may obtain alternative sources of supply of natural gas for use at its plant and that these alternatives may involve different suppliers and/or changes in delivery points. Consequently, Southern requests that the certificate authorization include flexible authority for Southern to provide transportation service from additional delivery points as provided for in the agreement. Southern explains that said flexible authority would not be used to authorize a change in the recipient of the service, the location of the redelivery point or the maximum daily quantity of gas transported by Southern.

Southern states that the agreement provides that CNC would pay Southern each month for the transportation services rendered thereunder an interim transportation charge of 100.7 cents per million Btu plus 10 cents per million Btu take-or-pay surcharge. In addition, Southern would collect from CNC the GRI surcharge of 1.25 cents per Mcf.

Southern states further that in order to redeliver the gas to CNC that it would have to construct, install, own and operate a tap, connecting pipeline, meter station and appurtenant facilities at or near the Columbia Nitrogen plant in Augusta, Georgia. The estimated cost of the proposed facilities is $282,100, the total cost of which would be reimbursed by CNC.

Comment date: July 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

15. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-530-000]

June 13, 1985.

Take notice that on May 21, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-530-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service for Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it has agreed to receive, on an interruptible basis, up to 2,000 Mcf of natural gas per day from a point of receipt located in Main Pass Block 69, offshore Louisiana. Tennessee would transport and deliver a thermally equivalent quantity, less volumes for Tennessee's fuel and use and lost and unaccounted-for gas to a point of interconnection near Kinder, Allen Parish, Louisiana (Fords).

It is stated that in accordance with the transportation agreement, Texas Eastern would pay Tennessee a volume charge equal to the product of 15.80 cents multiplied by the total volume in Mcf of gas delivered by Tennessee for the account of Texas Eastern during the month. Tennessee states that it would charge a minimum monthly bill which would consist of the greater of the volume charge of 15.08 cents multiplied by the total volume in Mcf of gas delivered during the month or a volume charge of 15.80 cents multiplied by the minimum bill volume, which would consist of the number of days in said month, multiplied by 66⅔ percent of the transportation quantity; provided that the minimum bill volume would be reduced by the volumes, if any, tendered by Texas Eastern and not taken by Tennessee, and would be reduced by the volumes retained for Tennessee's system fuel and uses.

In addition, Texas Eastern would provide to Tennesse, at no cost to Tennessee, 2 percent of the volumes received by Tennessee at the point of receipt for Tennessee's system fuel and uses and gas lost and unaccounted for.

Tennessee states that it is currently transporting natural gas for Texas Eastern pursuant to the provisions of

§ 284.221 of the Commission's Regulations and Tennessee's Order No. 60 blanket certificate issued February 21, 1980, in Docket No. CP80–132. Tennessee also states that reports of this transaction have been filed by Tennessee in Docket No. ST85–545.

Comment date: July 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

16. Texas Gas Transmission Corporation

[Docket No. CP85–546–000]

June 12, 1985.

Take notice that on May 28, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85–546–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point to serve an existing customer, Peoples Gas and Power Company, Inc. (Peoples), in Sullivan County, Indiana, up to a maximum daily quantity of 200 Mcf of gas per day for approximately 30 residential consumers, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to construct and operate a new delivery point on its Slaughters-Montezuma 12-inch pipeline located near Jasonville, Sullivan County, Indiana, to serve approximately 30 residential customers of Peoples an estimated maximum annual quantity of 15,000 Mcf of gas with a maximum daily quantity of 200 Mcf of gas.

It is explained that the subject proposal would not result in an increase in Peoples existing contract demand or quantity entitlement nor would it impair Peoples ability to serve its other customers. Texas Gas states that it currently sells gas to Peoples pursuant to a service agreement dated February 25, 1985, and that the proposed additional deliveries would be made to Peoples under such service agreement, as amended, to include the new delivery point.

Comment date: July 29, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14625 Filed 6–17–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER84–679–003 et al.]

Florida Power Co. et al.; Electric Rate and Corporate Regulations Filings

June 13, 1985.

Take notice that the following filings have been made with the commission:

1. Florida Power Company

[Docket No. ER84–679–003]

Take notice that on May 23, 1985, the Florida Power Company tendered for filing a compliance refund report showing refunds made and related interest paid in subject docket. Pursuant to Commission order dated January 14, 1985, the settlement rates were implemented in the last billing cycle of January, 1985 on an interim basis pending final Commission action on the complete settlement. Interim refunds reflecting the difference between the originally filed rates with appropriate interest, were made in late February 1985.

Since the final settlement rates accepted by Commission letter order dated April 26, 1985 are the same as the interim settlement rates previously authorized, no further refunds are due in this docket.

Comment date: June 28, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Pennsylvania Power Company

[Docket No. ER77–277–008]

Take notice that on May 28, 1985, the Pennsylvania Power Company tendered for filing a notice of its proposed changes in payment terms and its late payment charge from 1.25% to 1.35% effective June 1, 1985.

Comment date: June 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14626 Filed 6-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-1691-002 et al.]

Paul J. Sullivan et al.; Interlocking Directorate Applications

Take notice that the following filings have been made with the Commission:

1. Paul J. Sullivan

[Docket No. ID-1691-002]

June 13, 1985.

Take notice that the following supplemental application was filed by Paul J. Sullivan on May 16, 1985, pursuant to Section 305(b) of the Federal Power Act, for authority to hold the position of officer or director of more than one public utility, viz:

Title	Company
Director [1]	Massachusetts Electric Co.
Director [1]	The Narragansett Electric Co.
Director	New England Electric Transmission Corp.
Director	New England Hydro-Transmission Corp.
Director	New England Hydro-Transmission Electric Co., Inc.
Vice President [1] and Director [1]	New England Power Co.

[1] Previously authorized.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. E.H. Crews, Jr.

[Docket No. ID-2191-000]

June 11, 1985.

Take notice that on May 17, 1985, E.H. Crews, Jr. (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Officer, South Carolina Electric & Gas Company
Officer, South Carolina Generating Company, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. J.J. Saacks

[Docket No. ID-2204-000]

June 12, 1985.

Take notice that on June 4, 1985, J.J. Saacks (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Louisiana Power & Light Company, Public Utility
Vice President, New Orleans Public Service Inc., Public Utility

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14628 Filed 6-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8722-000 et al.]

Hydroelectric Applications (David O. Harde 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: Minor License.

b. Project No: 8722-000.

c. Date Filed: November 16, 1984.

d. Applicant: David O. Harde.

e. Name of Project: Landis-Harde Water Power Project.

f. Location: On Perry Creek in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. David O. Harde, Star Route, Somerset, CA 95684.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4-foot-high 42-foot-long diversion dam at elevation 1906 feet; (2) a 24-inch-diameter, 1,000-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 100 kW to operate under a head of 101 feet; and (4) a 500-foot-long tap will connect the project with an existing Pacific Gas and Electric Company's (PG&E) 21-kV transmission line west of the powerhouse.

k. Purpose of Project: The estimated annual generation of 115,000 kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

2 a. Type of Application: Preliminary Permit.

b. Project No. 9048-000.

c. Date Filed: March 25, 1985.

d. Applicant: B&T Associates.

e. Name of Project: Cascade Creek.

f. Location: On Cascade Creek, a tributary of the Middle Fork Stanislaus River, near Strawberry, in Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. Nicholas O. Bartsch, B&T Associates, 841 Cathedral Court, #1, Sacramento, CA 95825, (916) 487-1332.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) an 8-foot-high diversion structure approximately 60-foot-long across Cascade Creek at elevation 4,800 feet msl; (2) a steel penstock, 24 inches in diameter and 2,500 feet long; (3) a powerhouse containing a single Pelton turbine-generator unit with a rated capacity of 1.3 MW and producing an estimated average annual generation of 4.0 GWh; and (4) a 2.5-mile-long, 12-kV transmission line interconnecting the project to the existing Tri-Dam Company Donnells Powerhouse. Project power would be sold to Pacific Gas and Electric Company. The project would occupy Stanislaus National Forest lands.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the study at $65,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

3 a. Type of Application: Preliminary Permit.

b. Project No. 9050-000.

c. Date Filed: March 26, 1985.

d. Applicant: Santa Rosa Associates.

e. Name of Project: Santa Rosa Hydro Project.

f. Location: On the Pecos River in Guadalupe County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Jerry Rains, Agent for Partnership, 179 Yuca Drive, Portales, NM 88130.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Santa Rosa Dam and Reservoir (formerly Los Esteros Dam and Reservoir) and would consist of: (1) a new 8-foot-diameter penstock utilizing the existing outlet works near the left river bank; (2) a new powerhouse to contain a turbine-generator unit having a total rated capacity of 2,750 kW; (3) a tailrace returning flow to the river near the toe of the dam; (4) a new 500-foot-long, 12-kV transmission line connecting to an existing line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 5,800,000 kWh.

k. Purpose of Project: Project energy would be sold to the Farmers Electric Cooperative of New Mexico.

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 36 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 $125,000.

4 a. Type of Application: Preliminary Permit.

b. Project No. 9055–000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: South Fork McKenzie River.

f. Location: Blue River, Oregon, Lane County, on South Fork McKenzie River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Ms. Maxine Smith, 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) an 11-foot-high, 60-foot-long diversion dam at an elevation of 1260 feet; (2) a 10-foot-deep, 35-foot-wide, 13,500-foot-long canal; (3) two 108-inch-diameter, 1,900-foot-long penstocks; (4) a powerhouse containing one or more generating units with a total rated capacity of 11,302 kW; and (5) a 6,000-foot-long transmission line. Applicant estimates the average annual energy production to be 55,240 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Co.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No. 9053–000.

c. Date Filed: March 26, 1985.

d. Applicant: Tucumcari Associates.

e. Name of Project: Tucumcari Hydro Project.

f. Location: On Canadian River in San Miguel County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Jerry Rains, Agent for Partnership, 179 Yuca Drive, Portales, NM 88130.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Conchas Dam and Reservoir and would consist of two new developments: (1) a 110-foot-long, 6-foot-diameter penstock extending from an existing outlet pipe in the main dam; (2) a powerhouse to contain a turbine-generator unit rated at 1,200 kW; (3) a tailrace returning flow to the river near the toe of the dam; (4) a second penstock, 200 feet long and 11 feet in diameter, extending from a bifurcation in an existing irrigation outlet works through the south dike; (5) a second powerhouse to contain a turbine-generator rated at 1,000 kW; (6) a tailrace returning flow to the irrigation canal; (7) a 7,500-foot-long, 12-kV transmission line connecting both power plants to an existing line; and (8) appurtenant facilities. The total capacity would be 2,200 kW, and the Applicant estimates that the average annual energy output would be 3,400,000 kWh and 2,900,000 kW for a total of 6,300,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities.

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 36 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 $125,000.

6a. Type of Application: Preliminary Permit

b. Project No.: 9096–000

c. Dated Filed: April 8, 1985

d. Applicant: Rustic Hydro, Inc.

e. Name of Project: East Branch Pemigewasset

f. Location: On the East Branch of the Pemigewasset River in Grafton County, New Hampshire

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)

h. Contact Person: Barbara S. Jost, Rose, Schmidt, Chapman, Duff, & Hasley, 1825 Eye Street., N.W., Washington, DC 20006.

i. Comment Date: August 2, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) a new 22-foot-high and 400-foot-long concrete gravity dam; (2) a new impoundment with a surface area of 5.3 acres at normal water surface elevation of 942 feet mean sea level; (3) an intake structure at the north side of the dam; (4) a new 5-foot-diameter and 900-foot-long penstock; (5) a new powerhouse with 1 turbine-generator unit with an installed capacity of 900 kW; (6) a 100-foot-long tailrace; (7) a new 200-foot-long transmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 7,300,000 kWh.

k. Purpose of Project: Project energy would be sold to a nearby utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of

the studies. Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

7a. Type of Application: Preliminary Permit

b. Project No.: 9927–000.

c. Dated Filed: April 23, 1985.

d. Applicant: Hydrovest, Inc.

e. Name of Project: Campbell No. 1 Hydro Project.

f. Location: On the Redwater River near Belle Fourche, Butte County, South Dakota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. George L. Smith, P.O. Box 1016, Idaho Falls, Idaho 83402.

i. Comment Date: August 2, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) an existing 8-foot-long and 4-foot-high concrete diversion dam; (2) an existing 1.5-mile-long power canal; (3) an existing 30-inch-diameter steel penstock approximately 60 feet long; (4) a new concrete powerhouse with a single generator having a rated capacity of 346 kW; (5) an existing 8-foot-wide and 30-foot-long tailrace; (6) a new 4.61-kV or equivalent transmission line approximately 60 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 1,800 MWh. All project energy generated would be sold to a local utility company.

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 $20,000.

8 a. Type of Application: Minor License.

b. Project No.: 8611–000.

c. Date Filed: September 24, 1984.

d. Applicant: John N. Webster.

e. Name of Project: Alton Dam.

f. Location: Merrymeeting River in Belknap County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)—825(r).

h. Contact Person: Mr. John N. Webster, P.O. Box 1073, Dover, NH 03820.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 136-foot-long earth embankment and concrete gravity dam with; (2) 4-foot-high flashboards; (3) an existing reservoir with a normal water surface area of 500 acres and a storage capacity of 4,758 acre-feet at surface elevation 380.0 feet MSL; (4) an existing gate house located on the left abutment; (5) a new 4-foot-diameter, 330-foot-long penstock; (6) an existing concrete and masonry powerhouse which would contain a new generating unit with a capacity of 125 kW; (7) a new 350-foot-long transmission line; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 600,000 kWh. The existing dam is owned by the State of New Hampshire.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Peliminary Permit.

b. Project No.: 9046–000.

c. Date Filed: March 25, 1985.

d. Applicant: B&T Associates.

e. Name of Project: Mill Creek.

f. Location: On Mill Creek, a tributary of the Middle Fork, Stanislaus River, near Strawberry, in Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. Nicholas O. Bartsch, B&T Associates, 841 Cathedral Court, #1, Sacramento, CA 95825, (916) 487–1332.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high diversion structure approximately 60-foot-long across Mill Creek at elevation 4,880 feet msl; (2) a steel penstock, 30 inches in diameter and 2,000 feet long; (3) a powerhouse containing a single Pelton turbine-generator unit with a rated capacity of 2.3 MW and producing an estimated average annual generation of 6.5 GWh; and (4) a 3.5-mile-long, 12-kV transmission line interconnecting the project to the existing Tri-Dam Company Donnells Powerhouse. Project power would be sold to Pacific Gas and Electric Company. The project would occupy Stanislaus National Forest lands.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks at 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the study at $80,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9047–000.

c. Date Filed: March 25, 1985.

d. Applicant: B&T Associates.

e. Name of Project: Cow Creek.

f. Location: On Cow Creek, a tributary of the Middle Fork Stanislaus River, near Strawberry, in Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§791(a)—825(r)

h. Contact Person: Mr. Nicholas O. Bartsch, B&T Associates, 841 Cathedral Court, #1, Sacramento, CA 95825, (916) 487–1332.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) an 8-foot-high diversion structure approximately 60-foot-long across Cow Creek at elevation 4,120 feet msl; (2) a steel penstock, 24 inches in diameter and 2,000 feet long; (3) a powerhouse containing a single Pelton turbine-generator unit with a rated capacity of 1.3 MW and producing an estimated average annual generation of 3.4 GWh; and (4) a 1.5-mile-long, 12-kV transmission line interconnecting the project to the existing Tri-Dam Company Donnells Powerhouse. Project power would be sold to Pacific Gas and Electric Company. The project would occupy Stanislaus National Forest lands.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the study at $65,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9049–000.

c. Date Filed: March 25, 1985.

d. Applicant: Carex Hydro.

e. Name of Project: Pioneer.

f. Location: On the Deckers Creek in Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(A)–825(r).

h. Contact Person: Don R. King, AMMCO, 201 Woodycrest Avenue, Nashville, TN 37210.

i. Comment Date: August 2, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) a new intake structure; (2) a new 40-inch-diameter and 7,500-foot-long

penstock; (3) a new powerhouse with 2 turbine-generator units with a total installed capacity of 1,935 kW; and (4) other appurtenances. Interconnection facilities are available at the site. Applicant estimates an average annual generation of 8,700,000 kWh.

k. Purpose of Project: Project energy would be sold to the Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 8650-000.

c. Date Filed: December 26, 1985.

d. Applicant: Frank O. Johnson.

e. Name of Project: Reynolds Creek.

f. Location: In Okanogan National Forest, on Reynolds Creek in Okanogan County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Frank O. Johnson, P.O. Box 66492, Seattle, WA 98166.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high diversion dam at elevation 3,520 feet; (2) a 4,300-foot-long, 12-inch-diameter pipeline; (3) a powerhouse containing a single 350 kW generating unit with an average annual generation of 1,200 MWh; and (4) a 6-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Okanogan County Electric Co-op.

l. This notice also consist of the following standard paragraphs: A6, A7, A9, B, C, D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 8792-001.

c. Date Filed: April 1, 1985.

d. Applicant: Frank O. Johnson.

e. Name of Project: War Creek.

f. Location: In Okanogan National Forest, on War Creek in Okanogan County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Frank O. Johnson, P.O. Box 66492, Seattle, WA 98166.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high diversion dam at elevation 3,200 feet; (2) a 7,000-foot-long, 30-inch-diameter pipeline; (3) a powerhouse containing a single 750 kW generating unit with an average annual generation of 5,200 MWh; and (4) a 3.4-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Okanogan County Electric Co-op.

l. This notice also consist of the following standard paragraphs: A6, A7, A9, B, C, D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9133-000.

c. Date Filed: April 25, 1985.

d. Applicant: China Flat Company.

e. Name of Project: Hawkins Creek Power Project.

f. Location: On Hawkins Creek near William Creek, within Six Rivers National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jackson Howard, P.O. Box 467, Willow Creek, CA 95573.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 40-foot-long diversion dam at elevation 2,000 feet; (2) a 24-inch-diameter, 6,000-foot-long diversion pipeline; (3) an 18-inch-diameter, 1,000-foot-long penstock; (4) a powerhouse with a total installed capacity of 210 kW operation under a head of 500 feet; and (5) a 2,000-foot-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.9 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9126-000.

c. Date Filed: April 22, 1985.

d. Applicant: China Flat Company.

e. Name of Project: Ruby Creek Power Project.

f. Location: On Ruby Creek, near Willow Creek, within Six Rivers National Forest, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jackson Howard, P.O. Box 467, Willow Creek, CA 95573.

i. Comment Date: August 2, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 40-foot-long diversion dam at elevation 2,400 feet; (2) a 24-inch-diameter, 4,000-foot-long diversion pipeline; (3) an 18-inch-diameter, 1,000-foot-long penstock; (4) a powerhouse with a total installed capacity of 210 kW operating under a head of 600 feet; and (5) a 300-foot-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.8 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No: 9020-000.

c. Date Filed: March 12, 1985.

d. Applicant: JDJ Energy Company.

e. Name of Project: National Fish Hatchery Conduit at Norfolk Dam.

f. Location: On Norfolk Lake in Baxter County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§791(a)-825(r).

h. Contact Person: Mr. Doyle W. Jones, P.O. Box 225, Jones Mill, Arkansas 72105.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Norfolk Dam and Reservoir and the existing U.S. Fish and Wildlife Service's National Fish Hatchery and would consist of: (1) a proposed powerhouse 20 feet long and 20 feet wide to be located on the hatchery water supply conduit and which would contain one turbine/generator with a rated capacity of 280 kW; (2) a new 480-volt transmission line approximately 500 feet long; and (3) appurtenant facilities. The estimated average annual energy produced by the project would be 2,215,400 kWh operating under a hydraulic head of 125 feet. Project power would be sold to the Arkansas Power and Light Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

17 a. Type of Application: Preliminary Permit.

b. Project No: 9083-000.

c. Date Filed: April 1, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Dalton Dam No. 6.

f. Location: East Branch Housatonic River in Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§791(a)-825(r).

h. Contact Person: Mr. John R. Anderson, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 20-foot-high, 75-foot-long concrete dam owned by Byron Weston Co. Inc.; (2) an existing reservoir with a surface area of 80,000 square feet and a storage capacity of 40,000 cubic feet at water surface elevation 1,116 feet MSL; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 140-kW; and (4) a proposed 50-foot-long transmission line tying into the existing Western Massachusetts Electric Company System. The Applicant estimates a 610,000 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 the permit would be $8,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

18 a. Type of Application: Minor License.

b. Project No: 6758-003.

c. Date Filed: October 15, 1984.

d. Applicant: Holden Village, Inc.

e. Name of Project: Railroad Creek.

f. Location: On Railroad Creek, tributary to Lake Chelan, in Chelan County, Washington, and affecting lands within the Wenatchee National Forest.

g. Filed Pursuant to: 16 U.S.C. §§791(a)-825(r).

h. Contact Person: Mr. Roger D. Ockfen, Holden Village, Inc. Chelan, WA 98816.

i. Comment Date: August 2, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) a 6.5-foot-high, 50-foot-long concrete-wood buttress diversion weir; (2) a 5,300-foot-long, 30-inch-diameter steel penstock; (3) a powerhouse containing one generating unit rated at 325 kW; (4) a 4.5-mile-long transmission line; and (5) an access road. The average annual energy generation is estimated to be 2.6 million kWh. Applicant estimates that the project cost would be $630,000.

This application has been accepted for filing as of January 9, 1984, the submittal date of the Applicant's originally accepted exemption application pursuant to *Snowbird, Ltd.*, 28 FERC ¶ 61,062 issued July 18, 1984.

k. Purpose of Project: Project energy would be utilized to provide Holden Village with a reliable source of electric power during the winter months.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D1.

19 a. Type of Application: Minor License.

b. Project No: 8535-000.

c. Date Filed: August 20, 1984.

d. Applicant: Greenwood Ironworks.

e. Name of Project: Battersea Dam.

f. Location: On the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Joshua Greenwood, 420 Grove Avenue, Petersburg, Virginia.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing concrete dam about 365 feet long, varying between 3 and 4 feet in height; (2) an existing reservoir with a water surface area of 3 acres and a storage capacity of 9 acre-feet at elevation 29 feet m.s.l.; (3) an existing power canal 1700 feet long with width varying from 30 to 50 feet and depths varying from 4 to 6 feet, lined along its sides with masonry or rip-rap, and with a gravel bed and occasional bedrock outcrops; (4) an existing concrete penstock 12 feet wide, 4 feet in height, and 75 feet long, leading to proposed powerhouse number 1; (5) an existing stone lined channel 12 feet wide, 10 feet deep, and 65 feet long, leading to proposed powerhouse number 2; (6) two new powerhouses with a total installed capacity of 500 kW. Powerhouse No. 1 will be about 29 feet by 18 feet, and will house one generating unit with an installed capacity of 150 kW. Powerhouse No. 2 will be about 17.5 feet by 14 feet and will house two generating units at 175 kW each; (7) new transmission lines as follows: (a) 120 feet of underground line at 2.3 kV connecting the two powerhouses, (b) 55 feet of line at 2.3 kV connecting Powerhouse No. 1 to a new transformer house, and (c) 65 feet of line at 13.2 kV from the transformer house to the existing VEPCO line; and (8) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 2,584,200 kWh.

l. Purpose of Project: Applicant anticipates that project energy will be sold to the Virginia Electric Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 9129-000.

c. Date Filed: April 25, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Otis.

f. Location: Fall River in Berkshire and Hampden Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson and Mr. Joseph D. Brostmeyer, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 31-foot-high, 500-foot-long rockfill gravity dam; (2) a reservoir with a surface area of 850 acres, a storage capacity of 11,478 acre-feet, and a normal water surface elevation of 1,421 feet m.s.l.; (3) an existing concrete and steel intake structure; (4) a new 3,500-foot-long, 2.5-foot-diameter steel penstock; (5) a new masonry powerhouse containing two generating units with a capacity of 250 kW each for a total installed capacity of 500 kW; (6) a new transmission line, 200 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 2,200,000 kWh. The existing dam is owned by the Commonwealth of Massachusetts.

k. Purpose of Project: Project power would be sold to the Western 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 $23,000.

21 a. Type of Application: Major License.

b. Project No.: 7014–001.

c. Date Filed: September 28, 1984.

d. Applicant: Milk River Irrigation Districts.

e. Name of Project: Fresno Dam Power.

f. Location: At the U.S. Bureau of Reclamation's Fresno Dam and reservoir on the Milk River in Hill County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.c. §§ 791(a)—825(r).

h. Contact Person: Mr. Sever Enkerud, Tampico Route, Glasgow, MT 59230.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would utilize the existing Fresno Dam and reservoir and would consist of: (1) A concrete-encased bifurcation near the downstream end of one of the two existing outlet pipes; (2) a 180-foot-long, 10-foot-diameter penstock; (3) a 40-foot by 35-foot reinforced concrete powerhouse containing a generating unit rated at 3 MW producing an estimated average annual output of 9.3 GWh; (4) a tailrace to the Milk River; (5) a 17,000-foot-long, 69-kV transmission line; and (6) an existing access road. Recreational enhancement would consist of providing a 2,000-square-foot parking area adjacent to the powerhouse for fishermen, hunters, and other uses. The estimated project cost as of September 1984 is $3,600,000. This application was filed pursuant to a preliminary permit.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

22 a. Type of Application: Preliminary Permit.

b. Project No: 9155–000.

c. Date Filed: May 1, 1985.

d. Applicant: Manhattan Associates.

e. Name of Project: Tuttle Creek Hydro Project.

f. Location: On the Big Blue River near Manhattan, Riley County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, WA 98040.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tuttle Creek Dam and Reservoir, and would consist of: (1) a new 800-foot-long steel penstock approximately 18 feet in diameter; (2) a new 75-foot-long and 60-foot-wide powerhouse located on the south side of the existing stilling basin; (3) a new 34.5-kV transmission line approximately 1-mile long; and (4) appurtenant facilities. Applicant estimates the total capacity of the project to be 14,750 kW, and the average annual generation to be 56,690 MWh. All energy generated would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, 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, 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 $125,000.

23 a. Type of Application: Preliminary Permit.

b. Project No: 9149–000.

c. Date Filed: May 1, 1985.

d. Applicant: Riley Associates.

e. Name of Project: Milford Hydro Project.

f. Location: On the Republican River near Junction City, Geary County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, WA 98040.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would utilize the U.S. Corps of Engineers' Milford Dam and Reservoir, and would consist of: (1) a new 640-foot-long steel penstock approximately 19 feet in diameter; (2) a new powerhouse located on the south side of an existing stilling basin with an installed capacity of 14.8 MW; (3) a proposed 12.5-kV transmission line approximately .5-mile long; appurtenant facilities. Applicant estimates the average annual generation to be 18,300 MWh. All energy produced wil be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, 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. 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 $125,000.

24.a. Type of Application: Minor License.

b. Project No.: 7211–002.

c. Date Filed: September 24, 1984.

d. Applicant: Vernon L. & Betty J. Herzinger.

e. Name of Project: Twin Eagle Power.

f. Location: On Salmon Falls Creek, tributary to the Snake River, in Twin Falls County, Idaho.

g. Filed Pursuant to: 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Vernon L. & Betty J. Herzinger, 408 11th Avenue North, Buhl, ID 83316.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) a 195-foot-long, 12-foot-high concretecore rockfill dam having spillway crest elevation 2937 feet and having a fish ladder; (2) a reservoir having a surface area of 2.13-acres and a gross storage volume of 10 acre-feet at spillway crest elevation; (3) a screened reinforced-concrete intake structure along the left (west) bank; (4) an 862-foot-long, 96-inch-diameter corrugated-metal-pipe penstock; (5) a powerhouse containing five generating units each rated at 80-kW operated at a head of 26.5 feet and at a flow of 52 cfs; (6) a tailrace; (7) a 1,000-foot-long, 34.5-kV underground transmission line; and (8) a 0.67-mile long, 20-foot-wide gravel-surface access road. The project would affect 17.16 acres of U.S. lands under the jurisdiction of the Bureau of Land Management.

This application has been accepted for filing as of April 11, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Company, 28 FERC ¶ 61,061 issued July 18, 1984.

k. Purpose of Project: Project energy would be sold to Idaho Power Company. Applicant estimates that the average annual energy generation would be 2,600,000-kWh and that the total project cost would be $682,100.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D2.

25.a. Type of Application: Preliminary Permit.

b. Project No.: 9021–000.

c. Date Filed: March 12, 1985.

d. Applicant: JDJ Energy Company.

e. Name of Project: National Fish Hatchery Conduit at Greers Ferry Dam.

f. Location: On Greers Ferry Lake in Cleburne County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Doyle W. Jones, P.O. Box 225, Jones Mill, Arkansas 72105.

i. Comment Date: August 2, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Greers Ferry Dam and Reservoir and the existing U. S. Fish and Wildlife Service's National Fish Hatchery and would consist of: (1) a proposed powerhouse 20 feet long and 20 feet wide to be located on the hatchery intake conduit and which would contain one turbine/generator with a rated capacity of 250 kW; (2) a new 480-volt transmission line approximately 2,000 feet long; and (3) appurtenant facilities. The estimated average annual energy produced by the project would be 1,963,100 kWh operating under a hydraulic head of 140 feet. Project power would be sold to the Arkansas Power and Light Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The term of the proposed preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

26 a. Type of Application: Preliminary Permit.

b. Project No: 9023–000.

c. Date Filed: March 12, 1985.

d. Applicant: JDJ Energy Company.

e. Name of Project: Shepherd of the Hills State Trout Hatchery Conduit.

f. Location: On Table Rock Lake in Taney County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Doyle W. Jones, P.O. Box 225, Jones Mill, Arkansas 72105.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Table Rock Dam and Reservoir and would consist of: (1) an existing fish hatchery conduit; (2) a proposed powerhouse 20 feet long and 20 feet wide to be located on the hatchery water supply conduit and which would contain one turbine/generator with a rated capacity of 261 kW; (3) a new 480-volt transmission line approximately 1,500 feet long; and (4) appurtenant facilities. The estimated average annual energy produced by the project would be 2,061,500 kWh operating under a hydraulic head of 165 feet. Project power would be sold to the Empire District Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

27 a. Type of Application: Preliminary Permit.

b. Project No.: 8889–000.

c. Date Filed: January 22, 1985.

d. Applicant: Cordova Electric Cooperative, Inc.

e. Name of Project: Humpback Creek.

f. Location: On Humpback Creek, near the town of Cordova, Alaska, within Chugach National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Ronald O. Goodrich, President, Cordova Electric Cooperative, Inc., P.O. Box 20, Cordova, Alaska 99574.

i. Comment Date: August 5, 1985.

J. Description of Project: The proposed project would consist of: (1) a 10-foot-high wood crib diversion dam at an elevation of 415 feet; (2) a 36-inch-diameter, 6,600-foot-long flume; (3) a 30-inch-diameter, 700-foot-long penstock; (4) a powerhouse containing two generating units with a total rated capacity of 800 kW operating under a head of 350 feet; (5) a 20-foot-long concrete tailrace; and (6) a 12.4-kV transmission line tying into the Cordova Electric Cooperative's existing line. The average annual energy output would be 3,296 MWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 36 month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $50,000.

k. Purpose of Project: Project power would be utilized by the Cordova Electric Cooperative, Inc.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

28 a. Type of Application: Preliminary Permit.

b. Project No: 9148–000.

c. Date Filed: May 1, 1985.

d. Applicant: Topeka Associates.

e. Name of Project: Perry Dam Hydro Project.

f. Location: On the Delaware River near Topeka, Jefferson County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Tom Forbes, P.O. Box 421, Mercer Island, WA 98040.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Perry Dam and Lake, and would consist of: (1) a new 500-foot-long steel penstock approximately 21.5 feet in diameter; (2) a new powerhouse located on the southwest side of an existing stilling basin with an installed capacity of 5,800 kW; (3) a proposed 12.5-kV transmission line or equivalent approximately .5-mile long; and (4) appurtenant facilities. Applicant estimates the average annual generation to be approximately 15,300 MWh. All energy produced will be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, 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. 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 $125,000.

29 a. Type of Application: Preliminary Permit.

b. Project No: 9099–000.

c. Date Filed: April 8, 1985.

d. Applicant: Trans Mountain Construction Co.

e. Name of Project: Peru Creek Hydro Power.

f. Location: On Peru Creek in Summit County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Herbert C. Young, Trans Mountain Construction Co., 123 S. Paradise Road, Golden, Colorado 80401.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would consist of: (1) a new diversion dam about 5 feet high and 25 feet long; (2) an impoundment with negligible storage capacity; (3) a new 3-foot diameter penstock approximately 1,850 feet long; (4) a new powerhouse approximately 24 feet by 20 feet housing two turbine-generator units with a total installed capacity of 500 kW; (5) a proposed tailrace; (6) approximately 4,900 feet of new transmission line at 25 kV; and (7) appurtentant facilities. Applicant estimates that the average annual generation would be 900,000 kWh. All land within the project boundary is administered by the U.S. Forest Service, Arapahoe National Forest.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A6, 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 it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $80,000. Applicant will conduct field surveys for the proposed structures.

30 a. Type of Application: Exemption (5MW or less).

b. Project No.: 8764–000.

c. Date Filed: December 3, 1984.

d. Applicant: San Gabriel Hydroelectric Partnership.

e. Name of Project: San Gabriel Dam Hydroelectric Project.

f. Location: On San Gabriel River, within Angles National Forest, in Los Angeles County, California.

g. Filed Pursuant to: Section 408 of Energy Security Act of 1980. (16 U.S.C. §§ 2705 and 2708 *as amended*).

h. Contact Person: Mr. Edwin E. Hudson, Oscar Larson and Associates, P.O. Box 3806, Eureka, CA 95501.

i. Comment Date: July 26, 1985.

j. Description of Project: The proposed project would utilize the Los Angeles County Flood Control District's existing 405–foot-high San Gabriel No. 1 Dam and Reservoir (with water surface elevation of 1,453 feet). The outlet works of the dam include four individual pipes (51 inches, 96 inches, 123 inches and 123 inches in diameter) with energy dissipating valves at the discharge to the San Gabriel River. Connected to the 51-inch-diameter and 96-inch-diameter pipes are pipe tees with Pelton valves that redirect water to a side channel known as the Azusa Conduit.

The proposed project would include two units. Unit #1 would involve a new connect to the 96-inch-diameter outlet pipe and routing water through a 48-inch-diameter, 120-foot-long pipe to a 3,900-kW-generating unit before discharging into the San Gabriel River. Unit #2 would involve replacing a Pelton valve and a 20-foot-long section of the 51-inch-pipe to the Azusa Conduit with a 1,050-kW-generating unit. The units #1 and #2 will be operated under heads of 270 and 190 feet, respectively.

Due to the interrelationship of this proposed project with licensed Project No. 1250, this application will be processed concurrently with the application for new license for Project No. 1250.

k. Purpose of Project: The estimated annual generation of 11.5 millions kWh will be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, & D3a.

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 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. 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 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 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 exceptions: 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 intital 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 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 hyrdoelectric 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 filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary 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 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 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, .211, .214. In determinig 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 APPLICATION", "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 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., Washington, 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. No. 88-29, and other applicable statues. No other formal request 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.

D3. *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 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 Coorination 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 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 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 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: June 13, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14629 Filed 6-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-561-000 et al.]

Electric Rate and Corporate Regulation Filings; Alabama Power Co. et al.

June 12, 1985.

Take notice that the following filings have been made with the commission:

1. Alabama Power Company

[Docket No. ER85-561-000]

Take notice that Alabama Power Company ("APCO") on May 31, 1985 tendered for filing Amendment No. 2 and Amendment No. 3 to its Agreement for Transmission Service to Distribution Cooperative Customers of Alabama Electric Cooperative, Inc., which Agreement is designated APCO Rate Schedule FPC No. 147.

APCO states that the amendments to the Agreement are necessary to (1) define properly the power and energy to be supplied by Alabama Electric Cooperative, Inc.; and (2) to establish a new formula rate for service to a new delivery point to be served under the Agreement. The company is requesting that Amendment No. 2 be permitted to be effective February 1, 1985 and that Amendment No. 3 be permitted to be effective June 1, 1985.

Copies of the filing were served upon Alabama Electric Cooperative, Inc.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas and Electric

[Docket Nos. ER83-628-008 and ER84-131-005]

Take notice that on June 4, 1985, Kansas Gas and Electric Company submitted for filing an original and five (5) copies of the refund report for Augusta and Burlington, Kansas (Firm Power Service), Coffeeville, Mulvance, Neodesha, Wellington and Winfield, Kansas (Firm Power and Transmission Service), and Kansas Power and Light Company, Missouri Public Service Company, Girard and Oxford, Kansas. (CPWM Service).

The refund amounts include interest from the date payment was received through May 21, 1985 at the appropriate interest rate in accordance with 18 CFR § 35.18(a).

Comment date: June 24, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Consumers Power Company

[Docket No. ES85-17-000]

Take notice that on May 15, 1985, Consumers Power Company (Applicant) filed an amendment requesting that the

first sentence of paragraph (e) of the application be amended to include the words "or guarantee" preceding the word "secured" and on May 22, 1985, filed an amendment for a new Oakway IV construction financing agreement in the amount of $200 million for not more than one year.

Comment date: June 30, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER85-557-000]

Take notice that on June 4, 1985, Arizona Public Service Company (APS) tendered for filing a Notice of Cancellation of the Operating Letter Agreement between Electrical District No. 6 (District) and APS, FERC Rate Schedule No. 107, which provides for the banking of Arizona Power Authority energy allocated to the District.

APS requests to cancel said Agreement as of June 30, 1985, pursuant to its terms.

Copies of this filing have been served upon ED-6 and the Arizona Corporation Commission.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Utilities Company

[Docket No. ES85-40-000]

Take notice that on June 3, 1985, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, in connection with provision of funds for the refunding of outstanding industries revenue bonds and for the construction, extension and improvement of public utility facilities through the issuance of up to $85,000,000 in principal amount of industrial development revenue bonds, special purpose revenue bonds and environmental control revenue bonds (Bonds), requesting an order (a) authorizing negotiations with one or more underwriters; (b) exempting the issuance of Bonds from compliance with competitive bidding requirements; and (c) authorizing the assumption by the Company of obligations and liabilities in respect of the Bonds, on terms and conditions to be negotiated.

Comment date: July 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. The Connecticut Light and Power Company

[Docket No. ER85-531-000]

Take notice that on May 23, 1985 the Connecticut Light and Power Company tendered for filing a Notice of Termination of rate schedules FPC No. NELCO 98, FERC No. CL&P 298, FERC No. CL&P 268, FERC No. CL&P 286, FRC No. HELCO 97, FERC No. HELCO 225, FPC No. HELCO 77, FERC No. HELCO 205, FPC No. HELCO 115, FERC No. HELCO 200, FRC No. HELCO 68, FRC No. HELCO 114. Notice of the proposed termination has been served upon Burlington Electric Company, Central Vermont Public Service Corporation, Green Mountain Power Company, Massachusetts Municipal Electric Company, Montaup Electric Company, Western Massachusetts Electric Company, Middleborough Gas & Electric Company, New England Power Company, Northfield Electric Company, Public Service Company of New Hampshire, Reading Municipal Light Department, Village of Lyndonville Electric Department and Washington Electric Cooperative.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Power Company

[Docket No. ER85-548-000]

Take notice that Consumers Power Company on May 30, 1984 tendered for filing two revisions to the annual charge rate for charges due Consumers Power Company from Wolverine Power Supply Cooperative, Inc. ("Wolverine"), under the terms of the Blendon Interconnection Facilities Agreement (designated Supplement No. 3 to Consumers Power Company Electric Rate Schedule FERC No. 53).

Consumers Power Company states that Subsection 2.4 of the Blendon Interconnection Facilities Agreement provides for an annual redetermination of the annual charge rate to be charged by Consumer Power Company under the Blendon Interconnection Facilities Agreement and that, according to Subsection 2.4, the redetermination is to be made as of January 1 of each year, effective on the following May 1.

Consumers Power Company states that, effective May 1, 1985, the redetermination increases the annual charge rate from 21.16% to 21.43%. Consumers Power Company states that this increase reflects an increase in the annual carrying charge rate.

Consumers Power Company states that the annual effect of the increased in fixed charge rate is an increase of approximately $1,187.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER85-551-000]

Take notice that on June 3, 1985, Florida Power & Light Company ("FPL") tendered for filing three Agreements entitled: (1) Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Transmission Agreement"); (2) Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Jacksonville Beach; and (3) Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Green Cove Springs (collectively, (2) and (3) are referred to as the "Partial Requirements Agreements"). Under the Transmission Agreement, FPL has agreed to transmit power and energy from certain generating resources obtained, or anticipated to be obtained, by the Florida Municipal Power Agency ("FMPA") to meet a portion of Jacksonville Beach's and Green Cove Springs' (collectively referred to as the "Cities") electric requirements. Under the Partial Requirements Agreements, FPL will supply the Cities' supplemental requirements in excess of those supplied from FMPA's own generating resources.

The rates for service under the Transmission Agreement will be the rates provided under the "Delivery Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency" which was filed by FPL in Docket No. ER85-552. The rates for service under the Partial Requirements Agreements will be the rates for service under FPL Schedule PR-3, or any successor rate schedule.

Service under the three Agreements will commence no earlier than April 1, 1986, and no later than October 1, 1986. However, the Parties have agreed that FPL would file the above mentioned Agreements at the present time. FPL, therefore, requests a waiver of the Commission's regulations (18 CFR 35.3(a)) to permit the Agreements to be filed more than 120-days prior to the initiation of service.

Copies of the filing were served upon FMPA, the Cities of Jacksonville Beach and Green Cove Springs, and the Florida Public Service Commission.

Comment date: June 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER85-542-000]

Take notice that on May 28, 1985, Florida Power Corporation (Florida Power) tendered for filing Service Schedule D-Firm Interchange Service and a Letter of Commitment dated April 23, 1985 providing for 10MW of firm interchange service from Florida Power to the City of Homestead, Florida. Florida Power states that Service Schedule D and the Letter of Commitment are expected pursuant to the Contract for Interchange Service dated October 14, 1977 between Florida Power and City of Homestead, which contract is designated as Florida Power's Rate Schedule FERC No. 82. Service Schedule D and the Letter of Commitment are submitted for inclusion as supplements to that rate schedule.

Florida Power requests that Service Schedule D and the Letter of Commitment be permitted to become effective June 1, 1985, and, Copies of this filing have been served upon the City of Homestead and the Florida Public Service Commission.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Company

[Docket No. ER85-546-000]

Take notice that on May 30, 1985, Florida Power Corporation (Florida Power) tendered for filing Service Schedule X providing for extended economy interchange service between Florida Power and the Jacksonville Electric Authority. Florida Power states that Service Schedule X is submitted for inclusion as a supplement under the existing contract for interchange service between Florida Power and the Jacksonville Electric Authority, designated as Florida Power's Rate Schedule FERC No. 91).

Florida Power requests that Service Schedule X be permitted to become effective May 1, 1985, and, therefore, requests waiver of the sixty day notice requirement.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Gulf States Utilities Company

[Docket No. ER85-538-000]

Take notice that Gulf States Utilities Company (Gulf States) on May 24, 1985, tendered for filing proposed changes in its electric transmission service rate schedules presently on file with the Commission. The changes included increased rates for transmission service which would increase revenues from such service by $15,286,134 or 99.18 percent based upon the twelve (12) month period ended June 30, 1984.

In addtion to the proposed modification tariff sheets which reflect the entire $15,286,134 increase, Gulf States submitted alternate interim rate schedules which reflect an increase of $12,078,952 or 78.37 percent above current rates. Should the Commission suspend the modified tariff sheets reflecting the entire proposed increase for more than one day, Gulf States requests that the alternate interim rate schedules be made effective with no more than one day's suspension. Such interim rate schedules would be effective only during the period the higher rate schedules were suspended.

Gulf States estimates its rate of return on its jurisdictional rate base, for transmission for the twelve months ended June 30, 1984, was 5.83 percent. Gulf States further states that such return is substantially below its weighted cost of capital, and therefore will not attract the capital for planned construction and expansion programs. The proposed rates are based upon a 13.62 percent overall rate of return. The modified rate schedules and alternate interim rate schedules are based on a cost of service which reflects the inclusion of all pollution control construction work in progress (CWIP) and fifty percent of all remaining CWIP, but the proposed rates reflect the six percent limitation on the effect of CWIP inclusion in rate base required by the Commission's Regulations.

Additionally, Gulf States has proposed two changes related to administrative provisions in service schedules attached to certain Power Interconnecting Agreements identified in Mr. Carroll L. Waggoner's testimony and Exhibit CLW-3. In conjunction with these changes Gulf States has also proposed the inclusion of billing due date language in the rate schedules submitted as Exhibits CLW-1 and CLW-2 in order to have consistent payment provisions.

Copies of the filing have been served on Gulf State's jurisdictional customers, upon the Public Utility Commission of the State of Texas and upon the Louisiana Public Service Commission. The proposed effective date of the tariff is July 24, 1985.

Comment date: June 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Idaho Power Company

[Docket No. ER85-553-000]

Take notice that on June 3, 1985, the Idaho Power Company tendered for filing in compliance with the Federal Energy Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes original Volume No. 1) during April, 1985, along with cost justification for rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 42
Montana Power Company—Supplement 34
Sierra Pacific Power Company—Supplement 38
Portland General Electric Company—Supplement 34
Southern California Edison Company—Supplement 28
San Diego Gas & Electric Company—Supplement 23
Pacific Power & Light Company—Supplement 14
Washington Water Power Company—Supplement 28
Los Angeles Waster & Power Company—Supplement 25
Purget Sound Power & Light Company—Supplement 15
City of Burbank—Supplement 23
City of Glendale—Supplement 24
City of Pasadena—Supplement 22
Pacific Gas and Electric Company—Supplement 9

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Middle South Services, Inc.

[Docket No. ER85-560-000]

Take notice that on May 31, 1985, Middle South Services, Inc. (MSS), as agent for Mississippi Power & Light Company (MP&L), tendered for filing a Service Schedule C—Economy Energy and a Service Schedule RE—Replacement Energy under the Interchange Agreement between Big Rivers Electric Corporation and MP&L.

MSS requests an effective date of February 1, 1985 for the Service Schedules. MSS requests waiver of the Commission's notice requirements under Part 35 of the Commission's regulations.

Comment date: June 27, 1985, in accordance with Standard E at the end of this notice.

14. Northern States Power Company

[Docket No. ER85-556-000]

Take notice that Northern States Power Company, on June 4, 1985, tendered for filing a Notice of Cancellation, dated June 3, 1985, terminating the Firm Power Service Resale Agreement, dated August 2, 1983, with the City of Lake City, Minnesota.

Comment date: June 27, 1985, in accordance with Standard E at the end of this notice.

15. Northern State Power Company

[Docket No. ER85-554-000]

Take notice that Northern States Power Company, on June 4, 1985, tendered for filing a Notice of Cancellation, dated June 3, 1985, terminating the Firm Power Service Resale Agreement, dated August 19, 1983, with the City of St. Peter, Minnesota.

Comment date: June 27, 1985, in accordance with Standard E at the end of this notice.

15. Northern States Power Company

[Docket No. ER85-555-000]

Take notice that Northern States Power Company, on June 4, 1985, tendered for filing a Notice of Cancellation, dated June 3, 1985, terminating the Firm Power Service Resale Agreement, dated August 2, 1983, with the City of Waseca, Minnesota.

Comment date: June 27, 1985, in accordance with Standard E at the end of this notice.

17. Ohio Power Company

[Docket No. ER85-558-000]

Take notice that American Electric Power Service Corporation (AEP) on May 31, 1985 tendered for filing on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operating subsidiary, Modification No. 11 dated April 30, 1985 to the Facilities and Operating Agreement dated May 1, 1967 between OPCO and the Dayton Power and Light Company (Dayton Company). The Commission has previously designated the 1967 Agreement as OPCO's Rate Schedule FERC No. 36 and Dayton Company's Rate Schedule FERC No. 31.

Sections 1 and 2 of Modification No. 11 provide for an increase in the transmission demand rate for Short Term Power, when OPCO is the supplying party, to $0.46 per kilowatt per week and to $0.092 per kilowatt per day. Section 3 increases the Limited Term Power transmission demand rate, when OPCO is the supplying party, to $2.00 per kilowatt per month. The proposed rates included in this Modification No. 11 for Short Term and Limited Term Power transmission demand rates which have been filed and accepted for filing by the Commission on behalf of OPCO. AEP requests an immediate date, which will allow AEP to offer similar services at similar rates to electric utility systems interconnected with AEP affiliated operating subsidiaries as established in previous AEP filings, and therefore requests waiver of this Commission's Notice requirements.

Copies of this filing were served upon the Public Utilities Commission of Ohio.

Comment date: June 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

Public Service Company of New Hampshire

[Docket No. ER85-547-000]

Take notice that on May 30, 1985, the Public Service Company of New Hampshire has tendered for filing six copies each of revised page 5 for System Exchange Agreement between PSNH and Central Vermont Public Service designated as PSNH Rate Schedule FERC No. 108, revised page 5 for System Exchange Agreement between PSNH and New England Power Company designated as PSNH Rate Schedule FERC No. 112, and revised page 4 for System Exchange Agreement between PSNH, The Connecticut Light and Power Company (CLP), The Hartford Electric Company (now merged into CLP) and Western Massachusetts Electric Company designated as PSNH Rate Schedule FERC No. 114 filed herewith as a change in rate schedules pursuant to 18 CFR 35.13 and attached thereto as Attachments 1, 2, 3, respectively.

Pursuant to each of said System Exchange Agreements, the ceiling price applicable to the energy reservation charge is subject to change due to cost-justification. The purpose of this filing is to change the ceiling price of the energy reservation change due to cost-justification to $.0189 per kilowatthour. All other terms and conditions of the said Agreements are to remain unchanged and in effect. The agreements of the parties affected by the change to this filing and to the revised ceiling price are attached thereto as Attachments 4, 5 and 6.

The ceiling kilowatthour price for the energy reservation charge is proposed to be changed so as to account for all the generating plants which PSNH anticipates would be the source of energy for sales made under the System Exchange Agreements and to adjust for the capacity factors of those plants. Specfically, the revised rate is based upon three intermediate generating plants, namely Newington Station, Wyman No. 4 and Brayton No. 4, providing the power to be sold. The rate to be superceded was calculated using only Newington Station. Additionally, the calculation for the revised rate has been adjusted for the capacity factors of these plants providing the power. The projected capacity factors were determined based upon a five year historical average of capacity factors of the said plants. The rate to be superceded, unadjusted for capacity factors, was therefore calculated as if the plant had a 100% capacity factor.

Parties to the System Exchange Agreements only enter into an exchange where each expects to derive economic benefit. The kilowatthour price component of the energy reservation charge is applicable to the exchange, subject to the ceiling price imposed by the Agreement, as amended from time to time.

PSNH has not incurred any expenses or costs included in the cost of service statements for Period I or II, as defined 18 CFR in § 35.13d(3), that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

The proposed changed rate does not differ from that which is proposed to be offered for similar wholesale for resale service.

No installations or modifications of any facilities are required to supply the service furnished under the System Exchange Agreements, as proposed to be amended.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of Colorado

[Docket No. ER85-559-000]

Take notice that Public Service Company of Colorado (Public Service) on June 3, 1985, tendered for filing a proposed change in its Contract for Interconnection and Transmission Service (Contract) with the United States Department of Energy, Western Area Power Administration (WAPA). Public Service states that the proposed change is Supplement No. 13 to Public Service's Contract with WAPA, dated May 9, 1962, on file with the Commission under Company's FERC Rate Schedule No. 7.

Public Service states that the purpose of Supplement No. 13 is to lease the Greeley Substation from the United States in order to provide service to its customers in the Greeley, Colorado area.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: June 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

20. Rochester Gas and Electric Corporation

[Docket No. ER85-550-000]

Take notice that on May 31, 1985, Rochester Gas and Electric Corporation (RG&E) filed herewith six (6) copies of Supplement No. 2 to Rate Schedule FERC No. 25. This Supplement is filed pursuant to the terms of the agreement embodied in a letter from RG&E to the Power Authority of the State of New York ("Power Authority") dated November 23, 1982 (the "Agreement") previously filed as Supplement No. 1 to rate schedule FERC No. 25. The Agreement provides that the charges specified therein for firm transmission service shall be subject to modification during each odd-numbered year following the effective date of July 1, 1983, upon unilateral filing by RG&E with FERC.

RG&E requests an effective date for Supplement No. 2 of August 1, 1985, which is more than 60 days after this filing. However, pursuant to that provision of the Agreement which provides that notice of modified charges to the date on which it will be obligated to pay such modified charges, the Power Authority will not be obligated to pay the new rate provided under Supplement No. 2 until November 1, 1985 in any event. Accordingly, RG&E submits that any suspension of Supplement No. 2 need not extend beyond a one day period in this instance.

The rate increase requested in Supplement No. 2 is less than $200,000 for the 12 months ending December 31, 1984, which RG&E has used as its Period I. 18 CFR and information to meet the abbreviated filing requirements set forth in 18 CFR 35.13(a)(2). This information is annexed as Exhibit 1.

The New rate for transmission service set forth in Supplement No. 2 is $3.10/kW billing demand. As demonstrated in Schedules B and C to Exhibit 1, RG&E's costs of transmission service fully justify this rate. Indeed, this rate merely brings RG&E's charge for this service up to the approximate level demonstrated to be justified over two years ago in similar documents acompanying the filing of the Agreement (Supplement No. 1).

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

21. The Toledo Edison Company

[Docket No. ER85-549-000]

Take notice that on May 30, 1985, The Toledo Edison Company (Toledo) submitted for filing a Supplemental Resale Service Rate Agreement dated as of June 1, 1985 between Toledo and American Municipal Power-Ohio, Inc. (AMP-Ohio).

Toledo states that under the enclosed Supplemental Resale Service Rate Agreement, Toledo will supply supplemental power and energy needed by AMP-Ohio to meet the needs of municipal electric systems in Ohio during June, July and August 1985. Toledo states that the rates, terms and conditions have been established by negotiation, and will help AMP-Ohio to reduce its bulk power supply costs while enabling Toledo to increase its sales to AMP-Ohio.

Toledo requests an effective date of June 1, 1985.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

22. Union Electric Company

[Docket No. ER85-543-000]

Take notice that Union Electric Company, on May 28, 1985, tendered for filing First Amendment dated March 5, 1985, to the Wholesale Electric Service Agreement dated September 29, 1978 between Citizens Electric Corporation, and Union Electric Company.

Union Electric states the purpose of the Amendment is to provide for new and revised meter correction factors at certain delivery points.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

23. Virginia Electric and Power Company

[Docket No. ER85-544-000]

Take notice that on May 28, Virginia Electric and Power Company (The Company) filed a revised Page 7 to the Agreement for Transmission Use and Other Service Between Virginia Electric and Power Company and North Carolina Municipal Power Agency Number 3, now North Carolina Eastern Municipal Power Agency. The only change is a reduction in Facilities Charge for leased facilities as a result of elimination of the North Carolina Gross Receipts Tax.

The Company requests an effective date of January 1, 1985, and, therefore, requests waiver of the notice requirements.

Copies of the rate change were filed upon the affected customer and the North Carolina Utilities Commission.

Comment date: June 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14627 Filed 6-17-85; 8:45 am]

BILLING CODE 6717-01-M

Southwestern Power Administration

Federal Hydroelectric Power—Proposed Power Allocation Policy

AGENCY: Southwestern Power Administration, DOE.

ACTION: Proposed policy for the allocation of power and energy from new Federal hydroelectric power projects constructed with non-Federal funds.

SUMMARY: In 1980, the Southwestern Power Administration (SWPA) adopted a power allocation which allocated existing and future Federal hydroelectric peaking capacity and associated energy, hereinafter referred to as power, to preference customers in the SWPA marketing area. That power allocation was published in the **Federal Register** (45 FR 19032) dated March 24, 1980.

By letter dated January 24, 1984, President Reagan set forth a policy which requires Federal agencies to negotiate reasonable non-Federal funding prior to the start of construction for new Federal hydroelectric power projects (new projects).

The 1980 SWPA power allocation does not address the construction of

new projects with funds advanced by non-Federal entities. A notice of intent to develop additional power and energy allocation policy with published in the Federal Register (50 FR 7639) dated February 25, 1985. Interested parties were invited to comment by March 27, 1985.

SWPA has carefully considered all of the comments and hereby announces a proposed policy for the allocation of power and energy to be generated from new projects. The proposed procedure allocates power and energy available for marketing which results from the construction of new projects. The selection of non-Federal entities willing to provide funding prior to the start of construction for new projects will be a joint effort of SWPA and the U.S. Army Corps of Engineers (Corps). Selection procedures for project sponsor selection and criteria are being developed by SWPA and the Corps.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, Department of Energy, PO Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

SUPPLEMENTARY INFORMATION: The SWPA markets hydroelectric power and energy from 23 operating multipurpose projects constructed and operated by the Corps. The SWPA's marketing area includes the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and a portion of Texas.

The Corps has identified the new projects shown in the following table as economically feasible and environmentally acceptable. SWPA supports the construction of those projects. Additional hydroelectric power projects are being studied by the Corps. All of the proposed projects will probably require advance non-Federal funding.

PROPOSED CORPS OF ENGINEERS PROJECTS SUPPORTED BY SWPA

Proposed project	River basin	State	Installed capacity (in MWs)	Average annual energy (in GWH's)
Mayo Lock and Dam	Arkansas	OK	44.0	171.4
Murray Lock and Dam	do	AR	43.75	205.7
Fort Gibson	Grand	OK	22.5	38.9
Denison	Red	TX	70.0	50.2
Lock and Dam No. 13	Arkansas	AR	37.5	167.0
Lock and Dam No. 9	do	AR	37.5	194.0
Toad Suck Ferry Lock and Dam	do	AR	15.0	77.1
Town Bluff Dam	Neches	TX	6.0	35.9
Lock and Dam No. 26	Mississippi	IL	156.0	708.0
Columbia Lock and Dam	Ouachita	LA	6.7	26.7
Kaw Dam	Arkansas	OK	95.0	150.6
Norfork Units, 3 and 4	North Fork	AR	85.0	4.4
Lock and Dam No. 2	Arkansas	AR	107.64	384.5
Lock and Dam No. 3	do	AR	36.68	154.3
Lock and Dam No. 4	do	AR	26.84	123.0
Lock and Dam No. 5	do	AR	33.36	154.6
David Terry L and D	do	AR	33.36	154.6
Belton Dam	Brazos	TX	1.4	8.2
Lock and Dam No. 1	Red	LA	25.0	58.0
Lock and Dam No. 2	do	LA	35.0	114.5
Lock and Dam No. 3	do	LA	57.0	197.0
Lock and Dam No. 4	do	LA	33.9	122.0
Lock and Dam No. 5	do	LA	43.1	151.0
Totals			1,052.33	3,449.6

SWPA subscribes to the following general principles regarding new projects: First, hydroelectric power projects which are economically feasible and environmentally acceptable should be developed. Second, new generation and/or transmission projects should represent the lowest cost, long term power and energy supply to customers consistent with sound business principles. Finally public bodies and cooperatives should have preference in receiving the power from those Federal projects.

Copies of the following Proposed Power Allocation Policy will be mailed to all SWPA customers, state agencies and other Federal and non-Federal agencies and other interested parties.

Comments on the Proposed Power Allocation Policy are invited by July 18, 1985 and should be addressed to: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

Issued in Tulsa, Oklahoma, June 3, 1985.

Ronald H. Wilkerson,

Administrator.

Southwestern Power Administration (Proposed Power Allocation Policy)

Introduction

In 1980, the Southwestern Power Administration (SWPA) adopted a power allocation which allocated existing and future Federal hydroelectric power to preference customers in the SWPA marketing area. That power allocation was published in the Federal Register (45 FR 19032) dated March 24, 1980.

By letter dated January 24, 1984, President Reagan set forth a policy which requires Federal agencies to negotiate reasonable non-Federal funding prior to the start of construction for new Federal hydroelectric power projects (new projects).

The Southwestern Power Administration supports the development of 23 hydroelectric power projects which have been proposed by the Corps. Additional projects are being studied by the Corps.

A notice of intent to develop additional power and energy allocation policy was published in the Federal Register (50 FR 7639) dated February 25, 1985. Written comments were due by March 27, 1985. Eleven letters containing comments were received. Some of the comments pertained to the selection of financial sponsors and were outside the scope of the Notice. However, those comments will be considered when financial sponsor selection criteria are developed with the Corps of Engineers.

Public Participation

Summaries of the major comments concerning the intent to develop a new power allocation policy and SWPA's responses follow:

a. *Comment*—The new SWPA Allocation policy must be based on the principles inherent in Section 5 of the 1944 Flood Control Act.

SWPA Response—SWPA concurs with this comment.

b. *Comment*—Those preference customers which provide advance funding for new projects should be allocated power and energy from those projects.

SWPA Response—SWPA concurs with this comment.

c. *Comment*—Preference customers should be allocated power and energy in proportion to the amount of funds provided for development of new projects.

SWPA Response—SWPA agrees with this comment in principle, where the financing entity receives power and energy from the new project subject to inherent hydrological and operational limitations. However, in those instances where the sponsoring entity wants dependable power and firm energy from the SWPA interconnected system, the quantity of power and energy deliverable to the sponsoring entity would be dependent on the contribution of power and energy from the new project to the SWPA interconnected system.

d. *Comment*—New projects funded by non-preference entities or through Federal appropriation should be allocated in accordance with present policy.

SWPA Response—SWPA concurs with this comment provided the non-preference entities which provide funding (project sponsors) do not want power. SWPA will require that preference be given to public bodies and cooperatives in the selection of project sponsors.

e. *Comment*—A profit should not be made on the sale of power from a Federal project.

SWPA Response—Current law requires that power and energy delivered from federally financed projects be sold at the lowest possible cost, consistent with sound business principles. However, the principle of non-Federal financing of federal projects presupposes that the sponsoring non-Federal entity will receive a reasonable return on investment in exchange for project financing.

f. *Comment*—Projects constructed under a Federal Energy, Regulatory Commission license should not be subject to allocation.

SWPA Response—SWPA concurs with this comment. Section 5 of the Flood Control Act of 1944 limits SWPA marketing authority to those projects under control of the Secretary of the Army.

g. *Comment*—The non-interconnected part of Texas (within the ERCOT area) has not received a fair share of SWPA market power.

SWPA Response—SWPA concurs with this comment. The amount of power allocated to the non-interconnected part of Texas was limited due to transmission availability. Additional power could be allocated from new projects outside of the non-interconnected part of Texas provided that delivery into that area were economically feasible and institutionally acceptable.

h. *Comment*—Those entities which provide advance funding of new projects should receive power allocations for the useful life of the projects or 50 years.

SWPA Response—The duration of power allocations from new projects will be negotiated. SWPA does not anticipate that any such allocation would exceed a period of fifty years.

i. *Comment*—Preference customers should have the right to buy investor-owned utiliteis' interest in Federal power projects.

SWPA Response—If an investor-owned utility receives power from a Federal project in return for project financing, preference customers would be free to negotiate directly with the investor-owned utility concerning their interests during the term of the financing contract between the givernment and the utility. After the term of the financing contract SWPA would allocate the power from the project in accordance with the 1980 Final Power Allocation.

j. *Comment*—Allocations should not be limited on the basis of existing transmission facilities.

SWPA Response—SWPA concurs with this comment. However, power allocations to the non-interconnected portion of Texas would be dependent on developing an economical method to deliver power to that area.

k. *Comment*—The allocation of power for financing should be without prejudice to present or future allocations under 1980 allocation policy.

SWPA Response—SWPA will consider the amount of SWPA power and energy previously allocated to applicants for non-Federal power allocations as part of the sponsor selection process.

l. *Comment*—A fixed percentage of power produced at Federal projects should be allocated to preference customers in the state where the power and energy is generated.

SWPA Response—Adoption of this proposal would be incosistent with Section 5 of the Flood Control Act of 1944, which requires "widespread use" of Federally marketed power.

m. *Comment*—SWPA should provide additional opportunity for notice and comment before issuance of final policy.

SWPA Response—SWPA has provided an additional opportunity for public participation in this announcement.

n. *Comment*—The scheduling rights of customers from an existing project should not be impacted by an addition to that existing project.

SWPA Response—An addition to an existing project will not impact on an existing customer's scheduling rights throughout the term of that customer's power sales contract. However, at the expiration of that contract, SWPA may market the total project output at its discretion.

o. *Comment*—The ERCOT area of Texas should receive first priority in the development of new resources.

SWPA Response—Priority in the development of new Federal resources is dependent on many factors including, but not limited, to economic feasibility, environmental acceptability, social and institutional concerns, and availability of project sponsors.

p. *Comment*—Incentives should be provided to encourage the expenditure of non-Federal capital at new projects, for example: (1) Reduction of Federal fees such as user fees and falling water charges; (2) Reduction in operating, maintenance, or rehabilitation cost; (3) Increasing term of license from 50 to 100 years; (4) Increasing flow on run-of-river projects by systematizing releases of pooled water; (5) Basing cost on average system costs of the SWPA system, rather than on isolated project costs.

SWPA Response—The incentives listed and others would be considered in non-Federal proposals to provide funds for new project development.

Proposed Policy for the Allocation of Power and Energy From New Federal Hydroelectric Power Projects.

The Southwestern Power Administration (SWPA) shall allocate hydroelectric power from Federal projects constructed with Federal funds in accordance with the Final Power Allocation of March 24, 1980 (45 FR 19032). Power and energy generated from Federal hydroelectric power projects constructed with non-Federal funds will generally be apportioned as follows: First, if a portion of the construction cost is to be provided by the government, then the percentage of the marketable power equivalent to the percentage of construction funds provided by the government shall be allocated in accordance with the Final Power Allocation. Then allocation of the remaining power equivalent to the percentage of construction funds provided by non-Federal entities (up to 100% of the construction cost) shall be allocated as follows:

a. If a non-Federal entity provides funds for a Federal hydroelectric power project and wants Federal hydroelectric power, SWPA shall allocate to the entity an amount of marketable power and energy not to exceed the percentage of construction funds provided by the entity.

b. If a non-Federal entity provides funds for a Federal hydroelectric power project and does not want Federal

hydroelectric power or energy, SWPA shall allocate a percentage of the marketable power and energy equivalent to the percentage of construction funds provided by that entity in accordance with the Final Power Allocation with preference given to municipalities and public bodies.

[FR Doc. 85-14577 Filed 6-17-85; 8:45 am]
BILLING CODE 6450-01-M

Proposed System Power Rates; Opportunities for Public Review and Comment

AGENCY: Southwestern Power Administration (SWPA), DOE.

ACTION: Notice of Proposed System Power Rates and Opportunity for Public Review and Comment.

SUMMARY: The administrator, SWPA, has prepared Current and Revised 1985 Power Repayment Studies which show the need for a minor increase in annual revenues to meet cost recovery criteria for the Integrated System projects. The Administrator has also developed proposed system rate schedules to recover the required revenues. The proposed rates would increase annual revenues approximately 0.7 percent, from $105,355,300 to $106,111,900 beginning October 1, 1985. This would be accomplished through an increase of approximately one percent (1%) in the monthly demand charge to recover increased operating costs. A second element of the rates, the purchased power adders, which produce revenues segregated to cover system purchase power cost, will be reduced as a result of good water conditions. The effect of this reduction, when combined with the increased demand charge, will be an overall rate decrease of one to three percent for customers affected by the purchased power adders and an increase of approximately one percent for others. Other proposed rate schedule revisions include limiting the effective period of penalties applied for capacity overruns, clarifying billing adjustments for conditions of service and reductions in service, implementing power factor penalties in peaking rate schedules and adding a reference year to rate schedule designations. Opportunity is presented for customers and other interested persons to receive copies of the studies and proposed rate schedules, and to submit comments. Following review of comments and other information received, the Administrator will submit a rate proposal to the Deputy Secretary of Energy for confirmation and approval on an interim basis and to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow an opportunity to comment on the proposed rates before making a final decision.

DATE: Written comments are due on or before July 18, 1985.

ADDRESS: Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95-91, dated August 4, 1977, and SWPA's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977.

SWPA markets power from 23 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas. SWPA's marketing area includes these States plus Kansas and Louisiana.

One project (Sam Rayburn) is isolated hydraulically and electrically from SWPA's transmission system and is marketed under a contract through which the customer purchases the entire power output of the project at the dam. A separate power repayment study is prepared for the project which has a special rate that does not effect this proposal. The 22 projects to which the proposed rate schedules apply are interconnected through SWPA's transmission system and exchange agreements with other utilities.

Following departmental guidelines, the Administrator, SWPA, prepared a current power repayment study using the existing rates for the Integrated System projects. This study shows that the legal requirement to repay the power investment with interest will not be met without additional revenue. A revised power repayment study was then made which shows that additional annual revenue of $756,600 is needed (a 0.7 percent increase) to satisfy repayment criteria. SWPA proposes to accomplish this by adding three cents ($.03) per kW to the monthly capacity charge for Rate Schedules P-4, P-4B, F-4A and F-4B (to be redesignated P-84A, P-84B, F-84A and F-84B, respectively). The proposed increase in revenue from $105,355,300 to $106,111,900 would satisfy the present financial criteria for repayment of investment and related costs within the required number of years. SWPA has also analyzed the purchased power adders that have been in effect since approved by the FERC in August 1983. The 2 mill ($.002) per kWh adder applied to peaking and Federally-generated Borderline Sales and the 5 mill ($.005) per kWh adder applied to Firm Sales has provided an accumulated revenue credit through May 1985. SWPA proposes lowering the adders by ½ million ($.0005) per kwh as a credit to customers during the next rate period. The effect of this reduction, when combined with the increase in the monthly demand charge will be an overall decrease of one to three percent for the customers affected by the purchased power adders and an increase of approximately one percent for others.

SWPA also proposes relaxing the penalty for unauthorized power overruns on Rate Schedule P-4 (P-84B) and F-4A (F-84A) during the period 10:00 p.m. to 6:00 a.m. In addition, SWPA proposes clarifying conditions of service charges for deliveries made at two or more voltages and revising the billing adjustment for reductions in service in Rate Schedules P-4 (P-84A) and P-4B (P-84B) to recognize the quantity of kilowatt hours scheduled during a month. SWPA also proposes adding billing adjustments for low power factors to the two Peaking Rate Schedules.

Copies fo SWPA's 1985 Power Repayment Study data are available to SWPA's customers and others who have expressed an interest. Below is a comparision of the existing rates and the proposed rates including Rate Schedule P-48 (P-84B) which was approved on an interim basis May 21, 1985, by the Deputy Secretary of Energy in Rate Order No. SWPA-17 to become effective July 1, 1985:

	Rate schedule P-4	Rate schedule P-84A
	Existing	Proposed
Capacity:		
@ 138–169 kV	$2.22/kW/mo	$2.25/kW/mo.
@ 69 kV	+ .25/kW/mo	+ .25/kW/mo.
@ Load center or less than 69 kV	+ .75/kW/mo	+ .75/kW/mo.
Energy	$.0035/kWh of peaking energy and supplemental peaking energy plus a purchased power adjustment of $0.002/kWh of peaking energy.	$.0035/kWh of peaking energy and supplemental peaking energy plus a purchased power adjustment of $0.002/kWh of peaking energy less a credit of $.0005 per kWh of peaking energy.
	Rate schedule P-4B	Rate schedule P-84B
Capacity	$2.97/kW/mo	$3.00/kW/mo.
Energy	$.0035/kWh of peaking energy and supplemental peaking energy plus a purchased power adjustment of $0.002/kWh of peaking energy.	$.0035/kWh of peaking energy and supplemental peaking energy plus a purchased power adjustment of $0.002/kWh of peaking energy less a credit of $.0005/kWh of peaking energy.
	Rate schedule F-4A	Rate schedule F-84A
Capacity:		
@ 138–169 kV	$2.22/kW/mo	$2.25/kW/mo.
@ 69 kV	+ .25/kW/mo	+ .25/kW/mo.
@ Load center or less than 69 kV	+ .75/kW/mo	+ .75/kW/mo.
Energy	$.0035/kWh of firm energy plus a purchased power adjustment of $0.005/kWh of firm energy.	$.0035/kWh of firm energy plus a purchased power adjustment of $0.005/kWh of firm energy less a credit of 0.0005/kWh of firm energy.
	Rate schedule F-4B	Rate schedule F-84B
Capacity	$2.97/kW/mo	$3.00/kW/mo.
Energy	$.0035/kWh of federally-generated firm energy, plus a purchased power adjustment of $0.002/kWh of "Federal energy" (defined as 1,200 kWh of energy per kW of capacity during each contract year) plus an amount in dollars equal to the actual cost to SWPA of thermal-generated energy purchased by SWPA from the Oklahoma utility companies for service to the customer.	$.0035/kWh of federally-generated firm energy, plus a purchased power adjustment of $0.002/kWh of "Federal energy" less a credit of $0.0005 per kWh of "Federal Energy" (defined as 1,200 kWh of energy per kW of capacity during each contract year) plus an amount in dollars equal to the actual cost to SWPA of thermal-generated energy purchased by SWPA from the Oklahoma utility companies for service to the customer.
	Rate schedule EE-82	
Energy	$.0035/kWh	$.00354/kWh.
	Rate schedule IC-82	
Capacity	$.075/kW/day of interruptible capacity	$.075/kW/day of interruptible capacity.
Energy	$.0035/kWh	$.0035/kWh.

Written comments on the proposed Integrated System power rates are due on or before thirty (30) days following the date of publication of this notice in the **Federal Register**. Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101. Following review of the written comments and the information gathered in the course of the proceedings, the Administrator will submit a rate proposal to the Deputy Secretary of Energy for confirmation and approval on an interim basis and to the FERC for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the rate filing before making a final decision.

Issued in Tulsa, Oklahoma, June 7, 1985.

Charles A. Borchardt,

Acting Administrator, Southwestern Power Administration.

[FR Doc. 85–14576 Filed 6–17–85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85–144]

Digital Paging Systems, Inc., et al.; Memorandum Opinion and Order

In re Applications of Digital Paging Systems, Inc. Filed No. 50049–CM–P–74, and Private Networks, Inc. File No. 50169–CM–P–74, and Midwest Corp. File No. 50173–CM–P–74, and M.C.C.A. Service Corp. File No. 50198–CM–P–74, For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at Denver, CO.

Adopted May 8, 1985.
Released June 7, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Denver, Colorado. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered. That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its

Comment

(d) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Digital Paging Systems, Inc., Private Networks, Inc., Midwest Corporation, M.C.C.A. Service Corporation and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al,* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-14587 Filed 6-17-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-149]

Digital Paging Systems et al.; Memorandum Opinion and Order

In re Applications of Digital Paging Systems, Inc. File No. 50034-CM-P-74, and Private Networks, Inc. File No. 50119-CM-P-74, and Midwest Corp. File No. 50145-CM-P-74, and M.C.C.A. Service Corp. File No. 50147-CM-P-74, For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at St. Louis, Mo.

Adopted May 10, 1985.
Released June 10, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at St. Louis, Missouri. The applications are therefore mutually exclusive and, under present procedures, required comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merit of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Digital Paging Systems, Inc., Private Networks, Inc., Midwest Corporation, M.C.C.A. Service Corporation and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al,* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-14585 Filed 6-17-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-162]

Digital Paging Systems, Inc., et al., Memorandum Opinion and Order

In re Applications of Digital Paging Systems, Inc. File No. 50085-CM-P-74, and Private Networks, Inc. File No. 50181-CM-P-74, and Midwest Corporation File No. 50025-CM-P-75, and Multipoint Information Systems, Inc. File No. 50033-CM-P-75, For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at Boston, MA.

Adopted May 15, 1985.
Released June 10, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Boston, Massachusetts. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as a result of informal requests by the Commission's staff for

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petition. PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Denver, Colorado, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

[1] Private Networks, Inc. [PNI] filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including St. Louis, Missouri where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, *it is hereby ordered*, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. *It is further ordered*, That Digital Paging Systems, Inc., Private Networks, Inc., Midwest Corporation, Multipoint Information Systems, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. *It is further ordered*, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. *It is further ordered*, That any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-14588 Filed 6-17-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Boston, Massachusetts, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

[CC Docket No. 85-187]

Richard L. Vail et al., Memorandum Opinion and Order

In re Applications of Richard L. Vail File No. 50149-CM-P-82, and Tekkom, Inc. File No. 50150-CM-P-82, and American Communications Systems Corp. File No. 50216-CM-P-82, and Becker Broadcasting File No. 50239-CM-P-82, and New Mexico Media Co. File No. 50250-CM-P-82, For Construction Permits in the Multipoint Distribution Service for a new station at Santa Fe, NM.

Adopted May 31, 1985.

Released June 10, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and the proposed operations on Channel 1 at Santa Fe, New Mexico. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 USC § 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Richard L. Vail, Tekkom Inc., American Communications Systems Corp., Becker Broadcasting, New Mexico Media Company, and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-14586 Filed 6-17-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0106

Title: Flooded Property Purchase Program

Abstract: Section 1362 of the National Flood Insurance Act of 1968 (Pub. L. 90-488) as amended (42 U.S.C. 4103)

authorizes FEMA to purchase severely or repetitively damaged insured properties to reduce future Federal disaster costs. The forms will be used to collect data which determines eligibility, funding priorities and cost effectiveness.

Type of respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Non-Profit Institutions, Small Businesses or Organizations

Number of Respondents: 100

Burden Hours: 50

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC. 20503.

Dated: June 11, 1985.

Warren Colpe,

Chief, Space and Property Management Division.

[FR Doc. 85–14542 Filed 6–17–85; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–737–DR]

Amendment to Notice of a Major-Disaster Declaration; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–737–DR), dated June 3, 1985, and related determinations.

DATED: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3616.

Notice: The notice of a major disaster for the Commonwealth of Pennsylvania, dated June 3, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 1985:

Beaver, Northumberland, Union, and Venango Counties for Public Assistance

Forward, Jackson, Clinton, and Middlesex Townships in Butler County for Public Assistance

Bastress, Brady, and Washington Townships in Lycoming County for Public Assistance

Limestone Township in Warren County for Public Assistance.

(Catalog of Federal Domesic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–14545 Filed 6–17–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–736–DR]

Amendment to Notice of a Major-Disaster Declaration; Puerto Rico

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–736–DR), dated May 31, 1985, and related determinations.

DATED: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3616.

Notice: The notice of a major disaster for the Commonwealth of Puerto Rico, dated May 31, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 31, 1985:

The Municipalities of Anasco, Barranquitas, Las Piedras, Villalba, and Yabucoa for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–14544 Filed 6–17–85; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Agreement No. 224–010763]

Agreement Between the South Carolina State Ports Authority (Authority) and Evergreen Marine Corp. (Taiwan) Ltd. (Evergreen); Erratum

The **Federal Register** Notice published on June 3, 1985, (Vol. 50, No. 106, Pg. 23360), covering Agreement No. 224–010763, inadvertently omitted the second five-year extension period for the term of the agreement. It should have read that the initial term shall run for five years, with two additional optional renewal periods of five years each.

By Order of the Federal Maritime Commission.

Dated: June 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85– 14580 Filed 6–17–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Wisconsin Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1)) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than July 8, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to expand *de novo* the geographic scope of its general insurance agency activities to include the entire United States, through its subsidiary, First Wisconsin Insurance Services, Inc., Milwaukee, Wisconsin, pursuant to 4(c)(8)(G) of the Bank Holding Company Act.

2. *Northwest Suburban Bancorp, Inc.*, Mount Prospect, Illinois; to engage *de novo* through its subsidiary, NSB Finance, Inc., Mount Prospect, Illinois, in making and servicing loans and leasing personal or real property.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission-Valley Bancorp*, Pleasanton, California; to engage *de novo* directly in the activities of arranging and brokering residential, commercial and construction loans.

2. *Mission-Valley Bancorp*, Pleasanton, California; to engage *de novo* directly in the activities of leasing personal and real property and acting as an agent, broker or advisor in leasing such property.

Board of Governors of the Federal Reserve System, June 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14547 Filed 6-17-85; 8:45 am]

BILLING CODE 6210-01-M

National Commerce Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *National Commerce Corporation*, Birmingham, Alabama; to engage *de novo* directly in the activities of making, acquiring, or servicing loans or other extensions of credit from an office located in Birmingham, Alabama.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kaw Valley Bancshares, Inc.*, Kansas City, Kansas; to engage *de novo* through its subsidiary, Strawbery Hill Insurance Agency, Inc., Kansas City, Kansas, in the activities of acting as agent in the sale of credit related life insurance; and to engage in general insurance agency activities, except that life insurance, other than as prescribed above, and annuities will not be sold, pursuant to section 4(c)(8)(F) of the Bank Holding Company Act.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sabine Bancshares, Inc.*, Many, Louisiana; to engage *de novo* through its subsidiary, Sabine Leasing, Inc., Many, Louisiana, in the leasing of personal or real property.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Lloyds Bank, Plc* and *Lloyds Bank International Limited*, both in London, England; to continue to engage in the activity of soliciting loans and other extensions of credit and the marketing of commercial banking credit services to existing and potential corporate customers, through its subsidiary, Lloyds (New Orleans) Incorporated, New Orleans, Louisiana, and to extend the geographic area served to include the entire United States.

Board of Governors of the Federal Reserve System, June 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14548 Filed 6-17-85; 8:45 am]

BILLING CODE 6210-01-M

UST Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 11, 1985.

Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *UST Corp.*, Boston, Massachusetts; to acquire 100 percent of the voting shares of Gloucester National Bank of Gloucester, Gloucester, Massachusetts.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Commonwealth Financial Corporation*, Indiana, Pennsylvania; to acquire 100 percent of the voting shares

of The Dale National Bank, Johnstown, Pennsylvania.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Seacoast Banking Corporation of Florida*, Stuart, Florida; to acquire 100 percent of the voting shares of First National Bank and Trust Company/St. Lucie County, Port St. Lucie, Florida.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Diboll State Bancshares, Inc.*, Diboll, Texas; to acquire 80 percent of the voting shares of Peoples National Bank, Lufkin, Texas.

Board of Governors of the Federal Reserve System, June 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14549 Filed 6-17-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements; Preventive Health Services; Acquired Immunodeficiency Syndrome (AIDS) Surveillance and Associated Epidemiologic Investigations; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for new cooperative agreements for Acquired Immunodeficiency Syndrome (AIDS) active surveillance and associated epidemiologic investigations. The Catalog of Federal Domestic Assistance Number is 13.118. This program is authorized by section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. Office of Management and Budget clearance may be required for this project.

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa, which have either:

A. Reported at least 50 AIDS cases that meet the CDC surveillance case definition:

1. Presence of reliably diagnosed disease at least moderately indicative of underlying cellular immune deficiency (e.g., Kaposi's sarcoma in patients who are less than 60 years of age or patients with *Pneumocystis carinii* pneumonia or other opportunistic infections); and

2. Absence of known causes of underlying immune deficiency and of any other reduced resistance reported to be associated with the disease; or

B. Documented at least 50 patients with well-characterized symptoms of the AIDS-related complex (ARC), which may represent mild or early AIDS (i.e., prolonged and unexplained generalized lymphadenopathy, thrombocytopenia, thrush, etc.).

Eligible State and local health agencies are strongly encouraged to coordinate their request for assistance, ideally in a single application, to ensure the most efficient use of State, local, and Federal resources.

Applicants must demonstrate that AIDS surveillance and associated epidemiologic investigations cooperative agreement funds will be used primarily for activities to improve the identification and reporting of AIDS and ARC cases, conduct epidemiologic investigations of selected cases, and establish a central registry of cases in the official public health department.

Evaluation and ranking of new surveillance applications will be based on the following factors:

1. The total number of AIDS cases reported since June 1981 that meet the CDC surveillance case definition.

2. The total number of patients with well-characterized symptoms which may represent mild or early AIDS.

3. The applicant's understanding of the AIDS problem and the purpose of the cooperative agreement.

4. The qualifications and time allocation of the proposed staff and a description of how the project will be administered.

5. A proposed schedule for accomplishing the activities of the cooperative agreement, including time frames.

6. The applicant's current activities in AIDS surveillance and research including relationships to other AIDS investigators in the area.

7. How the applicant will develop and implement a surveillance system for AIDS among physicians and hospitals, including establishing and maintaining a central registry of cases, and how epidemiologic investigations of selected cases (e.g., cases assocated with blood transfusions) will be conducted.

8. Demonstration of close collaboration and working relationships between the public health department and those medical institutions diagnosing and treating patients with AIDS and related illnesses.

Objectives and cooperative activities

A. Objective

The objective of these cooperative agreements is to assist high priority areas in designing and implementing active surveillance for AIDS and associated epidemiologic investigations to determine incidence trends, identify risk groups and risk factors, and provide opportunities for epidemiologic and laboratory studies of AIDS and related disorders.

B. Cooperative Activities

The collaborative and programmatic involvement of CDE and recipients of funds is as follows:

1. *Recipient Agency Activities.* a. Design and conduct surveillance activities directed to improving the reporting of all AIDS cases and suspected cases diagnosed in the public health agency's geographic jurisdiction.

b. Establish systems with physicians, hospitals or clinics, cancer registries, laboratories, and other public health agencies for identifying and reporting cases.

c. Develop and maintain a central registry of all reported cases which includes epidemiologic and clinical information for individual cases, and which allows for rapid, uniform updates and retrieval of case information for regular and special tabulations of data for analysis.

d. Evaluate the effectiveness of surveillance approaches.

e. Conduct epidemiologic investigations of cases that have no identifiable risk factors including possible blood transfusion related cases and their donors.

f. In consultation with CDC, analyze, present, and publish the results of surveillance activities and epidemiologic investigations.

2. *Centers for Disease Control Activities.* a. Collaborate in the design, development, and implementation of surveillance and associated epidemiologic investigations including specific approaches to AIDS surveillance and epidemiologic investigations, methods for establishing and maintaining a central registry of cases, and publication of findings.

b. Provide criteria for the surveillance definition of AIDS cases and case report forms.

c. Assist the public health agencies in analyzing data from reported cases including incidence trends and groups at risk.

d. Provide onsite technical assistance in planning, operating, and evaluating surveillance activities.

e. Assist the public health agencies in conducting epidemiologic investigations of selected AIDS cases including those with no identifiable risk factors.

Progress reports of cooperative agreement activities will be submitted by the recipients of funds quarterly for the first year and semiannually thereafter. Financial status reports are required no later than 90 days after the end of a project period. Final financial status and progress reports are required 90 days after the end of a project period.

During Fiscal Year 1985, an estimated $1,280,161 will be available for this program. Awards totaling $680,161 have already been made to complete funding of approved applications submitted under a previous announcement. The balance of $600,000 will be used to make up to six new surveillance project awards ranging from $75,000–$125,000 each.

Applications should be submitted for a 1-year budget period and 1- to 3-year project period. Continuation awards within the project period will be made by CDC on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change due to budgetary uncertainties.

Cooperative agreement funds may be used to support personnel and to purchase supplies and services directly related to AIDS surveillance and epidemiologic investigation activities. Funds may not be used to supplant funds supporting existing AIDS activities provided by the health department or to support construction costs.

Applications for a new surveillance cooperative agreement must include a narrative which summarizes:

1. The background and need for project support including information that relates to factors by which the applications will be evaluated.

2. The objectives of the proposed project which are consistent with the purpose of the cooperative agreement and which are measurable and time-phased.

3. The methods that will be used to accomplish the objectives of active surveillance and epidemiologic investigations of selected cases including those with no identifiable risk factors.

4. The methods that will be used to evaluate the success of active surveillance and epidemiologic investigations.

5. Fiscal information pursuant to utilization of awarded funds in a manner consistent with the purpose and objectives of the project.

6. Any other information that will support the request for assistance.

The original and one copy of the application must be submitted on or before 4:30 p.m. (e.d.t.) on July 31, 1985, to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia, 30305. One additional copy should be simultaneously submitted to the appropriate Department of Health and Human Services Regional Office listed below.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date 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.)

Applications which do not meet the criteria in either paragraphs 1. or 2. above are considered late applications and will not be considered in the current competition.

Applications are not subject to the review requirements of the National Health Planning and Resources Development Act of 1974, as amended, and are not subject to intergovernmental review pursuant to Executive Order 12372.

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, N.E., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575, or FTS 236–6575. Technical assistance may be obtained from Lawrence D. Zyla, telephone (404) 329–3651 (FTS 236–3651), or E. Thomas Starcher, telephone (404) 329–3472 (FTS 236–3472), AIDS Activity, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333.

Dated: June 12, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827

Regional Health Administrator, PHS, HHS Region III, Gateway Building No. 1, 3521–35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353–1385

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810

Regional Health Administrator, PHS, HHS Region II, Federal Building 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264–2561

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Towers, Suite 1007, Atlanta, Georgia 30323, (404) 221–2316

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 South Street, Denver, Colorado 80294, (303) 844–6163

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S./402, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 85–14714 Filed 6–17–85; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a Georgia State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 24, 1985 in Atlanta, Georgia to reconsider our decision to disapprove Georgia State Plan Amendment 84–23.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore,

Maryland 21207. Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Georgia State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Georgia's amendment which would provide Medicaid under section 42 CFR 435.113 to families who are denied AFDC benefits because of consideration of sibling income and income deemed from parent(s) of a minor caretaker violates Federal regulations at section 42 CFR 435.113.

Section 42 CFR 435.113 requires States to provide Medicaid to individuals who would be eligible for AFDC except for an eligibility requirement used in that program that is specifically prohibited under title XIX. HCFA has determined the portion of Georgia's amendment which would provide Medicaid coverage to families denied AFDC due to consideration of sibling income is not approvable because consideration of sibling income is not specifically prohibited under title XIX under these circumstances. Section 402(a)(38) of the Social Security Act which provides for the consideration of sibling income is interpreted by the AFDC program as merely specifying who must apply for assistance. It does not change the income determination methodology, which has always taken into account the income and needs of all members of the filing unit in determining the eligibility of the unit. Thus, the siblings income is being considered in determining his or her own eligibility as part of a unit and the siblings are not being considered "financially responsible" for each other. Section 1902(a)(17)(D) does not prohibit the application of this requirement and, consequently, HCFA has determined section 42 CFR 435.113 does not require Medicaid coverage.

The notice to Georgia announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Ms. Vivian Davidson Egan,
Assistant Attorney General, 132 State Judicial Building, Atlanta, Georgia

Dear Ms. Egan: This is to advise you that your request for reconsideration of the decision to disapprove Georgia State Plan Amendment 84–23 was received on May 17, 1985. You have requested a reconsideration of whether the portion of this plan amendment which would provide Medicaid under section 42 CFR 435.113 to families who are denied AFDC benefits because of consideration of sibling income, conforms to the requirements for approval under the Social Security act and pertinent Federal regulations.

I am scheduling a hearing on your request to be held on July 24, 1985 at 10 a.m., in the 5th Floor Conference Room, 101 Marietta Tower, Spring and Marietta Streets, Atlanta, Georgia. If this date if not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 13116))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 13, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–14623 Filed 6–17–85; 8:45 am]

BILLING CODE 4120–03–M

Medicaid Program; Notice of Hearing: Reconsideration of the Disapproval of a Maryland State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 23, 1985 in Philadelphia, Pennsylvania to reconsider our decision to disapprove Maryland State Plan Amendment 84–16.

Closing date: Requests to participate in the hearing as a party must be received by the Docket Clerk July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Maryland State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Maryland's proposal to provide an exception to the current 20-day inpatient hospital limit for those recipients who receive care in out-of-State hospitals under a payment system based on diagnosis related groups (DRGs), and for those recipients receiving organ transplants in hospitals designated as national referral centers for nonexperimental organ transplants violates Federal regulations at 42 CFR 440.240(b). Federal regulations at 42 CFR 440.240(b) requires that a State's plan must provide that the services available to any individual in the categorically needy group or a covered medically

needy group are equal in amount, duration, and scope for all recipients within the group.

Under Maryland's proposal, Medicaid recipients with the same illnesses and in the same covered Medicaid group (categorically or medically needy) who receive care in Maryland hospital, or receive an organ transplant in a hospital that is not designated as a national referral center, would not receive the same amount of inpatient hospital days as those selected for exception by Maryland. Therefore, HCFA has determined that Maryland's proposed plan is in violation of the comparability requirement at 42 CFR 440.240(b).

The notice of Maryland announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Laurence B. Russell,
Assistant Attorney General, Office of the Attorney General, Department of Health and Mental Hygiene, 300 West Preston Street, Baltimore, Maryland

Dear Mr. Russell: This is to advise you that your request for reconsideration of the decision to disapprove Maryland State Plan Amendment 84–16 was received on May 16, 1985. You have requested a reconsideration of whether this plan amendment, which would provide an exception to the current 20-day inpatient hospital limit for those recipients who receive care in out-of-State hospitals under a payment system based on diagnosis related groups and for those recipients receiving organ transplants in hospitals, designated as national referral centers for nonexperimental organ transplants conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on July 23, 1985 at 10 a.m., in Room 3020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyn K. Davis, Ph.D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistnce Program)

Dated: June 13, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–14624 Filed 6–17–85; 8:45 am]

BILLING CODE 4120–03–M

Office of Human Development Services

Advisory Board on Child Abuse and Neglect; Meeting

Agency holding the meeting: Administration for Children, Youth and Families.

Time and date: 10:00 a.m. to 5:00 p.m.—Tuesday, July 9, 1985.

Place: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C., Room 703A.

Status: Advisory Board meetings are open for public observation. However, because of security precautions at all Government buildings, persons wishing to attend the meeting, but who do not have Government identification, should call the contact person listed below for information about access to the building.

Matters to be considered: At this meeting, the Advisory Board will discuss: Orientation of new members; coordination efforts among Federal agencies; plans for the 7th National Conference on Child Abuse and Neglect; and other matters of importance.

Contact person for more information: Arlene Taylor, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, D.C. 20013; (202) 245–2840.

Dated: June 12, 1985.

Carolyn Garnett,

HDS Committee Management Officer.

[FR Doc. 85–14529 Filed 6–17–85; 8:45 am]

BILLING CODE 4130–01–M

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685–92, February 25, 1970, as amended most recently in pertinent part 49 FR 10179–85, March 19, 1984), is amended to reflect a reorganization of the Center for Food and Safety and Applied Nutrition (CFSAN). The reorganization entails transferring the quality assurance activities from the Office of the Center Director to the Office of Management.

Section HF–B, Organization and Functions, is amended to delete paragraphs (k–1), and (k–1–i), in their entirety and replace them with new paragraphs (k–1), and (k–1–i), reading as follows:

(k–1) Office of the Center Director (HFF1). Develops, for approval of the Commissioner, agency policy on foods, food additives, color additives, and cosmetics, and implements this policy.

Provides overall executive direction to the Center programs and activities and coordinates programs with other agency organizational components, PHS, HHS, and other Government agencies.

Directs the development of the Center's regulatory, scientific, and management policy.

Recommends to the Office of the Commissioner new and revised legislation pertinent to the Center's responsibilities, and participates in the preparation of legislative proposals and testimony for presentation at congressional hearings.

Directs and coordinates the overall application of Center scientific and technical capabilities, coordinating the Center's scientific research within the agency and with other governmental and private agencies, both nationally and internationally, to facilitate collaboration in attacking common problems.

Establishes, promotes, and maintains a climate of mutual cooperation with scientists and scientific bodies, nationally and internationally, in order to maintain contact with scientific events which may influence the Center's activities.

(k–1–i) Office of Mangement (HFF17). Monitors the continuing developemnt and operation of strategic planning systems for the Center's activities and resource allocations; advises the Center Director on administrative policies and guidelines and scientific and technical information systems.

Provides direction and counsel to the Center's managers through development and performance of program evaluation and technological forecasting.

Plans and directs all of the Center's operations related to financial and personnel management, operations research, employee development and training, security, and safety management, laboratory safety and health, and veterinary medical services.

Establishes and conducts a quality assurance program to assure and maintain the highest level of quality and integrity for all Center laboratory

studies and processing of regulatory samples.

Provides technical support and facilities management to the Center in the area of engineering, visual information, supply, equipment, space, communications, printing, reproduction, and mail.

Directs the Center's automatic data processing (ADP) services, including planning contracts, equipment and software procurement, training and utilization of ADP systems and facilities, and information systems services (scientific literature searching, library services, and technical editing).

Plans and coordinates the Center's Equal Employment Opportunity Program.

Dated: June 10, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-14634 Filed 6-17-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1538]

Notice of 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: 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: Urban Homesteading Program
Office: Community Planning and Development
Form number: HUD-4027.1 and 4027.2
Frequency of submission: On Occasion, Monthly, Semi-annually, and Annually
Affected public: State or Local Governments
Estimated burden hours: 1,848
Status: Revision

Contact: Richard R. Burk, HUD (202) 755-5324, Robert Fishman, OMB, (202) 395-6880.

Dated: June 3, 1985.

Proposal: Urban Development Action Grant Program
Office: Community Planning and Development
Form number: SF-424, OPR:HUD-3440, HUD-3441, 3442, 3443, 3444, 3445, and 3446
Frequency of submission: On Occasion and Semi-annually
Affected public: State or Local Governments
Estimated burden hours: 71,155
Status: Reinstatement

Contact: Sheila Platoff, HUD (202) 755-7362, Robert Fishman, OMB, (202) 395-6880.

Dated: June 3, 1985.

Proposal: Project Self-Sufficiency Demonstration
Office: Policy Development and Research
Form number: None
Frequency of submission: Single-Time
Affected public: State or Local Governments
Estimated burden hours: 26,700
Status: Revision

Contact: Francetta White, HUD, (202) 755-5561, Robert Fishman, OMB, (202) 395-6880.

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: May 29, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-14593 Filed 6-17-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on July 2, 1985, at 9:00 a.m., Pacific Standard Time in Room 227 of the Federal Building at 211 E. 7th, Eugene, Oregon.

The agenda for the meeting will include: (1) A review of the proposed interchange of lands between the Forest Service and Bureau of Land Management; (2) summary of the proposed Bunker Hill timber sale. The Council will be asked to make a recommendation on both issues.

The meeting is open to the public. Interested persons may make oral statements to the Council, beginning approximately at 10:45 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401, by June 28. Depending on the number of persons wanting to make oral statements, a time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: June 12, 1985.

Melvin D. Clausen,

District Manager.

[FR Doc. 85-14539 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-33-M

[A-12830 et al.]

Arizona; Colorado River Front and Levee Works; Proposed Modification and Continuation of Withdrawal

June 7, 1985.

As a result of the review made pursuant to section 204(10 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Land Management, Department of the Interior, proposes to continue withdrawal of the lands listed below for a period of 20 years, rather than for an indefinite term. The withdrawal will be terminated as to 25,305.35 acres.

The land was withdrawn by the Bureau of Reclamation for control of the waters of the Colorado River and delivery of water to the States, irrigation districts, Indian reservations, and private land holdings with valid water rights; the Bureau's administrative responsibilities include the construction of storage reservoirs and control structures, river channelization, drainage of lowlands, and related resource development use.

The existing withdrawals, made by Secretarial orders issued pursuant to the Reclamation Act of June 17, 1902, segregate the lands from operation of the public land laws, including the mining laws. It is proposed to continue the segregation as to surface and mining entry; any areas now segregated against mineral leasing would be opened to leasing.

No other change in the segregative effect of the withdrawal or use of the land is proposed.

The following described land is included in the proposed modification:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 17 W.,
Sec. 17, All;
Sec. 18, Lots, 1, 2, 3, and 4, E½, E½W½;
Sec. 19, lots 3 and 4, SE¼SW¼;
Sec. 20, W½W½, W½SE¼SW¼;
Sec. 21, N½, N¼SW¼, SE¼SW¼, SE¼;
Sec. 27, S½NW¼;
Sec. 28, SW¼SW¼;
Sec. 29, NW¼NE¼NW¼, W½NW¼, S½;
Sec. 30, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 31, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 32, All;
Sec. 33, W½NW¼, SE¼NW¼, S½;
Sec. 34, SW¼NE¼, S½NW¼, S½;
Sec. 35, S½SW¼, NE¼SE¼, S½SE¼.

T. 10 N., R. 18 W.,
Sec. 1, lots 1, 2, 3, and 4, S½N½, S½;
Sec. 2, lots 1, 2, 3, and 4, S½N½, S½;
Sec. 3, lots 1, 2, 3, and 4, S½N½, S½;
Sec. 4, lots 1, 2, 3, and 4, S½N½, S½;
Sec. 5, lots 1, 2, and 3, S½NE¼, SE¼NW¼, SE¼;
Sec. 7, SE¼SE¼;
Secs. 8 to 12, inclusive;
Secs. 14 and 15;
Sec. 16, lots 1, 2, 3, and 4, N½, SE¼;
Sec. 17, lot 1, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 18, lots 2, 3, and 4, NE¼NE¼, S½NE¼, SE¼.

T. 11 N., R. 18 W.,
Sec. 3, lots 1, 2, 3, and 4, S½N¼, S½;
Sec. 4, lots 1, 2, 3, and 4, S½N½, S½;
Sec. 8, lot 1;
Sec. 10, N½, SW¼, N½SE¼;
Sec. 11, N½NE¼, SE¼NE¼, those portions of SE¼NE¼, and SE¼ lying north and east of State Highway 95, and that portion of N½NW¼SW¼ lying south and west of Havasu National Wildlife Refuge boundary;
Sec. 12, N½ N½SW¼, SE¼SW¼, SE¼, and that portion of SW¼SW¼ lying north and east of State Highway 95;
Sec. 13, NE¼NE¼, N½NW¼NE¼, NE¼SE¼NE¼, SW¼SW¼;
Sec. 14, N½NE¼, SE¼NE¼, SW¼, W½SW¼, SE¼SW¼, SE¼SE¼;
Sec. 16, lots 1, 2, 3, and 4, SE¼NE¼, E½SE¼;
Sec. 22, E½SW¼SE¼NE¼, SE¼SE¼N E¼, E½NE¼SE¼, W½W½NE¼SE¼;
Sec. 23, All;
Sec. 24, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 25, NE¼, N½NW¼;
Sec. 26, All;
Sec. 28, lots 3 and 4;
Sec. 32, lots 7, 8, 9, 10, 11, and 12;
Sec. 33, lots 7, 8, and 9, S½N½, S½;
Sec. 34, All;
Sec. 35, W½SW¼;
Sec. 36, All.

T. 12 N., R. 18 W.,
Sec. 19, lots 1, 2, and 3, N½ of lot 4, E½, E½W½;
Sec. 20, SW¼;
Sec. 29, All;
Sec. 30, lots 1, 2, 3, 4, and 5, NE¼, E½NW¼, N½SE¼, SE¼SE¼;
Sec. 32, lots 1 and 2, W½NW¼, E½SW¼.

T. 10 N., R. 19 W.,
Sec. 12, lots 5, 6, 9, and 10, E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, SE¼;
Sec. 13, NE¼SE¼NE¼, S½S½NE¼, S½SE¼NW¼, E½SW¼, SE¼.

T. 12 N., R. 19 W.,
Sec. 4, lots 3 and 4, S½;
Sec. 5, lots 1, 2, 3, and 4, S½;
Sec. 6, lots 1, 2, 3, 4, 5, and 6, E½SW¼, SE¼;
Sec. 8, lots 1, 2, 3, 4, and 5, NE¼NE¼;
Sec. 9, NE¼, N½NW¼, N½SW¼NW¼, SE¼NW¼, N½NE¼SW¼, SE¼NE¼SW¼, N½SE¼, N½S½SE¼;
Sec. 10, All;
Sec. 13, S½;
Sec. 14, NW¼, S½;
Sec. 15, NE¼, N½NE¼NW¼, SE¼NE¼NW¼, NW¼NW¼, S½NE¼SW¼, N½SE¼, NW¼SW¼SE¼, E½SE¼SE¼;
Sec. 16, lots 1, 2, 3, and 4, NE¼;
Sec. 22, lots 1, 2, 3, and 4, NE¼;
Sec. 23, N½N½, W½SW¼NE¼, NE¼SE¼NE¼, N½SW¼NW¼, SE¼SW¼, NW¼.
Sec. 24, lot 1, N½, N½SW¼, SE¼SW¼, SE¼.

T. 13 N., R. 19 W.,
Sec. 19, lots 3 and 4, E½SW¼, SE¼;
Sec. 29, W½
Sec. 30, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 31, E½NE¼, N½NW¼NE¼, E½SW¼NE¼, SE¼NE¼, NE¼SE¼, E½NW¼SE¼;
Sec. 32, W½, SE¼;
Sec. 33, SW¼.

T. 13 N., R. 20 W.,
Sec. 4, W½, W½SE¼;
Sec. 8, lots 1, 2, 3, 4;
Sec. 14, lot 2;
Sec. 16 All;
Sec. 20, lots 1, 2, 3, and 4, E½NE¼;
Sec. 22, lots 1, 2, 3, and 4, N½N½;
Sec. 26, lots 1, 2, 3, and 4, NE¼;
Sec. 36, lot 1.

T. 14 N., R. 20 W.,
Sec. 6, lots 1, 2, 3, 4, 5, 6, and 7, S½SE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 18, lots 1, 2, 3, and 4, E½NE¼;
Sec. 20, lots 1 and 2, N½, E½SW¼, SE¼, excluding the following parcel of land: Beginning at the SE corner of said section 20; thence N. 90°00'00" W. 1,659.32 feet; thence N. 29°23'54" W. 470.00 feet; thence N. 34°52'18" W. 906.23 feet; thence N. 3°56'46" W. 324.94 feet; thence N. 11°44'23" W. 817.53 feet; thence N. 56°06'23" W. 1,854.80 feet; thence N. 0°05'55" W. 976.17 feet; thence S. 89°50'20" E. 4,067.58 feet; to a point on the E. line of said section 20; thence S. 0°05'47" E. 1,789.69 feet to the E¼ corner of said section 20; thence S. 0°01'05" W. 2,637.90 feet to the point of beginning;
Sec. 28, W½;
Sec. 32, lots 1, 2, 3, and 4, E½E½.

T. 14 N., R. 20 W.,
Sec. 2, lots 1 and 2;
Sec. 12, lot 1.

T. 15 N., R. 20 W.,
Sec. 3, lots 1 and 2, E½SE¼;
Sec. 10, lots 1, 2, 3, and 4, E½E½;
Secs. 11 and 14;
Sec. 22, lot 1;
Sec. 23, NE¼, E½NW¼, E½NE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 25, E½, N½NW¼, N½S½NW¼, SE¼SE¼NW¼, E½E½SW¼;
Sec. 26, lots 1, 2, 3, and 4, NE¼NE¼;
Sec. 35, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 36, All

T. 3 N., R. 21 W.,
Sec. 4, lots 1, 2, 3, 4, and 5, E½SE¼;
Sec. 5, lots 1, 2, 3, and 4;
Sec. 7, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 8, S½S½N¼, N½NE¼NW¼, N½NW¼, S½SE¼NW¼, S½;
Sec. 9, E½NE¼, SW¼NE¼, S½NW¼, S½.

T. 15 N., R. 21 W.,
Sec. 2, lots 1, 2, 3, 4, 5, and 6, N½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 12, All;
Sec. 13, lot 1, NE¼NE¼NW¼, NE¼SE¼, E½NW¼SE¼, E½SE¼SE¼, SW¼SE¼SE¼;
Sec. 24, lots 1, 2, 3, and 4.

T. 16 N., R. 21 W.,
Sec. 18, lot 1;
Sec. 22, E½E½;
Sec. 26, lot 1;
Sec. 35, N½SE¼, SW¼SE¼.

T. 17 N., R. 21 W.,

Sec. 21, E½E½, E½NW¼NE¼;
Sec. 27, E½W½, W½NW¼;
Sec. 34, E½.
T. 2 N., R. 22 W.,
Sec. 4, lots 5, 6, 7, N½SW¼, and SW¼SW¼ lying north and west of the easterly bank of Colorado River, lot 8;
Sec. 5, SE¼ lying north and west of the easterly bank of the Colorado River, lots 2, 3, 4, and 5, SW¼NE¼, S½NW¼, SW¼;
Sec. 6, lots 1, 2, 3, and 4, SE¼NE¼;
Sec. 7, lots 1 and 2;
Sec. 8, lots 4, 5, NE¼, E½NW¼, and NE¼SW¼ lying north and west of the easterly bank of the Colorado River, lot 3, NW¼NW¼;
Sec. 9, E½;
Sec. 17, lot 6, W½SW¼SW¼;
Sec. 18, SW¼SE¼ and W½SE¼SE¼ lying north and west of the easterly bank of the Colorado River, lots 7 to 16, inclusive, E½SE¼SE¼;
Sec. 19, lots 1, 2, 3, 5, 6, and NW¼NE¼ lying south and east of the easterly bank of the Colorado River, lot 4.
T. 3 N., R. 22 W.,
Sec. 1, S½N½SW¼, S½SW¼, SW¼SE¼, S½SE¼SE¼;
Sec. 11, lot 4, E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, SE¼;
Sec. 12 and 13;
Sec. 14, E½, N½NW¼;
Sec. 15, lots 6, 13, and 14, N½NE¼NE¼, N½SW¼NE¼NE¼, SW¼SW¼NE¼NE¼, N½SE¼NE¼NE¼, E½SW¼SW¼, SE¼SW¼;
Sec. 21, lots 3, 4, 7, 8, 10, 11, 12 and 13, SE¼NW¼, E½SW¼;
Sec. 22, lots 4, 8, 9, and 12, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 27, lots 5, 8, 9, and 12, E½E½;
Sec. 28, lots 1, 7, 8, 11, 12, and 14, E½NE¼;
Sec. 33, lot 4;
Sec. 34, lots 7, 8, 10, 13, and 15, E½NE¼, SW¼NE¼, SE¼.
T. 19 N., R. 22 W.,
Sec. 10, lots 3 to 10, inclusive, SE¼NE¼, E½SE¼.
T. 20 N., R. 22 W.,
Sec. 9, lots 5 and 6;
Sec. 12, lots 5, 6, 7, and 9, E½NW¼, SE¼;
Sec. 20, lots 1, 2, 3, and 4, SW¼NE¼, S½NW¼;
Sec. 30, lots 9, 10, 11, 12, and 13, N½NE¼.
T. 1 N., R. 23 W.,
Sec. 20, lots 6 and 8;
Sec. 22, S½NW¼;
Sec. 28, E¼NE¼, SE¼SW¼, SE¼;
Sec. 29, SW¼SW¼, excluding lot 3;
Sec. 30, SE¼SE¼;
Sec. 31, N½N½, excluding lots 5, 6, 7, and 8;
Sec. 33, E½W½.
T. 2 N., R. 23 W.,
Sec. 25, lot 10, W½SW¼NE¼;
Sec. 34, lots 4, 5, 6, and 7, E½SE¼;
Sec. 35, lot 10 lying north and west of the easterly bank of the Colorado River, lots 5 and 6.
T. 1 N., R. 24 W.,
Sec. 24, lots 2 and 3;
Sec. 25, lots 8, 10, 12, 13, 14, and 17;
Sec. 26, lots 7, 9, 10, 11, and 12, SE¼SE¼;
Sec. 35, lot 4.
T. 5 S., R. 21 W.,
Sec. 29, S½
Sec. 30, S½NE¼SW¼NE¼, SE¼SW¼NE¼, S½NW¼SE¼NE¼, SW¼SE¼NE¼, E½SE¼;
Sec. 32, All.
T. 6 S., R. 21 W.,
Sec. 5, lots 1, 2, 3, and 4, S½;
Sec. 6, 7, and 8;
Sec. 17 to 20, inclusive;
Sec. 29 and 30;
Sec. 31, lots 1, 2, 3, 4, and E½ excluding land revoked by Public Land Order No. 6475, E½W½;
Sec. 32, All.
T. 7 N., R. 21 W.,
Sec. 5, lot 4, S½NW¼ and SW¼ excluding land revoked by Public Land Order No. 6475;
Sec. 6, lot 1 and SE¼NE¼ excluding land revoked by Public Land Order No. 6475, lots 2 to 7, inclusive, SW¼NE¼, SE¼;
Sec. 7, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 8, NE¼ excluding land revoked by Public Land Order No. 6475, W½SW¼
Sec. 18, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 19, lot 1, NE¼NW¼.
T. 4 S., R. 22 W.,
Sec. 31, lots 1, 2, 3, 4, and 5, N½NE¼, NE¼NW¼;
Sec. 32, lot 1, N½N½;
Sec. 33, lots 1, 2, 3, and 4, NE¼, N½NW¼;
Sec. 34, lots 1, 2, and 3, N½, N½SE¼, SE¼SE¼;
Sec. 35, All.
T. 5 S., R. 22 W.,
Sec. 1;
Sec. 2, lots 1, 2, 3, and 4;
Sec. 3, lot 1;
Sec. 11, lots 1, 2, 3, and 4, E½E½;
Sec. 12, All;
Sec. 13, W½W½E½W½W½NE¼, W½W½W½NE¼, W½NW¼NW¼NW¼SE¼, SW¼NW¼NW¼SE¼, W½W½NW¼SW¼SE¼, W½W½SW¼SE¼, W½W½NE¼SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, S½SE¼SW¼SE¼;
Sec. 23, lot 1;
Sec. 24, lots 1, 2, 3, and 4, S½N½NE¼NE¼, S½NE¼NE¼, W½NE¼, NW¼.
T. 6 S., R. 22W.,
Sec. 1, All;
Sec. 12, All;
Sec. 13, All;
Sec. 25, All;
Sec. 36, All.
T. 7 S., R. 22 W.,
Sec. 12, lots 1 and 2, SE¼SE¼;
Sec. 13, lots 1 to 8, inclusive, E½;
Sec. 14, lots 1, 2, 3, and 4, S½;
Sec. 15, lots 1, 2, and 3, E½SE¼;
Sec. 23, lots 1, 2, and 3, NE¼, E½SW¼, SW¼SW¼, N½SE¼, SW¼SE¼;
Sec. 24, N½N½, SW¼NW¼;
Sec. 26, W½NW¼;
Sec. 27, E½SE¼;
Sec. 34, E½E½;
T. 1 S., R. 23 W.,
Sec. 18, E½SE¼;
Sec. 19, E½NE¼, NE¼SE¼;
Sec. 29, W½.
T. 2 S., R. 23 W.,
Sec. 1, N½;
Sec. 6, lot 8;
Sec. 7, lot 5;
Sec. 8, E½SW¼;
Sec. 17, E½NW¼, SW¼;
Sec. 19, E½SE¼;
Sec. 20, W½;
Sec. 30, lots 5, 6, and 7, E½E½.
Sec. 31, lots 5, 6, 7, and 8, E½.
T. 3 S., R. 23 W.,
Sec. 6, lots 1, 2, 3, 5, and 8, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 7, lot 5, E½NE¼, SW¼NE¼, SE¼;
Sec. 18, lots 1, 2, 3, and 4, E½, E½SW¼;
Sec. 19, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 30, lots 1, 2, 3, and 4, E½, E½W½.
T. 4 S., R. 23 W.,
Sec. 18, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 19, lots 1 and 2, NE¼, E½NW¼, N½SE¼, SE¼SE¼;
Secs. 20, and 21;
Sec. 26, lots 1, 2, 3, and 4, N½, S¼;
Sec. 27, lots 1 to 12, inclusive, SW¼;
Sec. 28, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 29, lot 3, N½NE¼, NW¼, N½NE¼;
Sec. 30, E½NE¼, NE¼SE¼;
Sec. 31, lots 1 and 2;
Sec. 32, lots 1, 2, 3, and 4;
Sec. 33, lots 1, 2, and 3, NE¼NE¼;
Sec. 34, lots 1 and 2, N½, N½SE¼;
Sec. 35, N½, NW¼SW¼, SE¼;
Sec. 36, lot 4, E½NW¼, N½SW¼, SW¼SW¼.
T. 1 S., R. 24 W.,
Sec. 4, lot 4, SW¼NW¼, NW¼SW¼;
Sec. 22, lot 1;
Sec. 23, lots 5, 6, 7, and 8;
Sec. 26, lots 5, 6, 7, and 8, W½;
Sec. 27, lots 3, 4, 5, 6, 7, and 8, E½SE¼, SW¼SE¼;
Sec. 34, lots 1, 2, 3, and 4, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 35, lots 2 and 3, W½E½, W½, E½SE¼.2
T. 2 S., R. 24 W.,
Sec. 1, lots 4 to 13, inclusive;
Sec. 2, lots 1 to 8, inclusive;
Sec. 3, lots 1 and 2;
Sec. 12, lot 1;
Sec. 13, lots 3 and 4;
Sec. 24, lots 2, 3, 4, and 5.
T. 3 S., R. 24 W.,
Sec. 24, lots 1, 2, and 3;
Sec. 25, E½E½, SE¼SW½, SW¼SE¼;
Sec. 36, N½NW¼, SW¼NW¼, W½SW¼;
T. 4 S., R. 24 W.,
Sec. 1, All;
Sec. 2, lots 1, 2, 3, and 4, SE¼NE¼, E½SE¼;
Sec. 11, lot 4, NE¼NE¼;
Sec. 13, lots 1, 2, 3, 4, and 5, E½NE¼;
Sec. 24, lot 1.

Containing approximately 82,953.25 acres in La Paz, Mohave, and Yuma Counties, Arizona.

San Bernardino Meridian, Arizona

T. 16 S., R. 21 E.,
Sec. 24, lot 1;
Sec. 25, lots 7 to 17, inclusive;
Sec. 35 lot 5;
Sec. 36, lots 4, 5, and 8, N½SE¼.
T. 16 S., R. 22 E.,
Sec. 19, lot 10;
Sec. 28, lots 5 and 6;
Sec. 29, lots 21 to 25, inclusive;
Sec. 30, lots 11 to 20, inclusive, SE¼SW¼, SW¼SE¼;

Sec. 35, all land withdrawn by Executive Order of August 31, 1903 excluding Tracts 1 and 2.

Containing approximately 948.77 acres in Yuma County, Arizona.

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 continuation may present their views in writing to the undersigned officer.

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, and will review the withdrawal rejustification to ensure that continuation or modification would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. The authorized officer will also prepare a report for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued or modified, and if so, for how long. The final determination will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

All communications in connection with this proposed action should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-14643 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-32-M

Anchorage District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council Field Trip.

SUMMARY: The Bureau of Land Management's Anchorage District Manager will conduct a filed trip of areas under district management for the district advisory council beginning July 24, 1985.

The purpose of the trip is to familiarize council members with management issues and provides them first-hand observation of resources and conditions.

Members of the public may participate in the trip, however, transportation and lodgings, etc., are their own responsibility. Anyone wishing to comment to the council is requested to submit their statement in writing by July 23, 1985, to Joette Storm, Anchorage District Office, 4700 East 72nd Avenue, Anchorage Alaska 99507.

DATES: Wednesday, July 24, through Friday, July 26, 1985.

Time: Departure: 7:30 a.m. Wednesday.

Place: Bureau of Land Management lands in the Peninsula and Glennallen Resource Areas.

SUPPLEMENTARY INFORMATION: Itinerary: Anchorage District Advisory Council Field Trip, July 24, 25, 26, 1985.

Wednesday, July 24

7:30 a.m.—Depart Anchorage District Office via motorcoach for Glenn-allen Resource Area along the Denali, Gleen, and Richardson Highways.

Rest stop.

Cantell. Discuss Healy Intertie.

Continue on Denali Highway to view mining activities, land disposals, campgrounds, recreation opportunities.

Lunch.

Tangle Lakes Archaeologicl District.

Overnight at Tangle Lake Lodge.

Evening interpretive program.

Thursday, July 25

8 a.m.—Continue on Denali Highway to view 3½ mile exchange Delta National Wild and Scenic River, Trans-Alsaka Pipeline Corridor.

Continue on Richardson Highway. Stops at Paxson Lake Campground, Sourdough Roadhouse, Slana settlement area.

Lunch.

Arrive Glennallen. Overnight at Ahtna Lodge.

Friday, July 26

8 a.m.—Visit Glennallen Area Office.

9 a.m.—Depart Glennallen for Anchorage.

2 p.m.—Arrive Anchorage District Office.

Wayne A. Boden,

District Manager.

[FR Doc. 85-14613 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-JA-M

[ES-035045, Group 500]

Michigan; Filing of Plat of an Island

June 12, 1985.

1. On June 5, 1985, the plat representing the survey of an island in Donnell Lake, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on July 29, 1985.

The tract shown below describes the island omitted from the original survey.

Michigan Meridian, Michigan

T. 6 S., R. 14 W.,
Tract 37.

2. Tract 37 rises approximately 20 feet above the ordinary high water mark of Donnell Lake and is composed of silt loam. Tree species consist of maple, elm, aspen, oak, and willow, with a maximum age of 100 years.

3. The present water level of the lake compares favorably with that of the original meander line, therefore, the elevation and upland character of the island along with the depth and width of the channel between the upland and the island are considered evidence that the island did exist in 1837, the year Michigan was admitted into the Union. The original surveyor in 1828 did note the presence of the island in the field note record of the meanders of Donnell Lake.

4. Tract 37 is more than 50% upland in character within the purview of the Swamp and Overflow Act of September 28, 1850 (9 Stat. 519). Therefore the island is held to be public land.

5. The survey was made upon application by the State of Michigan, under the authority of section 211 of the Act of October 21, 1976.

6. Except for valid existing rights, this island will not be subject to application, petition, location, or selection under any public law until July 29, 1985.

7. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Bureau of Land Mangement, Eastern States Office, prior to 7:30 a.m., July 29, 1985.

8. All inquiries concerning the color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, after July 29, 1985.

9. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Particia A. Ludlow,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 85-14615 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-22-M

[M 61069]

Conveyance and Order Providing for Opening of Public Land in Musselshell County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document. No minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on July 29, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including mining, but not from exchange, by the Notice of Realty Action published in the **Federal Register** on October 19, 1984 (49 FR 4111). The segregation terminated on issuance of the quitclaim deed on December 17, 1984.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to Charles Ondracek and Susan A. Ondracek:

Principal Meridian, Montana

T. 9 N., R. 25 E.,
Sec. 19, SE¼;
Sec. 20, all;
Sec. 28, SE¼;
Sec. 29, all;
Sec. 33, N½ and SE¼.
Aggregating 2,080 acres, more or less.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Musselshell County:

Principal Meridian, Montana

T. 8 N., R. 24 E.,
Sec. 2, lots 9, 10, 15 and 16, S½, and 11 acres within lots 13 and 14 as described in that certain deed recorded March 24, 1916, in Book 29 of Deeds at Page 655, Musselshell County Records;
Sec. 10, SE¼;
Sec. 11, all;
Sec. 12, all; and
Sec. 14, N½NE¼, SW¼NE¼, NW¼.
Containing 2,211 acres, more or less.

3. The values of Federal public land and the non-Federal land in the exchange were both appraised at $249,000 each.

4. At 9 a.m. on July 29, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

June 4, 1985.

[FR Doc. 85-14603 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-22-M

Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Advisory Council.

DATES: July 18 and 19, 1985.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, U.S. Highway 191 North, Rock Springs, Wyoming 82902-1869, (307-382-5350).

SUPPLEMENTARY INFORMATION: A field tour of the Kemmerer Resource Area to acquaint Council Members with some of the issues considered in the Kemmerer Resource Management Plan will leave the area office at 9:30 a.m., Thursday, July 18, 1985. Transport will not be provided, a four wheel drive vehicle is advised for anyone wanting to join the tour.

The meeting beginning at 8:00 a.m., Friday, July 19, will be held at the Lincoln County Library, 519 Emerald, Kemmerer. The agenda will be:

Kemmerer Resource Management Plan Public Comment Period
Arrangements for the Next Meeting

Donald H. Sweep,

District Manager.

[FR Doc. 85-14614 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-22-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held July 15, 1985.

On July 15, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

A discussion of the Medford District's Final Supplemental Environmental Impact Statement on timber and election of officers.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board following conclusion of its other agenda items on July 15, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by June 12, 1985. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date Signed: June 10, 1985.

Hugh R. Shera,

District Manager.

[FR Doc. 85-14565 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-33-M

Ukiah District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a meeting of the Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94-579 and 43 CFR 1780, a meeting of the Ukiah District Advisory Council will be held (1) to discuss wilderness suitability of the King Range (CA-050-112) and Chemise Mountain (CA-050-011) wilderness study areas and (2) to brief

the council on the proposed Samoa off-road vehicle (ORV) use area.

DATES: The meeting will start at 10:00 a.m. and adjourn at 4:00 p.m. on Wednesday, July 10,1985.

ADDRESSES: The meeting will be held at the BLM Arcata Resource Area Office, 1125 16th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Barbara Gibbons, Ukiah District Office, Bureau of Land Management, P.O. Box 940, 555 Leslie Street, Ukiah, California, 95482–0940, (707) 462–3873.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral or written statements to the council or submit written comments for the council's consideration. Opportunity for public comments will be provided at 11:00 a.m. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: June 7, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85–14569 Filed 6–17–85; 8:45 am]

BILLING CODE 4310-22-M

Colorado; Grand Junction Draft Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Extension of Public Comment Period and Supplement to April 1, 1985, **Federal Register** Notice.

SUMMARY: The Department of the Interior, Bureau of Land Management (BLM), is extending its public comment period on the draft Grand Junction Resource Management Plan and Environmental Impact Statement (draft RMP EIS). The public comment period is extended from July 3, 1985, to July 17, 1985. The BLM is also supplementing its April 1, 1985, **Federal Register** notice announcing availability of the draft RMP EIS.

DATE: Comments should be submitted by July 17, 1985. Comments received or postmarked after this date may be considered in the final RMP EIS.

ADDRESS: Copies of the draft RMP EIS are available upon request from the Grand Junction Resource Area Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Forest Littrell, Area Manager, Bureau of Land Management, Grand Junction Resource Area, 764 Horizon Drive, Grand Junction, Colorado 81506. Telephone: 303–243–6552.

SUPPLEMENTARY INFORMATION: In addition to the items discussed in the April 1, 1985, **Federal Register** notice, the draft RMP EIS also contains information about oil and gas development in the Demaree Canyon and Little Book Cliffs Wilderness Study Areas. It analyzes possible development of pre-Federal Land Policy and Management Act leases, including ten pending applications for permit to drill, within these two areas.

Dated: June 4, 1985.

Kannon Richards,

State Director, Colorado State Office.

[FR Doc. 85–14561 Filed 6–17–85; 8:45 am]

BILLING CODE 4310-JB-M

[W-73564]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a)(b)(1), a petition for reinstatement of oil and gas lease W–73564 for lands in Carbon County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–73564 effective January 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85–14570 Filed 6–17–85; 8:45 am]

BILLING CODE 4310-22-M

[W-86110]

Wyoming; Realty Action—Direct Sale of Public Land in Holt County, NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of a public land parcel in Holt County, Nebraska.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for public sale and will accept bids on the parcel. The BLM must receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. All requests for information about the sale should be sent to BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (Phone (307) 746–4453). The planning document, environmental assessment/land report are also available for review at the Holt County Courthouse, O'Neill, Nebraska.

Parcels

Serial No.	Legal Description	Acreage	Appraised value
W-86110	T.33 N., R. 16 W., 6th P.M. Section 15, lot 5	0.48	$100

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The land described above will be offered for sale directly to the adjoining landowner. If the adjoining landowner does not purchase the land by August 28, 1985, the land will be reoffered for sale under a competitive bid process. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted.

Specific patent reservations include a minerals reservation. A detailed description of this reservation is available from the above address.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the district Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 7, 1985.
James W. Monroe,
Casper District Manager.
[FR Doc. 85-14571 Filed 6-17-85; 8:45 am]
BILLING CODE 4310-22-M

Proposed Mead/McCullough-Victorville/Adelanto Transmission Project; Draft Environmental Impact Statement and Report

AGENCY: Bureau of Land Management, Interior (BLM), California Desert District.

ACTION: Notice of Availability of the Draft Environmental Impact Statement/ Draft Environmental Impact Report, hereinafter referred to as a Draft Environmental Report (DER).

SUMMARY: Pursuant to section 102(C) of the National Environmental Policy Act of 1969, a DER has been prepared for the proposed Mead/McCullough-Victorville/Adelanto Transmission Project in Clark County, Nevada, and San Bernardino County, California.

SUPPLEMENTARY INFORMATION: BLM and the Los Angeles Department of Water and Power (DWP) have prepared a DER for the Mead/McCullough-Victorville/ Adelanto Transmission Project. DWP proposes to build, operate, and maintain a 200 mile long 500–DK transmission line from either the Mead Substation or the McCullough Substation near Boulder City, Nevada to the Victorville or Adelanto Substation in Southern California. DWP, a member of the Southern California Public Authority (SCPPA), would jointly own the project with Modesto-Santa Clara-Redding; U.S. Department of Energy, Western Area Power Administration; the Salt River Project; and the other members of SCPPA.

The primary purpose of proposing to establish this 500 Kv transmission line from the Boulder City area in Nevada to the Victorville/Adelanto, California area is to enable the project proponents to purchase and sell electrical energy and capacity. The project will have station facilities capable of transmitting alternating-current (ac) or direct-current (dc) power. Its capacity will be from a nominal 1000 MW to nominal 2000 MW, depending on whether the transmission line is ac or dc, respectively.

The project would include the allocation of approximately 5,000 acres of land for right-of-way. In addition, from 120 to 180 acres would be required for a converter station at Adelanto if the dc option is selected.

The DER was prepared under contract by Dames & Moore.

Public hearings to receive comments on the scope of the DER and the adequacy of the impact analysis will be held at the following locations in August 1985:

Location	Date and time
Boulder City, Nevada, Boulder City High School Auditorium.	Aug. 6, 1985—7 p.m.
Baker, California, Baker Community Center.	Aug. 7, 1985—7 p.m.
Victorville, California, 15494 Palmdale Road, Holiday Inn.	Aug. 8, 1985—7 p.m.

FOR FURTHER INFORMATION CONTACT: William H. Collins, Project Leader, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507.

A limited number of copies of the DER may be obtained by contacting the California Desert District at the above address. Copies of the DER may be inspected at the following locations:

Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507
Bureau of Land Management, Needles Resource Area, 901 3rd Street, Needles, California 92363
Bureau of Land Management, Barstow Resource Area, 831 Barstow Road, Barstow, California 92311
County of San Bernardino, Office of Planning, 3rd Floor, 385 North Arrowhead, San Bernardino, California 92415
Clark County Library, 1401 Flamingo Avenue, Las Vegas, Nevada 89101
Baker High School Library, Highway 120 and School Road, Baker California 92309
Los Angeles Public Library, Department of Water and Power Branch, 111 North Hope Street, Los Angeles, California 90012
San Bernardino Central Library, 401 North Arrowhead, San Bernardino, California 92415
San Bernardino County Library, Victorville Branch, 15011 Circle Drive, Victorville, California 92392
Bureau of Land Management, Public Affairs, Interior Building, 18th and C Streets NW., Washington, D.C. 20240
Bureau of Land Management, State Office, Federal Building, 2800 Cottage Way, Room E–2915, Sacramento, California 95825.

DATE: The review period runs for 90 days from the date of this notice. Written comments must be submitted within this 90-day period.

ADDRESS: Comments should be addressed to Gerald E. Hillier, District Manager of the California Desert District at the address given above.

Dated: June 11, 1985.
Gerald E. Hillier,
District Manager.
[FR Doc. 85-14602 Filed 6-17-85; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management Service

Information Collection Submitted for Review

The proposal for a change in responses and burden hours in the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting Raymond A. Hicks at 303–231–3147. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Reports for the Production Accounting and Auditing System
Abstract: Production Accounting and Auditing System (PAAS) information is needed to provide comprehensive production and disposition data on oil and gas from Federal onshore and offshore and Indian leases. MMS uses the data to monitor production, to check reported disposition against royalty paid, and for audits. Leases, plant operators, and purchasers are affected
Bureau Form Numbers: MMS–4051, MMS–4052, MMS–4053, MMS–4054–A, B, C, MMS–4055, MMS–4056–A, B, C, MMS–4057, MMS–4058, MMS–4061
Frequency: On occasion, monthly, quarterly, semi-annually
Description of Respondents: Companies producing and processing oil and gas from Federal onshore and offshore leases, and from Indian leases
Annual Responses: 37,900
Annual Burden Hours: 49,270
Bureau Clearance Officer: Dorothy Christopher, 703–435–6213.

Dated: May 31, 1985.
Robert E. Boldt,
Associate Director for Royalty Management.
[FR Doc. 85-14566 Filed 6-17-85; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Availability of General Management Plan; Development Concept Plan; Environmental Assessment and Statement for Management; Public Meeting; Martin Luther King, Jr., National Historic Site, Atlanta, GA

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service has prepared a General Management Plan/ Development Concept Plan/ Environmental Assessment and Statement for management for Martin Luther King, Jr., National Historic Site. Copies are available for inspection at the following locations:

Regional Office, National Park Service, 75 Spring Street SW., Atlanta, Georgia 30303, (404) 221–5835.

Superintendent, Martin Luther King, Jr., National Historic Site 522 Auburn Avenue, Atlanta, Georgia 30312, (404) 221–5190.

The assessment discusses alternatives for overall use, preservation, management and development of the national historic site.

In addition as part of the National Park Service's program for public participation in planning, a public meeting will be held at the Martin Luther King, Jr., Community Center, 450 Auburn Avenue, Atlanta, Georgia 30312 on Thursday, July 10, 1985, at 7 p.m.

Comments will be accepted at public meeting. Written comments will also be accepted at the address given above until July 25, 1985.

Dated: June 10, 1985.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 85–14632 Filed 6–17–85; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore; Insignia Prescription

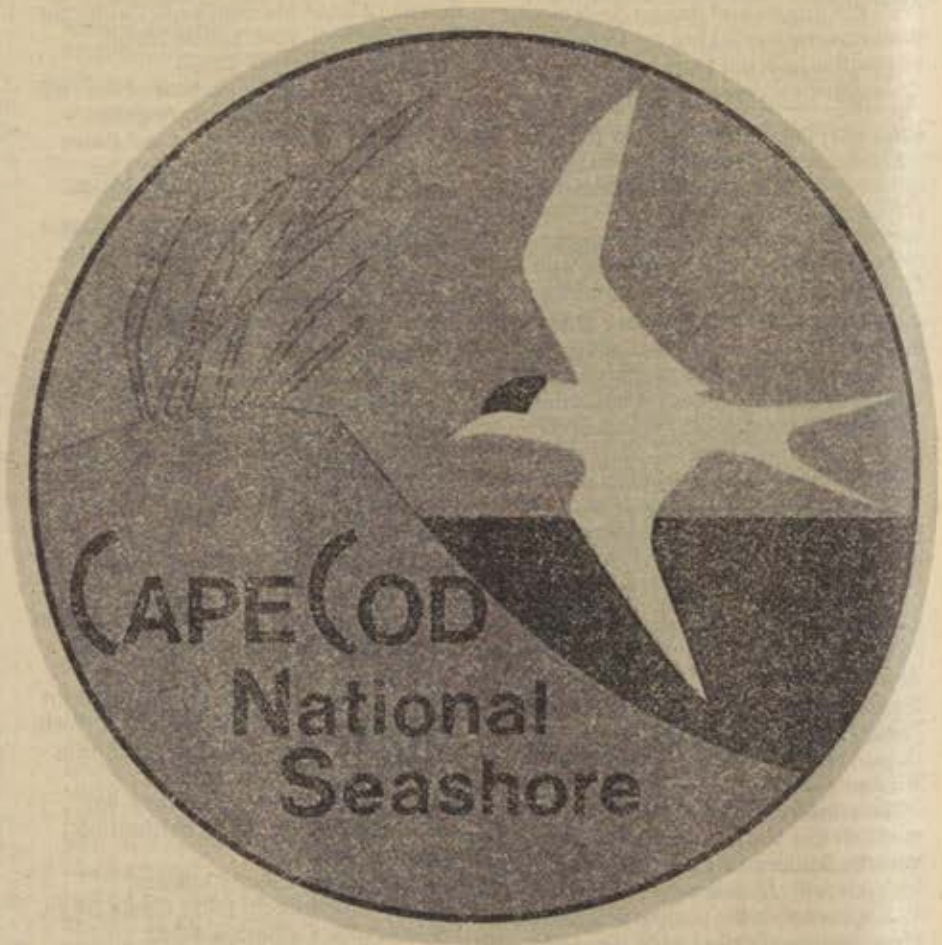
I hereby prescribe the Cape Cod National Seashore symbol which is depicted below as the official Insignia of the Cape Cod National Seashore, a unit of the National Park System, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive Cape Cod National Seashore Insignia and to assure against its use for purpose other than marking the seashore, marking interpretative exhibits and informational literature for seashore visitors and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the seashore was established the National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Cape Cod National Seashore Insignia.

Mary Lou Grier,

Acting Director, National Park Service.



[FR Doc. 85–14633 Filed 6–17–85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 8, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by July 2, 1985.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Pinellas County

St. Petersburg, *Studebaker Building*, 600 Fourth St. South

ILLINOIS

Sangamon County

Springfield, *Illinois Department of Mines and Minerals-Springfield Mine Rescue Station*, 609 Princeton Ave.

KENTUCKY

Barren County

Glasgow vicinity, *Killiam Kreek's Mill (Early Stone Buildings of Kentucky TR)*, Beaver Valley Rd.
Park City, *Belle's Tavern (Early Stone Buildings of Kentucky TR)*, KY 255

Boone County

Bullittsville, *Watts House (Early Stone Buildings of Kentucky TR)*, Williams Rd.
Francisville vicinity, *Souther, Abe, House (Early Stone Buildings of Kentucky TR)*, Off KY 237
Petersburg, *Tanner, John, House (Early Stone Buildings of Kentucky TR)*, KY 20

Bracken County

Augusta vicinity, *Cholfant, Mordecai, House (Early Stone Buildings of Kentucky TR)*, KY 8
Augusta vicinity, *Stone House on Bracken Creek (Early Stone Buildings of Kentucky TR)*, Off KY 435
Augusta vicinity, *Stroube House (Early Stone Buildings of Kentucky TR)*, KY 616
Wellsburg, *Rock Spring Warehouse (Early Stone Buildings of Kentucky TR)*, KY 8

Bullitt County

Brownington, *Crist, Henry, House (Early Stone Buildings of Kentucky TR)*, Maraman Lane off SR 1604
Shepherdsville, *Bank of the Commonwealth (Early Stone Buildings of Kentucky TR)*, Buckman St.

Butler County

Morgantown vicinity, *Ice House on Little Muddy Creek (Early Stone Buildings of Kentucky TR)*, US 231

Caldwell County

Princeton vicinity, *Cook, Captain, Spring House (Early Stone Buildings of Kentucky TR)*, Jones Rd. off KY 293

Carroll County

Carrollton, *Ogburn, Henry, House (Early Stone Buildings of Kentucky TR)*, Off US 42
Prestonville, *Stone House on Kentucky River (Early Stone Buildings of Kentucky TR)*, KY 55

Christian County

Hensleytown vicinity, *Stone House on West Fork (Early Stone Buildings of Kentucky TR)*, Logan Mill Rd.
Hopkinsville vicinity, *Smokehouse on Riverside Creek (Early Stone Buildings of Kentucky TR)*, Petsch Lane off KY 272

Edmonson County

Windyville vicinity, *Willis, Mathais, Store House (Early Stone Buildings of Kentucky TR)*, Cummins Rd.

Fleming County

Flemingsburg, *Flemingsburg Historic District*, Roughly bounded by Stockwell, Hunt, East Elm, Fox Springs, Mt. Sterling, Main Cross & Rhoades

Green County

Greensburg, *Allen's, James, Inn (Early Stone Buildings of Kentucky TR)*, 103, East Court St.
Greensburg, *Court Clerk's Office-County & Circuit (Early Stone Buildings of Kentucky TR)*, East Court St.

Hardin County

Star Mills vicinity, *Morrison, John, House (Early Stone Buildings of Kentucky TR)*, Off SR 1904

Henry County

New Castle, *Henderson, Isham, House (Early Stone Buildings of Kentucky TR)*, Main Cross Rd.

Kenton County

Bromley vicinity, *Pleasant Run Stone House I (Early Stone Buildings of Kentucky TR)*, Bromley Rd. off KY 8
Bromley vicinity, *Pleasant Runn II Stone House (Early Stone Buildings of Kentucky TR)*, Bromley Rd. off KY 8
Bromlye, Merry, Prettyman, *House (Early Stone Buildings of Kentucky TR)*, Shelby St.

LaRue County

Hodgenville vicinity, *Kirkpatrick, Joseph, House (Early Stone Buildings of Kentucky TR)*, Off US 31E

Lawrence County

Five Forks, *Bloody Bucket Tavern (Early Stone Buildings of Kentucky TR)*, KY 3

Lewis County

Tollesboro Vicinity, *Stone Cellar on Cabin Creek (Early Stone Buildings of Kentucky TR)*, Cabin Creek Rd.

Logan County

Chandlers Chapel vicinity, *Sawyer, David, House (Early Stone Buildings of Kentucky TR)*, Off Ky 103

Mason County

Flat Fork vicinity, *Spring House on Flat Fork (Early Stone Buildings of Kentucky TR)*, KY 161
Mays Lick vicinity, *Kercheval, John, Spring House (Early Stone Buildings of Kentucky TR)*, Off US 68
Mays Lick vicinity, *Poague House (Early Stone Buildings of Kentucky TR)*, Parker Lane
Mays Lick vicinity, *Stone Barn on Lee's Creek (Early Stone Buildings of Kentucky TR)*, US 68
Mays Lick, *Springhouse in Mays Lick (Early Stone Buildings of Kentucky TR)*, Off KY 324
Moranburg vicinity, *Moran, Been, House (Early Stone Buildings of Kentucky TR)*, Intersection of KY 8 & KY 10
Orangeburg vicinity, *Pelham, Charles, House (Early Stone Buildings of Kentucky TR)*, Taylor Mill Rd.
Washington, *Foreman, Tom, House (Early Stone Buildings of Kentucky TR)*, Off US 62

Meade County

Brandenburg vicinity, *Doe Run Mill (Early Stone Buildings of Kentucky TR)*, SR 1638 on Doe Run Creek

Nelson County

Bardstown vicinity, *Mattingly House (Early Stone Buildings of Kentucky TR)*, Off US 150
Bardstown, *Nelson County Jail (Early Stone Buildings of Kentucky TR)*, 111 W. Stephens Foster
Cox Creek vicinity, *Cartmell, Nathan, House (Early Stone Buildings of Kentucky TR)*, Off KY 509 near Fairfield-Cox Creek Rd.

Oldham County

Anchorage vicinity, *Wesley Church (Early Stone Buildings of Kentucky TR)*, Haunz Lane
Brownsboro vicinity, *McMakin, William, House (Early Stone Buildings of Kentucky TR)*, Off SR 1817
Floydsburg, *Ritter, John, House (Early Stone Buildings of Kentucky TR)*, Old Floydsburg Rd. off SR 1408
Goshen vicinity, *Bate, John Leslie, House (Early Stone Buildings of Kentucky TR)*, Off US 42 E. of Buckeye Lane
La Grange vicinity, *Woolfolk, William, House (Early Stone Buildings of Kentucky TR)*, Off US 42
Prospect vicinity, *Ross, Reuben, House (Early Stone Buildings of Kentucky TR)*, Off SR 1694

Owen County

New Liberty vicinity, *Hunter, Jacob, House (Early Stone Buildings of Kentucky TR)*, Off KY 325 near Big South Fork of KY River

Pendleton County

Falmouth vicinity, *Aluck, Dolph, Smokehouse (Early Stone Buildings of Kentucky TR)*, Milford Rd.
Falmouth vicinity, *Colvin, Henry (Early Stone Buildings of Kentucky TR)*, Colvin Bend Rd.

Robertson County

Mt. Olivet vicinity, *Metcalf, Thomas, House (Early Stone Buildings of Kentucky TR)*, Off US 62

Shelby County

Shelbyville vicinity, *Cross Keys Tavern Kitchen and Quarters (Early Stone Buildings of Kentucky TR)*, US 60
Shelbyville vicinity, *Dependency on Mulberry Creek (Early Stone Buildings of Kentucky TR)*, Off SR 1871
Shelbyville vicinity, *Fullenwielder, Peter, House (Early Stone Buildings of Kentucky*

TR). Off Aikens-Anderson Lane W. of Hebron-Scotts Station Rd.
Shelbyville vicinity, *Stone House on Clear Creek (Early Stone Buildings of Kentucky TR).* Off KY 55 W. of Bellview Rd.

Spencer County

Rivals, *Van Dyke House (Early Stone Buildings of Kentucky TR).* Buck Henry Foster Lane
Taylorsville vicinity, *Shields, Malone, House (Early Stone Buildings of Kentucky TR).* KY 652
Whitfield vicinity, *Stone House on Plum Creek (Early Stone Buildings of Kentucky TR).* Intersection of SR 1060 & SR 1319

Taylor County

Campbellsville vicinity, *Chandler, John, House (Early Stone Buildings of Kentucky TR).* Off KY 210

Todd County

Elkton, *Gray, John, Springhouse (Early Stone Buildings of Kentucky TR).* US 68

Trigg County

Cadiz vicinity, *McCaughan, John, House (Early Stone Buildings of Kentucky TR).* KY 276

Warren County

Bowling Green, *Kirby, Jesse, Springhouse (Early Stone Buildings of Kentucky TR).* Off US 231 on Love Howell Rd.

Washington County

Fredericktown vicinity, *Round Stone Smoke House (Early Stone Buildings of Kentucky TR).* US 150
Springfield vicinity, *Coldwell, William, Kitchen (Early Stone Buildings of Kentucky TR).* Off KY 555 on Spaulding Lane

MISSOURI

St. Louis County. Kirkwood, *Kirkwood Missouri Pacific Depot.* West Argonne Dr. at Kirkwood Rd.

MONTANA

Big Horn County

Hardin, *Commercial District (Hardin MRA).* Roughly bounded by Fourth, Crook, Burlington Northern RR, First and Crow Sts.
Hardin, *Residential District (Hardin MRA).* Roughly bounded by Fifth, Fourth, Crow and Cody

NEVADA

Carson (Independent City)
Spence, William, House. 308 South Thompson St.

RHODE ISLAND

Washington County

North Kingstown, *Crowfield Historic District (North Kingstown MRA).* Boston Neck Rd.
North Kingstown, *Davisville Historic District (North Kingstown MRA).* Davisville Rd.
North Kingstown, *Donnelly, Anna H., House (North Kingstown MRA).* 125 Lloyd Rd.
North Kingstown, *Gardner, Ezekial, House (North Kingstown MRA).* 297 Pendar Rd.
North Kingstown, *Northrup House (North Kingstown MRA).* 99 Featherbed Lane
North Kingstown, *Old Narragansett Cemetery (North Kingstown MRA).* Shermantown Rd.
North Kingstown, *Pierce, Joseph, Farm (North Kingstown MRA).* 933 Gilbert Stuart Rd.
North Kingstown, *Rathbun House (North Kingstown MRA).* 343 Beacon Dr.
North Kingstown, *Sanford, Esbon, House (North Kingstown MRA).* 88 Featherbed Lane
North Kingstown, *Saunderstown Historic District (North Kingstown MRA).* Roughly bounded by Stillman, Waterway, Willet, Boston Neck & Ferry Rds.
North Kingstown, *Shady Lea Historic District (North Kingstown MRA).* Shady Lea and Tower Hill Rds.
North Kingstown, *Slocum, Joseph, House (North Kingstown MRA).* Slocum Rd.
North Kingstown, *Spink Farm (North Kingstown MRA).* 1325Shermantown Rd.

TENNESSEE

Gibson County

Milan vicinity, *Union Central School.* Union Central Rd.

Giles County

Pulaski vicinity, *Tillery, George W., House.* US 31 N.

Hickman County

Primm Springs, *Primm Springs Historic District.* Irregular pattern along the Puppy Branch of Dog Creek between Hosue & Baker Rds. & Mineral Springs.

Marshall County

Chapel Hill, *Chapel Hill Cumberland Presbyterian Church.* Main St.

Sequatchie County

Dunlap, *Dunlap Coke Ovens.* Hickory St. and Cordell Rd.

Smith County

Carthage, *Carthage United Methodist Church.* 609 South Main St.

Wilson County

Lebanon, *Fite-Fessenden House.* 326 West Main St.

TEXAS

Potter County

McBride Canyon Ruin (41PT67)

Tarrant County

Fort Worth, *Rogers-O'Daniel House.* 2330 Warner Rd.

[FR Doc. 85-14631 Filed 6-17-85; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventy-first meeting of the Board for International Food and Agricultural Development (BIFAD) on July 11, 1985.

The purpose of the meeting is to: Discuss education and training strategy and programs with Francille Firebaugh, Ohio State University, giving an overview of BIFAD's interest and emerging strategy and Nyle Brady, AID Senior Assistant Administrator for Science and Technology reporting on AID's training programs; consider a critique of International Agricultural Research Centers (IARCs) programs with Norman Collins, Ford Foundation, presenting the Joint Committee on Agricultural Research and Development's Annual Assessment of IARCs and Allison Herrick, AID Deputy Assistant Administrator, Bureau for Program and Policy Coordination, and John Eriksson, Deputy Assistant Administrator for Research, Bureau for Science and Technology, reporting on AID's Study of IARCs; and hear a proposal for grant to American Association of State Colleges and Universities (AASCU) by Allan Ostar, President of AASCU.

The meeting will begin at 9:00 a.m. and adjourn at 12:30 p.m. and will be held in Conference Room B, Pan American Health Organization, 525 23rd Street, NW., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, or telephone him at (703) 235-8929.

Dated: June 12, 1985.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 85-14540 Filed 6-17-85; 8:45 am]
BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30317]

New York, Susquehanna and Western Railway Corp., Pocono Northeast Railway, Inc., and IR, Inc.; Exemption; 49 U.S.C. 10901, 11301, and 10746

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts IR, Inc., (IR), from the provisions of (1) 49 U.S.C. 10901 with respect to (a) its acquisition and operation of a 4.2-mile line of railroad known as the Suscon Industrial Tract between Suscon and Hillside, PA (the Line), and (b) its possible future lease and operation of two connecting lines of railroad owned by Pocono Northeast Railway, Inc. (PNER), and known as the Brownsville Industrial Tract, a 0.6-mile line between Hillside and Hillside Junction, PA, and the Suscon Running Tract, a 2.1-mile line running from Suscon to the end of the line; (2) 49 U.S.C. 10746 with respect to the service rendered by IR for its parent company, Independent Explosives, Inc., which is located on the Suscon Running Tract; and (3) 49 U.S.C. 11301 with respect to its issuance of a $50,000 promissory note to finance a portion of the acquisition. The Commission also exempts PNER from the provisions of 49 U.S.C. 10901 with respect to its lease and operation of the Line.

DATES: This exemption is effective on July 18, 1985. Petitions to stay must be filed by June 28, 1985, and petitions for reconsideration must be filed by July 8, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30317 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter A. Gilbertson, Witkowski, Weiner, McCaffrey and Brodsky, Suite 350, 1575 Eye Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 30, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners, Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-14553 Filed 6-17-85; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-83]

Passenger Train Operation

To: The Atchison, Topeka and Santa Fe Railway Company:

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana and Los Angeles, California, and between Chicago, Illinois and San Antonio, Texas. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near Tuscon, Arizona, are temporarily out of service because of derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Los Angeles, California and El Paso, Texas, via Belen, New Mexico.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1982, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Los Angeles, California, via Belen, New Mexico, and a connection with Southern Pacific Transportation Company at El Paso, Texas.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Series Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:00 p.m., (EDT), May 24, 1985.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (E.D.T.), May 27, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corportion (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 24, 1985.

Interstate Commerce Commission.

Bernard Gaillard,

Agent.

[FR Doc. 85-14551 Filed 6-17-85; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data for Use by the Association of American Railroads

The Commission has received a request from the Association of American Railroads (AAR) to use the Commission's 1983 Carload Waybill Sample to study hazardous material flows throughout the United States and prepare certain statistics. AAR would use the statistics it produces to map the flows of hazardous materials by rail through various areas and compare them with the number of known accidents/incidents involving hazardous materials in the same areas. The figures would then be compared to the actual number of responses by AAR's inspectors to the hazardous material accidents/incidents. AAR states that no numbers pertaining to individual railroads, shippers or car owners would be released outside the AAR, and if any information were to be released, it would include only aggregated statistics for the entire U.S. rail industry.

The Commission requires rail carriers fo file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission developed

a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidfential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983.)

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, 202–275–0907.

James H. Bayne,

Secretary.

[FR Doc. 85–14647 Filed 6–17–85; 8:45 am]

BILLING CODE 7035-01-M

[No. 39911]

Passenger Carriers; Notice of Proposed Tariff Filing and Exemption and Winfield Bus Service, Inc.—Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Winfield Bus Service, Inc., a motor contract carrier of passengers, seeks exemption from the tariff filing and requirements of 49 U.S.C. 10702, 10761, and 10762. The Commission has issued a decision proposing to grant an exemption for existing and future contracts. The petition for exemption from the tariff filing requirements may be inspected at the Public Docket Room (Room 1227) of the Commission in Washington, DC

Any interested party may file a comment in this proceedng.

Comments are due on July 5, 1985. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments will be considered and, within 20 days of the close of the comment period, the Commission will issue a final decision granting or denying the exemption.

ADDRESS: Send an original and 15 copies of comments to: Docket No 39911, Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Paul W. Schach, (202) 275–7885
or
Howell I. Sporn, (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the decision, write to the Office of the Secretary, Interstate Commerce Commission, Rm. 2215, 12th & Constitution Ave. NW., Washington, D.C. 20423, or call (202) 275–7428.

Decided: June 7, 1985.

By the Commission, Division 1, Commissioners Sterrett, Lamboley, and Strenio

James H. Bayne,

Secretary

[FR Doc. 85–14646 Filed 6–17–85; 8:45 am]

BILLING CODE 7035-01-M

Study of Estimated Traffic Diversion and Viability of the Divestiture Proposals Resulting From the Acquisition of the Consolidated Rail Corporation by Norfolk Southern

AGENCY: Interstate Commerce Commission.

ACTION: Modification of notice of a study.

SUMMARY: On May 29, 1985, the Honorable James J. Florio, Chairman of the Subcommittee on Commerce, Transportation and Tourism of the Committee on Energy and Commerce of the United States House of Representatives, requested the Commission to change the manner in which the study is to be conducted. Under chairman Florio's modified request, the Commission will continue to gather information through June 19, 1985, pursuant to the schedule published in the **Federal Register** on May 10, 1985, 50 FR 19816. However, after submittal of the evidentiary presentations, the Commission's role with respect to this study will be complete. At that time, appropriate Commission staff will be detailed to the Subcommittee to assist that body in its analysis of the information gathered at the Commission.

Accordingly, Item 6 of the prior **Federal Register** notice is modified to read as follows:

6. At the conclusion of the evidentiary presentation on June 19, 1985, the Commission's role with respect to this study will be complete. At that time, appropriate Commission staff will be detailed to the Subcommittee to assist that body in its analysis of the record.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

Dated: June 11, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley concurred. Vice Chairman Gradison and Commissioner Strenio were present and did not participate. Commissioner Andre did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85–14763 Filed 6–17–85; 10:05 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Restructuring the Federal Bureau of Investigation's Uniform Crime Reporting Program; Request for Comments

AGENCY: Bureau of Justice Statistics, Justice.

ACTION: Request for public comment.

SUMMARY: This Notice requests public comment on a report which recommends restructuring of the Federal Bureau of Investigation's Uniform Crime Reporting program.

FOR FURTHER INFORMATION CONTACT: Paul D. White, Chairman BJS/FBI Task Force for the Study of UCR, Bureau of Justice Statistics, 633 Indiana Avenue, NW., Room 1164–A, Washington, D.C. 20531; telephone 202/724–7770.

SUMMARY INFORMATION: The Bureau of Justice Statistics and the Federal Bureau of Investigation (FBI) announce a 30 day period of public comment on a report entitled "Blue print for the Future of the Uniform Crime Reporting Program." The report contains recommendations for restructuring the FBI's Uniform Crime Reporting program into a more useful, flexibile, reliable statistical series. The report was prepared by ABT Associates, Inc. of Cambridge, Massachusetts under Contract No. J–LEAA–011–82.

The 30 day review period commences June 18; 1985 and ends July 18, 1985. If you wish to provide written comments, please send them to the Bureau of Justice Statistics at the address shown below. Single copies of the report may

be obtained at no charge by writing or calling:

Bureau of Justice Statistics, Att: Paul D. White, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-7770

Federal Bureau of Investigation, UCR Section, J. Edgar Hoover Building, 9th St. and Penn. Ave. NW., Washington, D.C. 20535, (202) 324-2820

Steven R. Schlesinger,

Director, Bureau of Justice Statistics.

[FR Doc. 85-14743 Filed 6-17-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 9, 1985, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 7th day of June.

James F. Taylor,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 85-14609 Filed 6-17-85; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, DC 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration
State Job Training Plan
1205-0204; ETA RC 56
Biennially
State or local governments
15 respondents; 150 burden hours

The State Job Training Plan, required by JTPA for those States with one statewide JTPA program, will provide information on the activities to be conducted and participants to be served by the State under JTPA.

Signed at Washington, DC this 13th day of June 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-14008 Filed 6-17-85; 8:45 am]

BILLING CODE 4510-30-M

[Order 1-85]

Renaming Selected Office of the Secretary Components

June 5, 1985.

1. *Purpose.* To change the organizational names of the Office of Legislative Affairs and the Office of Intergovernmental Affairs.

2. *Background.* Since July 1983 an Office of Legislative Affairs has been a separate component of the Office of the Secretary. The Office was headed first by an Assistant Secretary and more recently by a Deputy Under Secretary with responsibility for coordinating, supervising and directing all legislative activities, including all contacts with the Congress and the presentation of legislative programs and views to the Congress. However, the critical responsibility of the Deputy Under Secretary is to manage and maintain effective relationships with the Congress. Therefore to give proper emphasis to that role the Office is being renamed the Office of Congressional Affairs.

With respect to the Office of Intergovernmental Affairs, it is important that the Department's relationship with the public be coordinated and consistent with our relationships with labor and management and Federal, State and local officials. To ensure the required coordination the Office of Information and Public Affairs is being merged with the Office of Intergovernmental Affairs to form the Office of Public and Intergovernmental Affairs.

3. *Effecting the Changes*

a. The Office of Legislative Affairs is hereby renamed the Office of Congressional Affairs to be headed by a Deputy Under Secretary for Congressional Affairs who is responsible for maintaining the Department's relationship with the Congress and the effective implementation of the President's

legislative initiatives as they affect the Department of Labor.

b. An Office of Public and Intergovernmental Affairs is hereby established by merging the Office of Information and Public Affairs with the Office of Intergovernmental Affairs. The Office is to be headed by a Deputy Under Secretary for Public and Intergovernmental Affairs who is responsible for overseeing all the Department's public affairs and public information activities and supervising the Department's regional representatives who handle relations with senior representatives of labor, industry and community groups as well as with Federal, State and local government agencies and officials.

4. *Solicitor of Labor.* The Solicitor of Labor is responsible for providing legal advice and assistance to all officers of the Department relating to the administration of this Order.

5. *Directives Affected.* Secretary's Order 2–83 remains in effect except that the Deputy Under Secretary for Public and Intergovernmental Affairs has the added responsibilities specified in Secretary's Orders 37–65, 7–82 and 6–83. Those Orders also remain in effect except that the duties and responsibilities of the Director of Information and Public Affairs are carried out subject to the direction and guidance of the Deputy Under Secretary for Public and Intergovernmental Affairs.

6. *Effective Date.* This Order is effective immediately.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–14606 Filed 6–17–85; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Job Training Partnership Act; Native American Programs; Final Total Allocations and Allocation Formulas for Program Year 1985, Regular Program and Calendar Year 1985, Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the final Native American total allocations, distribution formulas and rationale for Program Year 1985 for regular programs funded under the Job Training Partnership Act (JTPA), and for Calendar Year 1985 for Summer Youth Employment and Training Programs funded under JTPA.

FOR FURTHER INFORMATION CONTACT: Paul A. Mayrand, Director, Office of Special Targeted Programs, 601 D Street NW., Room 6102, Washington, D.C. 20213. Telephone: (202) 376–6225.

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) is publishing the final total allocations and distribution formulas for Native American grantees to be funded under Title IV, section 401, and Title II, Part B. The amounts to be distributed are $62,243,000, for Title IV, section 401, for Program Year 1985; and $13,176,511 for Title II, Part B, for the Summer Youth Employment and Training Programs (SYEP) for the summer of Calendar Year 1985.

This information, along with individual grantee planning estimates, was published as a proposal on April 9, 1985. 50 FR 14037. Written comments from the public were invited, but no changes were suggested in response. Accordingly, the allocation tables are not being republished in this notice.

The formula for Title IV, section 401, provides that 25% of the finding will be based on the number of unemployed Native Americans in the grantee's area, and 75% will be based on the number of poverty-level Native Americans in the grantee's area.

Furthermore, the Program Year 1985 no grantee will receive less than 80% of the finding level it received for Program Year 1984, unless its territory to be served was increased or decreased. The rationale for the formula is that unemployment and poverty in an area are good indications of the need for employment and training programs.

The formula for allocating Title II, Part B, SYEP funds divides the funds among eligible recipients based on the proportion that the number of youths in their area bears to the total number of youths in all eligible areas. Further, in Calendar Year 1985 each grantee is guaranteed it will receive at least 80% of the SYEP funds it received in Calendar Year 1984. The rationale for using the number of youths in the formula is that they are the program beneficiaries.

Statistics on youth, unemployed, and poverty-level Native Americans are derived from the Decennial Census of the Population, 1980. Subject to Congressional appropriation action, DOL proposes to use a similar methodology for one more year for the SYEP, and thereafter to allocate to each grantee the amount it would receive by a direct application of the 1980 Census data without a hold harmless provision. Program Year 1985 is the last year a hold harmless provision will apply to Title IV, section 401, funds.

Signed at Washington, D.C., this 13th day of June, 1985.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 85–14610 Filed 6–17–85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 28, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 28, 1985.

The petitions filed in this case are available for inspection at the office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 10th day of June 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Aloyco, Inc. (IUE)	Linden, NJ	6/4/85	5/20/85	TA-W-16,066	Castings for valves.
Armco, Inc., Coke Div. (wkrs)	Ashland, KY	6/4/85	5/28/85	TA-W-16,067	Steel products.
Augat Corporation (workers)	Mashpee, MA	5/29/85	5/23/85	TA-W-16,068	Components.
Bergen Southwest Steel (workers)	Canutillo, TX	6/5/85	5/30/85	TA-W-16,069	Fabricated structural steel.
Champion International Corp., Buildings Products Div. (Brotherhood of Carpenters).	Anderson, CA	5/29/85	5/24/85	TA-W-16,070	Lumber and other wood products.
Chino Mines Co. (workers)	Hurley, NM	6/4/55	5/23/85	TA-W-15,071	Mine, refine copper.
Johnson Controls, Inc. (Sheetmetal Workers)	Georgetown, KY	5/31/85	5/30/85	TA-W-15,072	Instruments and related actuators for environmental control systems.
Jones & Laughlin, Aliquippa Works (USWA)	Aliquippa, PA	5/31/85	5/31/85	TA-W-16,073	Tin mill products, tin plate, bars, shapes, sheets, pipe tube, etc.
Nikki, Inc. (workers)	Cresaptown, MD	5/31/85	5/24/85	TA-W-16,074	Ladies blouses.
Stone Manufacturing Co. (workers)	Tignall, GA	6/4/85	5/29/85	TA-W-16,075	Girls cuffed walking shorts.
Soule Steel Co. (USWA)	Carson, CA	5/31/85	5/31/85	TA-W-16,076	Rebar mill.
Texaco Refinery, Eagle Point Plant (OCAWIU)	Westville, NJ	6/4/85	5/15/85	TA-W-16,077	Oil refinery products.
(The) Timkin Company (USWA)	Canyon, OH	5/31/85	5/31/85	TA-W-16,078	Tapered roller bearings and specialty steel items.
Tremonton Sportswear (company)	Tremonton, UT	6/4/85	5/20/85	TA-W-16,079	Men's and boys collar placket and button front shirts, jogging suits.
U.S. Steel Mining Co. Cumberland Mine, Northern Coal Div. (workers).	Waynesburg, PA	5/31/85	5/24/85	TA-W-16,080	Coal mining.
Weinbrenner Shoe Co. (workers)	Merrill, WI	6/4/85	5/30/85	TA-W-16,081	Boots, shoes, dress, unsulated, work.
Zenith Electronics Corp. Color TV Plant & Plastic Plant (IBEW).	Springfield, MO	6/5/85	5/30/85	TA-W-16,082	Color TV 13" receivers, sub assemblies, plastic cabinets, plastic parts, cable boxes, tack machines.

[FR Doc. 85-14604 Filed 6-17-85; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Ending of Extended Benefit Period in the State of West Virginia

This notice announces the ending of the Extended Benefit Period in the State of West Virginia, effective on May 18, 1985.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of West Virginia on February 3, 1985, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on April 27, 1985, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending May 18, 1985.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment services office in their locality.

Signed at Washington, D.C., on June 6, 1985.

Frank C. Casillas,

Assistant Secretary of Labor.

[FR Doc. 85-14605 Filed 6-17-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[V-85-5]

The Chlorine Institute, Inc.; Notice of Application for Variance

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for variance.

SUMMARY: This notice announces the application of the Chlorine Institute, Inc., on behalf of a number of its members, for a permanent variance from the standards prescribed in 29 CFR

1910.134(b)(11) concerning the use of approved or accepted respirators against the particular hazards for which they were designed in accordance with standards established by competent authorities. The Chlorine Institute seeks a variance that would allow mouthpiece respirators as a limited alternative to the use of half-mask respirators in chlorine-producing facilities. This notice invites comments from interested parties on the variance application.

DATES: The last date for interested parties to submit comments is July 18, 1985. The last date by which affected employers and employees may request a hearing is July 18, 1985.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3656, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination, at the above address, Telephone: (202) 523-7193

or the following Regional and Area Offices:

US Department of Labor—OSHA, 1515 Broadway (1 Astor Plaza), Rm. 3445, New York, New York 10036

US Department of Labor—OSHA, 220 Delaware Avenue, Suite 509, Buffalo, New York 14202

US Department of Labor—OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

US Department of Labor—OSHA, Federal Office Building, Rm. 3007, 844 King Street, Wilmington, Delaware 19801

US Department of Labor—OSHA, 550 Eagan Street, Rm. 206, Charleston, West Virginia 25301

US Department of Labor—OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367

US Department of Labor—OSHA, Building 10, Suite 33, LaVista Perimeter Office Park, Tucker, Georgia 30084

US Department of Labor—OSHA, Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216

US Department of Labor—OSHA, 951 Government Street, Suite 502, Mobile, Alabama 36604

US Department of Labor—OSHA, 1720 West End Ave., Suite 302, Nashville, Tennessee 37203

US Department of Labor—OSHA, Rm. 127 John C. Watts Federal Building, 330 W Broadway, Frankfort, Kentucky 40601

US Department of Labor—OSHA, 555 Griffin Square Building, Rm. 602, Dallas, Texas 75202

US Department of Labor—OSHA, Hoover Annex, Suite 200, 2156 Wooddale Boulevard, Baton Rouge, Louisana 70806

US Department of Labor—OSHA, 2320 LaBranch Street, Rm. 1103, Houston, Texas 77004

US Department of Labor—OSHA, 11349 Federal Building, 450 Golden Gate Avenue, PO Box 36017, San Francisco, California 94102

US Department of Labor—OSHA, 1960 Addison St., Suite 290, Berkeley, California 94704

US Department of Labor—OSHA, 1050 East William Street, Suite 402, Carson City, Nevada 89701

US Department of Labor—OSHA, Federal Office Building, 909 1st Avenue, Seattle, Washington 98174

US Department of Labor—OSHA, 121-107th Street, NE., Bellevue, Washington 98004

Notice of Application

Notice is hereby given that the Chlorine Institute, Inc., 70 West 40th Street, New York, New York 10018, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596, 29 U.S.C. 655) and 29 CFR 1905.11 for permanent variance from the standards prescribed in 29 CFR 1910.134(b)(11) concerning the use of approved or accepted respirators against the particular hazards for which they were designed in accordance with standards established by competent authorities.

The addresses of the places of employment that will be affected by this application are as follows:

B.F. Goodrich Chemical Group, Box 527, Calvert City, KY 42029

Convent Chemical Corporation, Box 129, Convent, LA 70723

Diamond Shamrock Chemicals Co., Box 500, Deer Park TX 77536

Diamond Shamrock Chemicals Co., River Road, Delaware City, DE 19706

Diamond Shamrock Chemicals Co., Box 999, La Porte, TX 77571

Diamond Shamrock Chemicals Co., 1300 Jarvis Road, Mobile, AL 36614

Diamond Shamrock Chemicals Co., Wilson Dam Road, Sheffield, AL 35661

Dow Chemical USA, B-101 Building, Freeport, TX 77452

Georgia-Pacific Corp., Box 629, Plaquemine, LA 70764

Kaiser Chemicals, Box 337, Gramercy, LA 70052

Olin Corp., Box 1234, Augusta, GA 30903

Olin Corp., Box 248, Charleston, TN 37310

Olin Corp., Box 28, McIntosh, AL 36553

Olin Corp., 2400 Buffalo Avenue, Niagara Falls, NY 14302

PPG Industries, Inc., Box 1000, Lake Charles, LA 70604

PPG Industries, Inc., Box 191, New Martinsville, WV 26155

Dow Chemical USA, Box 1398, Pittsburg, CA 94565

Dow Chemical USA, Box 150, Plaquemine, LA 70764

Ethyl Corporation, Petroleum Chemicals Group, Box 341, Baton Rouge, LA 70821

FMC Corp., Box 8127, So. Charleston, WV 25303

Stauffer Chemical Co., Box 86, Henderson, NV 89015

Stauffer Chemical Co., Box 100, Axis, AL 36505

Stauffer Chemical Co., Box 23, St. Gabriel, LA 70776

Weyerhaeuser Co., Box 188, Longview, WA 98632

Where a request for variance is made by a group of employers (a class application) and where it would be applicable to places of employment in more than one State, including at least one State with a State plan approved under section 18 of the Act, and involved a standard, or portion thereof, identical to a State standard effective under such plan, any grant of variance would be made under the Federal/State Reciprocity Agreement established at 29 CFR 1905.14(b)(3). Thus, the States of California, Kentucky, Nevada, Tennessee, and Washington, having jurisdiction over a portion of the places of employment covered in the application, are parties to the application. Each State has been forwarded a copy of the application for its review and recommendation. The State of Tennessee has responded by opposing the granting of the variance on the basis that mouthpiece respirators have not been proven to be practical or reliable for use other than for escape purposes only. The State of Washington also has responded by recommending against approval of the variance for a number of reasons, including the fact that the warning properties of chlorine are not adequate with a mouthpiece respirator and the inability to fit test this type respirator.

The applicant certifies that the above listed facilities of the member companies which it is representing have informed employees who would be affected by the variance of the application by posting copies at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

The applicant requests a variance from 29 CFR 1910.134(b)(11) to permit the use of mouthpiece respirators as a limited alternative to half-mask respirators in chlorine-producing

facilities. The wearer must keep his lips closed around the mouthpiece to maintain a proper seal, as well as wear a nose-clip. Half-mask respirators, on the other hand, fit over the mouth and nose to form a seal with the face.

Section 1910.134(b)(11) states that respirators shall be used and designed in accordance with standards established by competent authorities. The U.S. Department of the Interior, Bureau of Mines is recognized by § 1910.134(b)(11) as such an authority. However, the functions of, and mandatory standards issued by, the Bureau of Mines have since been transferred by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 961, to the U.S. Department of Labor, Mine Safety and Health Administration (MSHA). Currently, MSHA and the National Institute for Occupational Safety and Health (NIOSH) have jointly approved the mouthpiece respirator for escape purposes only. 30 CFR 11.90. Half-mask respirators are approved for work atmospheres containing up to 10 parts per million parts of air (10 ppm) of chlorine. 30 CFR 11.150. The applicant requests a variance to permit the use of mouthpiece respirators where exposures are 10 ppm or less of chlorine and are of a duration of less than 15 minutes.

The applicant states that its members have instituted a high level of administrative controls, engineering controls, and work practices to prevent employee exposure to chlorine. Among these are:

—Open design for 70% of the chlorine-producing cell rooms in the U.S., with the balance of plants utilizing high-efficiency forced ventilation systems;
—Well-posted, restricted-access work areas;
—The processing of chlorine in cells operating under vacuum or low pressure conditions; and
—Respiratory protection equipment maintenance programs which include respirator cartridge changes on a scheduled basis well in advance of the normally expected end-of-service life.

The applicant further states that chlorine releases are transient in nature and of very low concentrations. Thus, the applicant contends that the need for respiratory protection has been reduced primarily to unscheduled, short-time incidents in which a quick response is often advisable or required. According to the applicant, operational tasks in chlorine-producing facilities, with the potential for low-level chlorine excursions, are of two broad types:

—Unscheduled and unanticipate short-term exposure, for example, responding to a newly-discovered leak by tightening valve bonnet and flange bolts and cell clamps;
—Potential unscheduled short-term exposure in the course of a routine operation where it is known in advance that brief exposure is possible though not certain, for example, in the breaking down of an evacuated mercury or diaphragm cell to perform maintenance.

The applicant asserts that the mouthpiece respirator is more suitable in both cases due to its compactness, convenience, and ease of donning. Further, the applicant contends that the relative complexity of donning the half-mask, requiring removal of the helmet and eye protection and adjustment of headstraps, makes it much less suitable than the mouthpiece respirator for a quick response.

According to the applicant, in the first type of exposure potential cited above, as soon as the worker recognizes the need for respiratory protection based on chlorine's high olfactory warning capability (detectable by human smell typically below 0.3 ppm), the worker could quickly don the mouthpiece respirator and take the appropriate action or could, alternatively, leave the area to obtain a higher level of protection. The applicant contends that the ability to respond quickly to such an unanticipated, though not wholly uncommon, leak is ultimately more protective of this worker and others because the quantity of escaping chlorine is minimized by quick response.

To illustrate the second case, the applicant states that one should consider the scenario in which a cell is being disassembled and evacuated. The applicant contends that it is unlikely that any chlorine remains in the cell though this is not certain. The applicant asserts that for such a short-term job, where exposure is possible but uncertain, the mouthpiece respirator is a more practical option for protection than the half-mask. It is the one most workers would choose, according to the applicant.

A further factor which the applicant believes supports the granting of a variance is that the work environment is heated by the electrochemical production of the chlorine. The physical configuration of the mouthpiece respirator causes less perspiration than the more confining half-mask. Perspiration occurring around the seal of the half-mask many cause irritation in the acid environment of the chlorine plant.

Workers in most chlorine-producing plants already carry mouthpiece respirators for emergency and escape situations. The applicant proposes that mouthpiece respirators also be permitted for general work practice tasks lasting up to 15 minutes when the workplace atmosphere contains 10 ppm or less chlorine. This proposed use would be available to approximately 2500 employees at the 24 chlorine-producing facilities previously listed.

The following conditions are proposed by the applicant for the use of the mouthpiece respirator in chlorine-producing facilities:

1. Use only in conjunction with a nose-clip;
2. Use only after completion of a site-specific training program addressing:
   a. Fitting; and
   b. The merits of the available respirators and the significance of the choice between them;
3. Use only in tasks involving a duration of exposure not exceeding 15 minutes;
4. Use only where chlorine exposure is 10 ppm of less; and
5. Administrative controls for scheduling cartridge changes.

The applicant has submitted the results of a quantitative respirator fitting test program which indicate that, based on facepiece leakage, the mouthpiece respirator offers protection at least equal to that provided by a half-mask air purifying cartridge respirator. The study involved 90 quantitative fitting tests each of mouthpiece and half-mask respirators on 30 subjects. The test considered parameters such as fit factors of a particular respirator/person combination, comparison of the overall fit factors of the two respirators at the different locations, and comparison of test results with published information. Based on the quantitative fit data, statistically evaluated by three separate parties, the applicant asserts that the study concluded that, measured in terms of facepiece leakage, the mouthpiece respirator is capable of providing protection at least equal to that provided by a half-mask respirator. The data submitted by the applicant has been placed in the record and is available for review by the public.

The applicant states further that the safety record of the mouthpiece respirator is based on many person-years of experience during which the mouthpiece respirator was in use for general work practices, not limited by regulation to escape use. Unlike the half-mask, the effectiveness of the mouthpiece respirator is not limited by workers' colds, sinus problems, or facial

hair. The relative complexity of donnng the half-mask, requiring removal of the worker's helmet to adjust straps, interrupts protection of the worker's eyes. By contrast, the reliability of fit of the mouthpiece respirator is enhanced by the simplicity of its easily learned fitting procedure. A report by the Chlorine Institute's Respirator Equipment Task Force details further justifications for expanded use of the mouthpiece respirator.

The applicant states that its data on time lost by chlorine-producing plant workers due to chlorine inhalation indicate an outstandingly low incident rate of 0.129 day per 100 workers over the past ten years. According to the applicant, without the ready and instant availability of the mouthpiece respirator carried at workers' sides this record would quite possibly not have been as good.

Moreover, the applicant asserts that because for many workers mouthpiece respirators are in fact the respirator protection of choice, they may well be more effective for the specialized uses of concern here than are half-masks. Both compliance with the respirator regulations and the effectiveness of respirator protection depend to a significant extent on worker cooperation and assistance in fitting, wearing, and maintaining the equipment.

A common complaint from plant workers in using half-mask respirators, states the applicant, is the delay required in achieving protection due to the need to adjust the respirator's head straps in order to obtain an effective seal. As a result, workers might be inclined either not to use respiratory protection or to hand hold the half-mask to their faces without straps secured, resulting in poor fitting. In comparison, only a fraction of the time is needed to don a mouthpiece respirator. The applicant contends that for the low-level, transient exposures and routine but unscheduled exposures it claims are at issue here, ease of respirator use and the time required to acquire respirator protection are determinative of worker preference and acceptance, and, hence, of the relative efficacy of respirator use. Based on a 1983 chlorine producing plant survey conducted by the applicant, the mouthpiece respirator is the respiratory protective device carried by workers in 40 plants while only in 17 plants are half-mask respirators routinely carried by workers.

Is should be noted that, according to the applicant, its request for approval of the mouthpiece for general, short-term work practices is not motivated by cost concerns. The cost differential between the mouthpiece and half-mask is small and would probably involve only the differing costs of maintenance.

The applicant states, in summary, that it requests that the mouthpiece respirator be recognized as an alternative to the half-mask in general work practice situations not exceeding 10 ppm in exposure concentration nor 15 minutes in exposure duration for chlorine and subject to other conditions as outlined previously. The applicant believes that in these limited situations the mouthpiece respirator is as protective as the half-mask in compliance with Section 6(d) of the OSH Act, and on the basis of worker preference it may indeed, be more protective.

The applicant states further that the proposed limited use accompanied by a training program satisfies the criteria established in the OSHA general respirator standard, 29 CFR 1910.134(b), including the requirement that a respirator be selected on the basis of specified hazards and the requirements of a program of user training, written procedures, and adequate respirator protection against the particular hazard for which the respirator is designed. Mouthpiece respirators have long been approved for escape use, in reliance on their ease and speed of donning, simplicity, and protectiveness. The applicant asserts that these characteristices are the basis of worker approval and justify the proposed use of the mouthpiece as an alternative, at the choice of workers, to the half-mask respirator.

In addition, the applicant states that it feels that the use of the mouthpiece respirator is in compliance with the current standard for specific uses not presently identified in the Industrial Hygiene Manual and MSHA regulation, e.g., 30 CFR 11.90 Implementation of this alternative means of compliance by the granting of a permanent variance is, therefore, respectfully requested by the Chlorine Institute.

Various employee respresentatives wrote letters in support of the variance application. These letters were submitted by the Chlorine Institute along with the application and are in the record. In addition, the International Chemcial Workers Union (ICWU) filed, on behalf of its members, comments opposing the proposed variance. ICWU believes that there are serious errors in the arguments made by the Chlorine Institute. ICWU questions, in particular, the conclusions reached by the Chlorine Institute's study of the comparative effectiveness of the mouthpiece and half-mask respirators. ICWU contends that under actual working conditions mouthpiece respirators are not as effective as the Chlorine Institute claims. Moreover, ICWU asserts that the use of mouthpiece respirators would ultimately be left up to the discretion of management at each plant and that the conditions set forth by the applicant are unenforceable. ICWU's comments, as well as those of other employee representatives, are in the record and available for public review.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the pertinent application no later than July 18, 1985. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than July 18, 1985, in conformance with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, D.C., this 10th day of June, 1985.

Patrick R. Tyson.

Deputy Assistant Secretary of Labor.

[FR Doc. 85-14607 Filed 6-17-85; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Application No. D-4585 et al.]

Proposed Exemptions; Gibson Products Co., Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the

writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal **Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Gibson Products Company, Inc., of Sherman Employees Profit Sharing Plan (the Plan) Located in Sherman, Texas

[Application No. D-4585]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a 15 acre parcel of real property located in Grayson County, Texas (the Property) by the Plan to Ms. Dianne Loving and Mr. Gary Acklin, parties in interest with respect to the Plan, for $80,000 in cash, representing the fair market value of the Property, plus accrued earnings, provided such amount is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 147 participants. The Plan had total assets of $1,492,415 as of December 31, 1982. The trustees of the Plan (the Trustees) are employees of Gibson Products Company, Inc. of Sherman (the Employer). The Employer operates discount retail centers in the Sherman, Texas area.

2. The Plan purchased the Property in May 1981 for $58,345 from an unrelated party. At the time the Property was purchased, the Plan intended to construct improvements thereon to be leased as retail stores. The Property is unimproved and has not been used since it was acquired by the Plan.

3. Although the Property has appreciated, the Trustees now believe it would be in the best interests of the Plan to sell it as opposed to the Plan's investing additional funds in the Property for retail development. The Trustees believe that the funds necessary for a viable retail center would require a substantially disproportionate investment of the Plan's assets which would substantially restrict the Plan's liquidity. Further, the Trustees belief that the Plan's investment in a retail center would require substantial administrative duties and would expose the Plan to unnecessary risks due to competition from other retail centers.

4. It is proposed that the Property be purchased by Dianne Loving and Gary Acklin (the Purchasers). The Purchasers are two of the five Trustees and each owns approximately 8 percent of the stock of the Employer. The Purchasers have offered to purchase the Property for its appraised value of $80,000. The purchase will be for cash. The Trustees have agreed to accept this offer with the Purchasers abstaining from voting on this matter because of their interest in the proposed transaction. The Purchasers will pay the cash amount of $80,000 for the Property.

5. An indipendent appraisal of the Property was performed by Larry Long & Associates, Inc. of Denison, Texas, establishing the fair market value of the Property at $80,000 as of March 14, 1985.

6. Mr. Roy H. Poe, (Mr. Poe) a Senior Vice President and Trust Officer of Texas American Bank (the Bank) reviewed the proposed transaction as an independent fiduciary. There is no relationship between Mr. Poe, the Bank and the Plan Sponsor. Mr. Poe has reviewed copies of the minutes of several meetings of the Board of Trustees (the Board) of the Plan to verify that proper consideration had been given and recorded concerning the Plan's original purchase of the Property. Mr. Tommy R. Allen, a member of the Board, submitted a sworn affidavit to the Bank in which he stated that the Board had initially intended that the Plan develop the Property. However, during the two-year period that followed the purchase of the Property, as a result of various discussions and consideration of the expense and administrative requirements associated with the development of the Property, the Board reached the conclusion that the development of the Property by the Plan would not be in its best interests. The Board decided that development by the Plan would impose a substantial administrative burden upon the Board associated with the initial development of the Property and the subsequent operation of it, and would obligate a substantially disproportionate part of the Plan's assets for the cost of the development. Development costs were estimated at $600,000 to $800,000. Therefore, the Board elected to sell the Property for the above-stated reasons as well as the financial risks inherent in an investment of this nature when compared to the risk and potential returns available to the Plan from other types of investments which would not carry the administrative and development expenses associated with development of the Property. Mr. Poe has concluded that the proposed sale of the Property to the Trustees is in the best interest of the Plan.

7. On September 6, 1983, the Purchasers and the Plan entered into an escrow agreement (the Agreement) whereby the sale was closed into escrow with the First National Bank of Sherman (First National). First National has held the deed and title documentating regarding the Property

and the net purchase funds of $80,000 [1] pending approval by the Department of the requested exemption. Should the exemption be granted, the deed for the Property will be delivered to the Purchasers and the purchase funds to the Plan. During the escrow period the purchase funds have been invested by the escrow agent, with the earnings to be turned over to the Plan upon approval of the exemption, or alternately returned to the Purchasers if the exemption is denied. The applicant represents that the Agreement is in the best interests of the Plan because it has enabled the Plan to invest the proceeds from the sale of the Property. Currently, the escrow fund has accrued earnings of $12,654. Upon approval of the exemption, the Plan will also receive accrued earnings as of the date of sale.

8. In summary the applicant represents that the proposed transactin meets the statutory criteria of section 408(a) of the Act because:

(1) The sale will be a one-time cash transaction;

(2) The sale will increase the liquidity of the Plan's assets;

(3) The sales price has been determined by an independent appraisal; and

(4) The Trustees and the Plan's independent fiduciary have determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-881. (This is not a toll-free number.)

Local 725 Pension Trust Fund of Dade, Broward and Monroe Counties, FL (the Pension Plan) and Local 725 Educational Trust Fund of Dade, Broward and Monroe Counties, FL (the Educational Plan; collectively, the Plans) Located in Coral Gables, FL

[Application Nos. D-5072 and D-5073]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the continuation of a Loan (the Loan) by the Pension Plan to the Educational Plan, provided that the terms and conditions of the Loan were and will remain at least at arms-length.

Effective Date: If this proposed exemption is granted, the effective date will be July 1, 1984.

Summary of Facts and Representations

1. The Plans were established to provide certain benefits to members of the Air Conditioning, Refrigeration, Heat & Piping Local Union No. 725 (the Union). As of February 28, 1984, the Pension Plan had assets of $24,831,950 and approximately 1,628 participants. As of February 28, 1984, the Educational Plan had assets of $519,615 and approximately 900 participants. The same individuals currently participate in both Plans, with the exception that retired pensioners have no continuing need for the education offered by the Educational Plan. In addition, the same individuals (the Trustees) serve as the Trustees of both Plans. The Plans are not parties in interest with respect to each other.

2. On or about May 20, 1969, the Pension Plan loaned $300,000 to the Educational Plan. This Loan was for a term of 20 years with an interest rate of 7½%. The Loan was secured with a first mortgage on real property owned by the Educational Plan located at 13201 NW. 45th Avenue in Opa Locka, Florida (the Property). The proceeds of the Loan were and are being used by the Educational Plan to provide training to members of the Union.

3. The applicants represent that pursuant to section 414(c)(1) of the Act, the Loan was exempted from the prohibited transaction provisions of the Act until June 30, 1984.[2] The applicants are requesting an exemption which will permit the continuation of the Loan beyond June 30, 1984 until it matures on May 20, 1989. The loan provides for equal monthly payments of principal and interest and since the Loan has been in effect, all payments of the principal and interest have been made on a timely basis. As of April 5, 1985, the outstanding balance on the Loan was approximately $170,000. The applicants propose that the Loan continue under the existing terms and conditions with the exception of the interest rate which was increased to 11% effective July 1, 1984.

4. The Trustees represent that the terms and conditions of the Loan are in the best interests of the participants and beneficiaries of the Educational Fund. The Trustees state that the Educational Fund saved substantial costs that would have been involved in refinancing the Loan through another intermediary such as a bank (e.g. appraisal fees, legal fees, origination fees, etc.). The Trustees after careful review of current market conditions believe that the 11% interest rate assessed on the Loan represents fair market value.

5. Oppenheimer Capital Corporation (Oppenheimer), an independent party, was appointed on May 4, 1983 to review the terms of the Loan on behalf of the Pension Plan and represents as follows. Openheimer is an investment advisor registered with the Securities and Exchange Commission and currently manages over $4 billion of assets. Oppenheimer acknowledges that it is an independent fiduciary of the Pension Plan. Oppenheimer represents that the Loan is in the best interests of the participants and beneficiaries of the Pension Plan.

Among the factors considered by Oppenheimer in making this determination were the small percentage of the assets of the Pension Plan involved, the extremely high level of collateral securing the Loan based upon an appraisal of the Property by the Dade County, Florida tax appraiser establishing the value of the Property as of May 10, 1983 at $725,108; the short term of the Loan until maturity; and the adjusted current interest rate of 11%. Oppenheimer represents that based on its analysis of all the relevant factors, including the short time to maturity and the extensive collateralization, that 11% was the fair market interest rate for the loan on July 1, 1984. In addition, Light and Associates, an independent pension consultant located in Atlanta, Georgia, has been delegated authority to monitor the Loan on behalf of the Plans.

6. In summary, the applicants represent that the Loan satisfies the statutory criteria set forth in section 408(a) of the Act as follows: With regard to the Pension Plan: (1) The terms and conditions of the Loan have been approved by Oppenheimer; (2) the Loan represents a small percentage of the assets of the Pension Plan; and (3) the Pension Plan will receive the current rate of interest on the Loan. With regard to the Educational Plan: (1) The Trustees represent that it will be in the best interests of the participants and beneficiaries of the Educational Plan; (2) the Educational Plan will avoid the expenses incurred in refinancing the existing debt; and (3) the Loan will assist in training members of the Union

[1] The applicant originally proposed a purchase price of $75,000 for the Property based upon an independent appraisal which established the fair market value of the Property at $75,000 on March 14, 1983. As a result of a more recent appraisal, establishing the fair market value at $80,000, the purchase price was increased to $80,000.

[2] The Department is not making any determination as to whether pursuant to section 414(c)(1) of the Act the Loan was exempted from the prohibited transaction provisions of the Act until June 30, 1984.

who are participants in the Educational Plan.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Consultants in Cardiology, P.A. Pension Plan (the Plan) Located in Millburn, New Jersey

[Application No. D–5897]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code shall not apply to (1) the loan (the Loan) of $100,000 by the Plan to consultants in Cardiology, P.A. (the Employer); and (2) the guarantee of repayment of the Loan by Drs. Donald Rothfeld and Roland Werres, the shareholders of the employer; provided that the terms of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party.

Summary of Facts and Representations

1. The Employer is a professional corporation organized under the laws of New Jersey and engaged in the practice of medicine. The Employer maintains its clinic facility at 116 Millburn Avenue, Millburn, New Jersey.

2. The Plan is a defined benefit pension plan with approximately 9 participants as of November 20, 1984. On October 30, 1984, the Plan had assets of $484,234. The trustees of the Plan are Donald Rothfeld, M.D. and Roland Werres, M.D., each of whom is a 50% shareholder of the Employer. The trustees have ultimate responsibility for making investment decisions for the Plan.

3. The Employer proposes to borrow $100,000 from the Plan to finance the Employer's recent move to new offices on October 1, 1984. The cost of the move was approximately $150,000, of which approximately $100,000 was spent on leasehold improvements, including furnishings, fixtures, and equipment. The proposed Loan will represent less than 25 percent of the assets of the Plan, and will be evidenced by a promissory note providing for the repayment of the indebtedness in sixty (60) monthly installments of principal and interest. The rate of interest will be fixed at 14 percent per annum on the unpaid principal balance.

4. The Loan will be secured by a first security interest in all of the Employer's accounts receivable (the Receivables). In addition, the Loan will be personally guaranteed by Drs. Rothfeld and Werres, who represent that they have a combined net worth of more than $1,000,000. To document the Plan's security interest in the Receivables, the Employer will execute a security agreement and file a Uniform Commerical Code Financing Statement in favor of the Plan, which will be maintained so long as the Loan is outstanding. As of October 29, 1984, the Employer had outstanding Receivables of $378,347. The applicant has submitted information summarizing the Employer's Receivables for the period May 1, 1984 through February 28, 1985, which shows that during that period the Employer had billings of $1,260,705 and collections of $979,450, indicating that approximately 80 percent of the Receivables are actually collected. In determining the value of the collateral, the face value of the Receivables shall be discounted by 20 percent to reflect the actual collection rate. The Employer agrees to maintain collateral at all times equal to at least 200 percent of the outstanding loan balance, and will post additional collateral should the receivables fall below that level.

5. Michael J. Steinhorn, a certified public accountant, has agreed to act as the independent fiduciary (the Independent Fiduciary) for the Plan in the proposed transaction. The Independent Fiduciary represents that he advises clients with respect to plan design and administration, investment of plan assets, and compliance with the Act. He further represents that he does not serve as the Employer's accountant, nor does he have any other relationship to the Employer. The Independent Fiduciary states that the Employer would receive the same terms from a bank, which statement is supported by a letter dated November 16, 1984 from United National Bank in Plainfield, New Jersey offering to consider a five-year loan to the Employer at an interest rate of 14 percent per annum. The Independent Fiduciary represents that he has examined the terms of the Loan and has determined that it is in the best interest of the Plan and its beneficiaries because the Loan is of reasonable duration, and the collateral securing the Loan is adequate to protect the Plan. In making his determination, he indicates that he has examined the overall portfolio of the Plan, considered the Plan's cash flow needs, considered the assets that might have to be sold in order to meet the liquidity and diversification requirements of the Plan, and reviewed the proposed Loan in terms of how it fits within the Plan's investment policy. The Independent Fiduciary will undertake the following actions: (a) Monitor the Loan and verify the payments under the promissory note are made in accordance with its terms; and (b) verify that the collateral is always 200 percent of the outstanding loan balance, and (c) demand additional collateral from the Employer if it ever falls below that level.

6. In summary, it is represented that the proposed Loan will satisfy the conditions of section 408(a) of the Act because (a) the Loan will represent less than 25 percent of the total assets of the Plan; (b) the Loan will be secured by a perfected first security interest in the Employer's Receivables representing at all times at least 200 percent of the outstanding balance of the Loan; (c) Drs. Rothfeld and Werres will personally guarantee the repayment obligation in the event of a default; and (d) the Independent Fiduciary has determined that the Loan is in the best interest of the Plan and will take all appropriate actions to enforce the rights of the Plan.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Laney & Duke Storage Warehouse Company Employees Profit Sharing Plan and Trust (the Storage Plan) Laney & Duke Terminal Warehouse Company, Inc. Employees Profit Sharing Plan and Trust (the Terminal Plan; collectively the Plans) Located in Jacksonville, Florida

[Application Nos. D–5965 and D–5966]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of certain parcels of real property (the Property) by the Plans to Laney & Duke Terminal Warehouse Company, Inc., a party in interest with respect to the plans provided that the sale price of the Property is not less than

the higher of either $2,709,500 or the fair market value on the date of the sale.

Summary of Facts and Representations

1. As of June 30, 1984, the Terminal Plan consisted of 227 participants with total assets of $2,771,404 and the Storage Plan consisted of 24 participants with total assets of $2,714,373. The sponsoring employer of the Terminal Plan is Laney & Duke Terminal Warehouse Company, Inc. and its subsidiaries: Land Trucking Company and Laney & Duke Distribution Center, Inc. (the Terminal Employer); and the sponsoring employer of the Storage Plan is the Laney & Duke Storage Warehouse Company (the Storage Employer; collectively the Employer). The fiduciaries of the Plans are Thomas A. Duke, Thomas H. Duke, Jr. and S. Charles Farrell who are all officers of the Employer. Thomas A. Duke is also the sole shareholder of the Employer. In addition, Robert A. Mills, a licensed realtor and appraiser of real property from Jacksonville, Florida, has been delegated certain independent fiduciary responsibilities with regard to the proposed transaction. Mr. Mills has represented that he is familiar with the fiduciary responsibility provisions of the Act and that he has no financial interest in the Employer and no business relationship with the Employer.

2. The Employer, incorporated in the State of Florida, is involved in public warehousing and distribution of food related merchandise. Its warehousing and distribution facilities are located in five major cities of Florida, and all its facilities are leased, with the exception of one. The net worth of the Employer, as of June 30, 1984, was approximately $2,300,000.

3. Prior to 1973, and under terms that were represented to be binding as of July 1, 1974, the Plans entered into agreements for leasing to the Terminal Employer the Property, which includes six adjoining parcels with improvements consisting of warehouse facilities plus a small shop. The Property is located on Portions of Government Lots 2 and 6, Section 18, Township 2 South, Range 27 East, between Marshall and Jessie Streets in Jacksonville, Florida.[3] The leases terminate either in 1988 or in 1992. The rentals were established on an arm's-length basis by independent appraisals and have been adjusted periodically in accordance with annual appraisal reports. The Employer believes that all of the leases were exempt from the prohibited transaction restrictions of the Act until June 30, 1984, by section 414(c)(2) of the Act.[4] The Employer also represents that it is aware that the lease agreements are in violation of the prohibited transaction provisions of the Act since July 1, 1984, and that Form 5330 will be filed with the Internal Revenue Service and the applicable excise taxes will be paid for the period beginning July 1, 1984, within 60 days of the date the Department concludes its action on this exemption application.[5]

4. An exemption is sought which will permit the Plans to sell the Property to the Terminal Employer for cash in an amount not less than the higher of either $2,709,500 or the fair market value of the Property on the date of the sale. Robert A. Mills, the independent fiduciary with respect to the proposed transaction, determined that the sale of the Property to the Employer will be appropriate and in the best interests of the Plans. Mr. Mills in reaching his favorable conclusion relied upon, among other things, an appraisal of the Property made by James C. Johnston, S.R.P.A., a qualified independent appraiser, from Jacksonville, Florida. Mr. Johnston, on July 15, 1984, determined that the Property had a fair market value of $2,709,500; furthermore, he will up-date the appraisal within 45 days before the sale. The Employer and Mr. Mills also represent that the Plans will incur no expenses from the sale.

5. In summary, the Employer represents that the proposed sale will satisfy the criteria of section 408(a) of the Act because (a) the sale will be a one-time transaction for cash; (b) the sale will permit the Plans to convert much of their real property holdings into cash and achieve a rate of return that is more advantageous in today's market; (c) the sale will avoid expenses and avoid fragmented sales of the Property at lower prices; (d) the Plans will sell the Property at the highest price which can be realized from a sale on the open market; and (e) Mr. Mills, the independent fiduciary, represents that the sale is in the best interests of the Plans and their participants and beneficiaries.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

[3] The Employer in its application for exemption represents that because a substantial number of the parcels are not geographically dispersed, the parcels do not meet the definition of "qualifying employer real property" as defined in section 407(d)(4) of the Act; and therefore, the statutory exemption provided under section 408(e) of the Act is not available for the proposed transaction.

[4] The Department expresses no opinion as to whether the lease agreements were exempt until June 30, 1984, from the prohibited transaction restrictions of section 406 of the Act and section 4975 of the Code by reason of section 414(c)(2) of the Act and section 2003(c)(2)(B) of the Code.

[5] However, as to one lease agreement, the Miami Area Office of the Department has disputed the availability of section 414(c)(2) of the Act. If it is ultimately determined that this lease agreement which is in dispute did not meet the specific requirements of section 414(c)(2) of the Act, the Employer represents that it will file Form 5330 with the Internal Revenue Service and will pay the applicable excise taxes for the period beginning January 1, 1975, within 60 days of the date on which this dispute is resolved between the Department and the Employer.

Signed at Washington, D.C., this 13th day of June, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-14644 Filed 6-17-85; 8:45 am]

BILLING CODE4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittees on Quality and Quality Assurance in Design and Construction/Watts Bar; Meeting

The ACRS Subcommittees on Quality and Quality Assurance in Design and Construction and Watts Bar will hold a meeting on June 26, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 26, 1985—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the Black & Veatch IDP Report on the AFW System at Watts Bar. The Subcommittees will also discuss the Independent Design Policy Group and NSRS evaluations of those reports as well as recent allegations concerning construction and design at Watts Bar.

Oral statements may be presented by members of the public with the 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 meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is 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 Tennessee Valley Authority, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on request 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. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. 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: June 12, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-14637 Filed 6-17-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 OL, 50-414 OL]

Duke Power Co. et al. Catawba Nuclear Station, Units 1 and 2; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of June 13, 1985, supplemental oral argument on the pending appeals in this operating license proceeding will be heard at *9:30 a.m. on Friday, June 28, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

For the Appeal Board.

Dated: June 13, 1985.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-14642 Filed 6-17-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No.: STN 50-482]

Kansas Gas & Electric Co. and Wolf Creek Nuclear Generating Station; Receipt of Request for Action

Notice is hereby given that by petition dated May 15, 1985 and an amendment thereto dated May 31, 1985, the Government Accountability Project on behalf of the Nuclear Awareness Network requested that the Nuclear Regulatory Commission take certain actions regarding allegations of safety-related deficiencies at the Wolf Creek facility before authorizing full power operation. The petitioner requested the Commission to analyze safety-related deficiencies in the licensee's "Quality First" program files, determine the significance of the deficiencies for any findings on the adequacy of the licensee's quality assurance program and to investigate the licensee's conduct of the "Quality First" program. The petition is being handled as a request for action pursuant to 10 CFR 2.206 and, accordingly, appropriate action will be taken on the petition within a reasonable time.

Copies of the petition are available for public inspection in the Commission's Public Docket Room at 1717 H Street, N.W., Washington, D.C. 20555, in the local public document room at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and in the local public document room at the Washburn University School of Law Library, Topeka, Kansas 66612.

Dated at Bethesda, Maryland, this 12th day of June 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-14640 Filed 6-17-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-187]

Northrop Corp.; Finding of No Significant Environmental Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the Northrop Corporation to dismantle their TRIGA reactor facility in Hawthorne, Los Angeles County, California and to dispose of the reactor components in accordance with the application dated January 14, 1985, as supplemented.

The Order would authorize dismantling of the facility and disposal of the components in accordance with the licensee's application for decontamination and dismantling dated January 14, 1985, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Termination of Facility License published in the **Federal Register** on May 22, 1985 at 50 FR 21153.

Finding of No Significant Environmental Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action, dated May 28, 1985, and has concluded that the proposed action will not have a significant effect on the quality of human environment.

Summary of Environmental Impacts

The environmental impacts associated with the dismantling and decontamination operations are discussed in an Environmental Assessment associated with this action, dated May 28, 1985. The operations are calculated to result in a total radiation exposure of less than 5 person-rem to all operating personnel and the general public. The Environmental Assessment concluded that the operation will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the fact that all operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological effluent control procedures and systems ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA).

For further details with respect to this proposed action, see the application for dismantling, decontamination and license termination dated January 14, 1985, as supplemented, the Environmental Assessment, and the Safety Evaluation prepared by the staff. These documents and this Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 13th day of June 1985

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-14639 Filed 6-17-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-275]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-80, issued to Pacific Gas and Electric Company, the licensee, for the operation of the Diablo Canyon Nuclear Power Plant, Unit 1, located in San Luis Obispo County, California.

In accordance with of the licensee's applications for amendment dated May 14 (LAR 85-01 Rev. 4 and LAR 85-03), May 20 (LAR 85-04) and May 30, 1985 (LAR 85-05 and LAR 85-06), the proposed changes would revise the Diablo Canyon Unit 1 Technical Specifications to eliminate typographical errors, provide additional clarification, improve consistency, adjust nomenclature, modify the reporting requirements to bring them into conformance with the guidance in Generic Letter 83-43 for the Licensee Event Report System, bring portions of the Specifications into conformance with current NRC staff positions, incorporate Unit 2 information where appropriate, and make other minor changes. A primary objective of the amendment request is to achieve a single Technical Specifications document that is common for the nearly identical Units 1 and 2 with individual specifications for each Unit clearly identified, as appropriate. In this regard, the proposed changes to the Unit 1 Technical Specifications are consistent with the Unit 2 Technical Specifications recently issued as Appendix A to Facility Operating License DPR-81 and proposed changes to the Unit 2 Technical Specifications included in the licensee's application for amendment to DPR-81 dated May 14, 1985. Furthermore, most of the Unit 1 proposed changes have already been incorporated by the Commission into the current Unit 2 Technical Specifications as a part of DPR-81. This becomes a pertinent consideration in evaluating whether or not the Unit 1 proposed changes involve a significant hazards consideration, and is so recognized in the proposed determination.

The following is a description of the proposed changes to the current Unit 1 Technical Specifications:

1. Page 1-2, item c of Definition 1.8, CONTAINMENT INTEGRITY, is changed from "c. Each air lock is OPERABLE pursuant to Specification 3.6.1.3" to "c. Each air lock is in compliance with the requirements of Specification 3.6.1.3".

2. Page 1-2, Definition 1.10, an "s" is added to the title of "CORE ALTERATION" and "reactor pressure vessel" is changed to "reactor vessel".

3. Page 1-3, in Definition 1.11, Table E-7 of NRC Regulatory Guide 1.109, Revision 1, October 1977 is added as an additional source of thyroid dose conversion factors, and the definition of the AVERAGE DISINTEGRATION ENERGY, 1.12, is changed to "E shall be the average (weighted in proportion to the concentration of each radionuclide in the sample) of the sum of the average beta and gamma energies per disintegration (MeV/d) for the radionuclides in the sample."

4. Pages 1-3 and 1-5, the tables references in Definition 1.15, FREQUENCY NOTATION, and Definition 1.21, OPERATIONAL MODE, are reversed to Table 1.1 and Table 1.2 respectively; Table 1.1 on page 1-8 becomes Table 1.2, and Table 1.2 on page 1-9 becomes Table 1.1. These changes are made for consistency with the order in which the tables are cited in the text.

5. Page 1-4, in Definitions 1.16 and 1.17, change "primary coolant system" and "primary system" to "Reactor Coolant System", and change "secondary system" to "Secondary Coolant System". Make these changes, where applicable, throughout the document.

6. Page 1-5, the last line of Definition 1.27, RATED THERMAL POWER, which only includes Unit 1 data, is changed to ". . . 3338 MW_t for Unit 1 and 3411 MW_t for Unit 2."

7. Page 1-6, Definition 1.29 of REPORTABLE OCCURRENCE, is replaced with "REPORTABLE EVENT shall be any of the conditions specified in Section 50.73 of 10 CFR Part 50.," and the term "REPORTABLE OCCURRENCE" is changed throughout the Technical Specifications to "REPORTABLE EVENT."

8. Page 1-4, 1-5, 1-6 and 1-7, Definitions 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.27, 1.28, 1.29, 1.30, 1.31, 1.33, 1.34, 1.35, 1.36, 1.37, and 1.38 are renumbered to 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.27, 1.28, 1.29, 1.30, 1.31, 1.32, 1.33, 1.34, 1.35, 1.36, 1.37, 1.38, 1.39, 1.41 and 1.42, respectively, to account for the three new definitions, 1.19, 1.32 and 1.40.

9. Page 2-1, in Specifications 2.1.1 and 2.1.2, Reactor Core and Reactor Coolant System Pressure, add ". . . and comply with the requirements of Specification 6.7" at the end of the ACTION statement.

10. Page 2-4, Specification 2.2.1, Table 2.2-1, the footnote is changed to "Design flow is 87,700 gpm per loop for Unit 1 and 88,500 gpm per loop for Unit 2" (Unit 2 design flow added).

11. Page 2-6, Specification 2.2.1, Table 2.2-1, item 22.d is changed from "Low Setpoint Power Range Neutron Flux, P-10" to "Power Range Neutron Flux, P-10".

12. Page 2-7, Specification 2.2.1, Table 2.2-1, the table subtitle is modified to "TABLE NOTATIONS", and in note 1 the definition of T' is replaced with "T' = less than or equal to 576.6°F for Unit 1

and less than or equal to 577.6°F for Unit 2 Reference T_{avg} at RATED THERMAL POWER" (Unit 2 T_{avg} added).

13. Pages 2–8 and 2–9, Specification 2.2.1, Table 2.2–1, the table substitute is changed to "TABLE NOTATIONS" and in Notes 2 and 4, "trip point" is changed to "Trip Setpoint" (twice each).

14. Page 2–9, Specification 2.2.1, Table 2.2–1, in Note 3, the definition of T" is changed to "T" = less than or equal to 576.6°F for Unit 1 and less than or equal to 577.6°F for Unit 2 Reference T_{avg} at RATED THERMAL POWER" (Unit 2 T_{avg} added).

15. Page 2–9, Specification 2.2.1, Table 2.2–1, in Note 3, the definition of K_3 is changed to ". . . average temperature, and 0 for decreasing . . ."

16. The note before page B 2–1 is changed to "The BASES contained in the succeeding pages summarize the reasons for the Specifications of Section 2.0, but in accordance with 10 CFR 50.36 are not part of these Technical Specifications."

17. Page B2–1, Bases for Specifications 2.1.1, in the second and third sentences of the second paragraph, the reference to the "W–3" correlation is replaced with one to the "R-grid" correlation.

18. Page B 2–2, Bases for Specification 2.1.2, delete "1967 Edition" from the ANSI Standard reference for the RCS piping and fittings design.

19. Page B 2–2, Bases for Specification 2.1.2, and Pages ¾ 9–3, ¾ 9–6, and ¾ 9–9, Technical Specification ¾.9, Refueling Operation, "reactor pressure vessel" is replaced with "reactor vessel".

20. Page B 2–3, Bases for Specification 2.2.1, "Reactor Protection System" is replaced with "Reactor Trip System" (four times).

21. Page B 2–3, Bases for Specification 2.2.1, in the second paragraph, replace "Reactor System" with "Reactor Coolant System" and other places throughout the document.

22. Page B 2–4, Bases for Specification 2.2.1, the second paragraph under the heading "Power Range, Neutron Flux, High Rates" is replaced with "The Power Range Negative Rate Trip provides protection for control rod drop drop accidents. At high power, a rod accident could cause local flux peaking which could cause an unconservative local DNBR to exist. The Power Range Negative Rate Trip will prevent this from occurring by tripping the reactor. No credit is taken for operation of the Power Range Negative Rate Trip for those control rod drop accidents for which the DNBRs will be greater than 1.30."

23. Page B 2–4, Bases for Specification 2.2.1, the title of the "Intermediate and Source Range, Nuclear Flux" section, and first line of the corresponding paragraph is changed to "Intermediate and Source Range Neutron Flux". Also in the same paragraph "reactor core protection" is replaced with "core protection", and "Reactor Protection System" with "Reactor Trip System".

24. Page B 2–5, Bases for Specification 2.2.1, the title of the reference in the top paragraph is corrected to "WCAP–9226, Reactor Core Response to Excessive Secondary Steam Releases".

25. Page B 2–7, Bases for Specification 2.2.1, the seventh and eighth lines in the paragraph discussing the Steam/Feedwater Flow Mismatch and the Low Steam Generator Water level setpoints are changed to ". . . when the steam flow exceeds the feedwater flow by greater than or equal to 1.45×10^6 lbs/hour for Unit 1 and 1.49×10^6 lbs/hr for Unit 2" (Unit 2 value added).

26. Page B 2–8, Bases for Specification 2.2.1, under Reactor Coolant Pump Breaker Position Trip, "reactor core protection" is replaced with "core protection" in the second line, and "accident analyses" with "safety analyses" in the fourth line.

27. Pages B 2–8, B 2–9, 3/4 4–25, 3/4 4–26, 3/4 4–27 (Table 4.4–4 title and footnote), 3/4 4–28 (the heading of Figure 3.4–1), 3/4 7–10, B 3/4 3–2, and B 3/4 4–3 "primary coolant" is replaced with "reactor coolant".

28. Pages B 2–8 and B 2–9, Bases for Specification 2.2.1, in the paragraphs describing the P–6 and P–10 interlocks, "reactor trip" is replaced with "trip" (five times).

29. Page 3/4 0–1, Specification 3/4.0, Applicability of Limiting Conditions for Operations, add a new specification: "3.0.5 Limiting Conditions for Operation including the associated ACTION requirements as follows:

a. Whenever the Limiting Conditions for Operation refers to systems or components which are shared by both units, the ACTION requirements will apply to both units simultaneously. This will be indicated in the ACTION section;

b. Whenever the Limiting Conditions for Operation applies to only one unit, this will be identified in the APPLICABILITY section of the specification; and

c. Whenever certain portions of a specification contain operating parameters, Setpoints, etc., which are different for each unit, this will be identified in parentheses, footnotes, or body of the requirement."

30. Page 3/4 0–3, Specification 3/4.0, Applicability of Surveillance Requirements, add a new surveillance requirement: "4.0.6 Surveillance Requirements shall apply to each unit individually unless otherwise indicated as stated in Specification 3.0.5 for individual specifications or whenever certain portions of a specification contain surveillance parameters different for each unit, which will be identified in parentheses, footnotes, or body of the requirement."

31. Page 3/4 1–1, in Surveillance Requirement 4.1.1.1.1d, "Specification of the factors of e. below", is replaced with "of the factors of Specification 4.1.1.1e. below".

32. Page 3/4 1–1, the footnote to Specification 3.1.1.1 is changed rom "*See Special Test Exception 3.10.6." to "*See Special Test Exception Specification 3.10.1.".

33. Page 3/4 1–4, Specification 3.1.1.3, delete "in lieu of any other report required by Specification 6.9.1" from ACTION a.3.

34. Page ¾ 1–6, the footnote to Specification 3.1.1.4 is changed from "*See Special Test Exception 3.10.3." to "*See Special Test Exception Specification 3.10.3."

35. Page ¾ 1–12, Specification 3.1.2.5a.2) is changed from "Between 20,000 and 22,500 ppm of boron, and" to "A boron concentration between 20,000 and 22,500 ppm, and".

36. Page ¾ 1–13, Specification 3.1.2.6a.2) is changed from "Between 20,000 and 22,500 ppm boron, and" to "A boron concentration between 20,000 and 22,500 ppm, and".

37. Page ¾ 1–13, Specification 3.1.2.6b.2) is changed from "Between 2000 and 2200 ppm boron, and" to "A boron concentration between 2000 and 2200 ppm, and".

38. Pages ¾ 1–15 and ¾ 1–16, in Specification 3.1.3.1, Movable Control Assemblies, delete ACTION item b and add new ACTION items c and d. The previous ACTION item c is redesignated to item b. This change allows the use of rods which are immovable but retain their trip function and are properly positioned.

39. Page ¾ 1–16, the first line in Surveillance Requirement 4.1.3.1.2 is changed from "Each full-length rod not fully inserted shall be determined to be . . ." to "Each full-length rod not fully inserted in the core shall be determined to be . . ."

40. Page ¾ 1–18, Specification 3.1.3.2, "The shutdown and control rod position indication system . . ." is replaced with "The Digital Rod Position Indication System . . ."

41. Page ¾ 1–18, Specification 3.1.3.2, in ACTION items a and b.1, "rod position indicator" is replaced with "digital rod position indicator".

42. Page ¾ 1–18, in Surveillance Requirement 4.1.3.2, replace "rod position indicator" with "digital rod position indicator", and "Rod Position Indication System" with "Digital Rod Position Indication System" (twice).

43. Page ¾ 1–19, Specification 3.1.3.3, "rod position indicator" is replaced with "digital rod position indicator".

44. Page ¾ 1–19, the "#' footnote is change to "# See Special Test Exceptions Specification 3.10.4".

45. Page ¾ 1–19, Surveillance Requirement 4.1.3.3 is changed to "4.1.3.3. Each of the above required digital rod position indicator(s) shall be determined to be OPERABLE by verifying that the digital rod position indicators agree with the demand position indicators within 12 steps when exercised over the full range of rod travel at least once per 18 months."

46. Page ¾ 1–22, Specification 3.1.3.6 is changed to "The control banks shall be limited in physical insertion as shown in Figure 3.1–1a for Unit 1 and Figure 3.1–1b for Unit 2" (Unit 2 figure added).

47. Page ¾ 1–22, delete "either" in the second line of the introductory sentence under the Specification 3.1.3.6 ACTION statement.

48. Page ¾ 1–23, the designation of Figure 3.1–1 is changed to "3.1.1a" and an indication that it applies to Unit 1 is added. A new Figure 3.1–1b, which applies to Unit 2 is added in page ¾ 1–24.

49. Pages ¾ 2–1 and ¾ 2–2, Specification 3.21, Axial Flux Difference, is replaced with a revised Specification 3.2.1, which extends the range of applicability form "above 50% RATED THERMAL POWER" to "above 15% RATED THERMAL POWER" and incorporates the LIMITING CONDITION FOR OPERATION AND ACTION items that apply within the range of 15% to 50% RATED THERMAL POWER.

50. Page ¾ 2–3, in the third line of Surveillance Requirement 4.2.1.4, insert "Specification" before "4.2.3".

51. Page ¾ 2–5, Specification 3.2.2, in the definition of K(Z) "is" is replaced by "=".

52. Page ¾ 2–7, in Surveillance Requirement 4.2.2e, the last line is changed from "Specification 6.9.1.14" to "Specification 6.9.1.8".

53. Page ¾ 2–9, in the second line of Specification 3.2.3. "R_1, R_2 is replaced with "R", and item a is changed to define "R".

54. Page 3/4 2–9, in the third line of Specification 3.2.3, "Figure 3.2–3" is replaced with "Figure 3.2–3a for Unit 1 and Figure 3.2–3b for Unit 2".

55. Page 3/4 2–9, in Specification 3.2.3, item b, which defines R_2 in terms of R_1 and the Rod Bow Penalty (RBP(BU)), and item e, which defines RBP(BU), are deleted, and items "c" and "d" are redesignated as items "b" and "c", respectively.

56. Page 3/4 2–9, in Specification 3.2.3, the third line of new item c is changed to ". . . values of $F^N_{Delta\ H}$ shall be used to calculate R since Figure 3.2–3a for Unit 1 and Figure 3.2–3b for Unit 2 . . ."

57. Page 3/4 2–9, in Specification 3.2.3, the second line of the introductory ACTION paragraph is changed to ". . . acceptable operation shown on Figure 3.2–3a for Unit 1 and Figure 3.2–3b for Unit 2".

58. Page 3/4 2–9 and 3/4 2–10, in Specification 3.2.3, ACTION items a.1, b, and c, "R_1, R_2" is replaced with "R".

59. Page 3/4 2–10, in Specification 3.2.3, in the seventh line of ACTION item c "Figure 3.2–3" is replaced with "Figure 3.2–3a for Unit 1 and Figure 3.2–3b for Unit 2".

60. Page 3/4 2–10, in Surveillance Requirement 4.2.3.2 "R_1, R_2" is replaced with "R" and "Figure 3.2–3" with "Figure 3.2–3a for Unit 1 and Figure 3.2–3b for Unit 2".

61. Page 3/4 2–11, in Surveillance Requirement 4.2.3.3, "Figure 3.2–3" is replaced with "Figure 3.2–3a for Unit 1 and Figure 3.2–3b for Unit 2" and "R_1, R_2" is replaced with "R".

62. Page 3/4 2–12, Specification 3.2.3, Figure 3.2–3 is redesignated Figure 3.2–3a, the DNB limit curve and the designation that the other curve represents the "LOCA LIMIT" are deleted, and an indication that the figure applies to Unit 1 is added.

63. Page 3/4 2–13, Specification 3.2.3, Figure 3.2–4 is replaced with a new Figure 3.2–3b, which provides RCS Total Flowrate versus R for Unit 2.

64. Page 3/4 2–18, Specification 3.2.5, Table 3.2–1 is revised to incorporate the limits for the Unit 2 DNB parameters, and thus provide the applicable DNB parameters for each unit.

65. Pages 3/4 3–2 to 3/4 3–7, Specification 3.3.1, Table 3.3–1, Table Notations, is replaced with revised Table Notations to incorporate administrative changes. In addition, the second and third lines in ACTION 11 are changed to ". . . channels OPERABLE requirement, be in at least HOT STANDBY within 6 hours; however one channel may be bypassed for up to 2 hours for surveillance . . ."

66. Page 3/4 3–8, Specification 3.3.1, Table 3.2–2, a response time" less than or equal to 0.5 second*", with a reference to the table footnote, is assigned to Functional Unit 6. Source Range, Neutron Flux.

67. Page 3/4 3–13, Surveillance Requirements 4.3.1.1, Table 4.3–1, the Table Notation "*" is revised to incorporate administrative changes, and Table Notation (6) is changed to "Incore-Excore Calibration, above 75% of RATED THERMAL POWER" and "The provisions of Specification 4.0.4 are not applicable for entry into MODE 2 or 1" is added at the end of (2), (3) and (6).

68. Pages 3/4 3–15 to 3/4 3–22, Specification 3.3.2, Table 3.3–3 is revised to incorporate administrative changes.

69. Pages 3/4 3–15 and 3/4 3–18, Specification 3.3.2, Table 3.3–3 in the Functional Units 1.c. and 4.a, the Applicable Modes are changed from Modes "1, 2, 3" to "1, 2, 3, 4", and the reference to Table Notation "##" is the Applicable Modes column for the Functional Unit 1.e entry is deleted.

70. Pages 3/4 3–16 and 3/4 3–17, Table 3.3–3, the information in the CHANNELS TO TRIP COLUMN for the 2.a and 3.b.1 entries is changed to "2 with 2 coincident switches", and a reference to Table Notation "*" in the ACTION column for the 3.c.1 and 3.c.2. entries added.

71. Page 3/4 3–18, Specification 3.3.2, Table 3.3–3, a reference to Table Notation "##" in the Applicable Modes column is added to the 4.d entry, the ACTION for the 5.a entry is changed to "25", and "ACTION 25—With the number of OPERABLE channels one less than the Minimum Channels OPERABLE requirement, be in at least HOT STANDBY within 6 hours; however, one channel may be bypassed for up to 2 hours for surveillance testing per Specification 4.3.2.1, provided the other channel is OPERABLE" is added in page 3/4 3–22.

72. Pages 3/4 3–23 to 3/4 3–27, Specification 3.3.2, Table 3.3–4 is revised to incorporate administrative changes, and in pages 3/4 3–23 and 3/4 3–26 the Allowable Values for entries 1.f.2) and 4.d.2) are changed from "less than or equal to 585 psig" to "less than or equal to 580 psig".

73. Pages 3/4 3–28 and 3/4 3–31, Specification 3.3.2, Table 3.3–5 is revised to incorporate adminstrative changes, replace the entry under Initiating Signal 8 with "Turbine Trip", and add main feedwater bypass valves information to Table Notation (2) and, consequently, the requirement to verify response time on these valves.

74. Pages 3/4 3–32 to 3/4 3–36, Surveillance Requirement 4.3.2.1, Table 4.3–2 is revised to incorporate administrative changes, in the Functional Unit 1.c the Applicable Modes are changed from Modes "1, 2, 3"

to "1, 2, 3, 4", and a reference is added to new Table Notation "(2) For the Plant Vent Activity—High Monitor, only a CHANNEL FUNCTIONAL TEST shall be performed at least once every 31 days" for entry 3.c.2).

75. Page 3/4 3–37, in Specification 3/4.3.3, replace the title with "RADIATION MONITORING FOR PLANT OPERATION", and insert "for plant operations" after "instrument channels" in the first line of Specifications 3.3.3.1, after "Alarm Trip Setpoint" in the first line of ACTION item a., after "monitoring channels" in the first line of ACTION item b., and after "instrumentation channels" in the first line of Surveillance Requirement 4.3.3.1.

76. Pages 3/4 3–38 and 3/4 3–39, Specification 3.3.3.1, in Table 3.3–6, add "FOR PLANT OPERATIONS" to the title, delete the headings "1. AREA MONITORS" and "2. PROCESS MONITORS"; change "Control Room Ventilation Isolation" to "Control Room Ventilation Mode Change"; and change the number of "MINIMUM CHANNELS OPERABLE" for the same line from "1" to "2" with a reference to footnote "* * *", which is added as: "* * * One channel for each normal intake to the Control Room Ventilation System (common to both units)", and change ACTION 30 to "With less than the minimum Channels Operable requirement, operation may continue for up to 30 days provided an appropriate portable continuous monitor with the same Alarm Setpoint or an individual qualified in Radiation Protection Procedures with a radiation dose rate monitoring device is provided in the Fuel Storage Pool Area. Restore the Inoperable monitors to OPERABLE status within 30 days or suspend all operations involving fuel movement in the fuel storage pool area."

77. Page 3/4 3–40, Specification 3.3.3.1, Table 4.3–3, is revised to be consistent with and incorporate the applicable changes made to Table 3.3–6 (see item 76 above).

78. Page 3/4 3–42, in Specification 3.3.3.3, a reference to footnote "# The Seismic Monitoring instrumentation is common to both units but located in Unit 1 or common areas" is added.

79. Page 3/4 3–42, Surveillance Requirement 4.3.3.3.2, which applies to seismic monitoring instrumentation following a seismic event, the time allowed for CHANNEL CALIBRATION in the third line is extended from "5" to "10" days, and the time allowed for submittal of a Special Report in the seventh line is extended for "10" to "14" days.

80. Page 3/4 4–45, in Specification 3.3.3.4, a reference to footnote "# The meteorological monitoring instrumentation channels are common to both units", is added.

81. Page 3/4 3–48, Specification 3.3.3.5, ACTION item a is changed from ". . . channels less than required by Table 3.3–9 . . ." to ". . . channels less than the minimum channels OPERABLE requirement by Table 3.3–9, . . ."

82. Page 3/4 3–49, in Specification 3.3.3.5, Table 3.3–9, delete the "MEASUREMENT RANGE" column, change Instrument 5 to "Steam Generator Wide Range Water Level", and change Instrument 6 to "Condensate Storage Tank Water Level".

83. Page 3/4 3–50, Surveillance Requirement 4.3.3.5, Table 4.3–6 is revised to incorporate administrative changes that parallel those in Table 3.3–9 (see Item 82 above).

84. Page 3/4 3–51, ACTION items a and b of Specification 3.3.3.6 are changed to indicate that the Reactor Vessel Level Indication System is exempted from their provisions. ACTION item e is redesignated as item g. and ACTION item e, which stipulates the provisions that apply to the Reactor Vessel Level Indication System, and ACTION item f, stating that ACTION item e applies only to the first cycle, are added, and replace "containment sump" with "containment recirculation sump" in ACTION items b and c.

85. Page 3/4 3–52, Specification 3.3.3.6, Table 3.3–10 entries 9 and 10 are changed to "9. Containment Reactor Cavity Sump Level (3)—Wide Range" and "10. Containment Recirculation Sump Level (1)—Narrow Range", respectively, and a new entry added "20. Reactor Vessel Level Indication System" with the REQUIRED NUMBER OF CHANNELS as 2 and the MINIMUM NUMBER OF CHANNELS OPERABLE as 1.

86. Page 3/4 3–53, in Table 4.3–7 entries 9 and 10 are changed to "9. Containment Reactor Cavity Sump Level—Wide Range", respectively, and a new entry "20. Reactor Vessel Level Indication System" with "M" (monthly) channel check and "R" (every 18 months) channel calibration is added.

87. Page 3/4 3–54, in Specification 3.3.3.7, add a reference to footnote "# The Chlorine Detection System is common to both units installed in the normal intakes to the Control Room Ventilation System".

88. Page 3/4 3–55, in Specification 3.3.3.8 delete ACTION item a.2, ACTION item a.1 become part of the introductory statement to ACTION a, and ACTION Item a.3 is redesignated as ACTION item c.

89. Pages 3/4 3–57 and 3.4 3–58, Table 3.3–11, Fire Detection Instruments, Panel B, Zone 6 data is changed to

"6. Fire Pump Area [5]	1	N.A.
Unit 2 Auxiliary Building Supply Fan Room.	1	N.A.
Control Room Ventilation Equipment Room.	1	N.A.";

the first item in Zone 16(1) is changed to "Unit 1 Auxiliary Building . . .", and note "(5) The Fire Pumps and Diesel Generator No. 3 are common to both units. Located on the Unit 1 side and on the Unit 1 Fire Detection Instrument Panel only" is added.

90. Pages 3/4 3–65 and 3/4 3–66, Specification 3.3.3.10, in Table 3.3–13, the reference under the APPLICABILITY column for the Noble Gas Activity Monitor in entry 5 is changed to "* * * Modes 1–4, also Mode 6 during CORE ALTERATIONS or movement of irradiated fuel within containment," and the Instruments designation "(RM–14A and 14B)" is changed to "(RM–14A or 14B)."

91. Pages 3/4 3–67 and 3.4 3–68, Surveillance Requirement 4.3.3.10, in Table 4.3–9, the reference under the MODES FOR WHICH SURVEILLANCE REQUIRED column for the Noble Gas Activity Monitor in entry 5 is changed to "* * * Modes 1–4, also Mode 6 during CORE ALTERATIONS or movement of irradiated fuel within containment", and the Instrument designation "(RM–14A and 14B)" is changed to "(RM–14A or 14B)".

92. Page 3/4 3–69, in Specification 3.3.4.1, lines 3 through 7 under ACTION a are changed to ". . . steam line inoperable, restore the inoperable valve(s) to OPERABLE status within 72 hours or isolate the turbine from the steam supply within the next 6 hours".

93. Page 3/4 3–69, in Specification 3.3.4.1, changes lines 2 and 3 of ACTION b to ". . . within 6 hours isolate the turbine from the steam supply".

94. Page 3/4 4–1, in Specification 3.4.1, delete the reference to the footnote in the APPLICABILITY section and the footnote, and change the ACTION statement to "With less than the above required reactor coolant loops in operation, be in at least HOT STANDBY within 6 hours".

95. Page 3/4 4–2, in Specification 3.4.1.2, delete the reference to footnote "* *" in the APPLICABILITY section and the footnote.

96. Page 3/4 4–3, in Specification 3.4.1.3, modify the introductory statement a to "At least two of the loops/trains listed below shall be OPERABLE and at least one of these loops/trains shall be in operation *", delete item b, reverse the order of the

footnotes, and in ACTION items a and b, replace "RC loops and/or RHR trains" by "loops/trains".

97. Page 3/4 4–4, change the first two lines of Surveillance Requirements 4.4.1.3.1 to ". . . pump(s) and/or RHR pumps, if not in operation, shall be determined OPERABLE once . . ."

98. Page 3/4 4–4, the second line of Surveillance Requirement 4.4.1.3.2 is changed to ". . . secondary side water level to be . . ."

99. Page 3/4 4–5, in Specification 3.4.1.4.1, ACTION a is change to "With one of the RHR trains inoperable and with less than the required steam generator water level, immediately initiate corrective action to return the inoperable RHR train to OPERABLE status or restore the required steam generator water level as soon as possible."

100. Page 3/4 4–5, delete Surveillance Requirements 4.4.1.4.1.1 and renumber the following two Surveillance Requirements.

101. Page 3/4 4–6, delete Surveillance Requirement 4.4.1.4.2.1 and renumber the remaining Surveillance Requirements.

102. Page 3/4 4–7, in Specification 3.4.2.1, change the last two lines of the ACTION statement from ". . . and place an OPERABLE residual heat removal train into operation in the shutdown cooling mode." to ". . . and place a residual heat removal train into operation".

103. Page 3/4 4–10, in Specification 3.4.4, delete "and remove power from the block valve(s);" in the third line of ACTION a.

104. Page 3/4 4–10, the last two lines of Surveillance Requirement 4.4.4.2 are changed to ". . . the block valve is closed in order to meet the requirement of ACTION a, of Specification 3.4.4.".

105. Page 3/4 4–13, in Surveillance Requirement 4.4.5.3c.1) replace "Primary" with "Reactor".

106. Page 3/4 4–15, change lines 2, 3, and 4 of Surveillance Requirement 4.4.5.5c. to ". . . Category C–3 shall be reported in a Special Report pursuant to Specification 6.9.2 within 30 days prior to resumption of operation. This report shall provide . . .".

107. Page 3/4 4–17, Surveillance Requirement 4.4.5, Table 4.4–2, the reporting requirements when the results of a first and second sample steam generator tube inspection fall in Category C–3, are changed to "Notification to NRC pursuant to 50.72(b)(2) to 10 CFR Part 50."

108. Page 3/4 4–18, in Specification 3.4.6.1b, replace "containment sump level" with "Containment Structure Sumps and the Reactor Cavity Sump Level".

109. Page 3/4 4–18, in Surveillance Requirement 4.4.6.1b, replace "containment sump level" with "Containment Structure Sumps and the Reactor Cavity Sump Level".

110. Page 3/4 4–19, changed the second line of Specification 3.4.6.2e to "2235 ±20 psig, and ".

111. Page 3/4 4–20, in the third line in Surveillance Requirement 4.4.6.2.1c change the RCS pressure to "2235 ±20 psig".

112. Page 3/4 4–25, in Specification 3.4.8b, ACTION, Modes 1, 2, and 3, item c., and third line of ACTION, Modes 1, 2, 3, 4, 5, item a., insert "of gross radioactivity" after "microcuries/gram".

113. Page 3/4 4–25, in Specification 3.4.8, ACTION a. that applies only during MODES 1, 2, and 3 is divided into two ACTION items, a. and b., with no change in their provisions, and ACTION items b. and c. are redesignated c. and d., respectively.

114. Page 3/4 4–25 and 3/4 4–26, the second sentence in the introductory statement to the ACTION item a., which applies during MODES 1, 2, 3, 4, and 5, is replaced with "For this ACTION statement, prepare a Special Report to the Commission pursuant to Specification 6.9.2 with 30 days with a copy to the Director, Nuclear Reactor Regulation, Attention: Chief, Core Performance Branch, and Chief, Accident Analysis Branch, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555.". The word "first" is deleted from item 1 under the same ACTION item a, and item 2 is replaced "2. Results of

(a) The last isotopic analysis for radionuclides performed prior to exceeding the limit,

(b) Analysis while limit was exceeded, and

(c) One analysis after radioiodine activity was reduced to less than the limit including each isotopic analysis, and the date and time of sampling, and the radioiodine concentrations;"

115. Page 3/4 4–27, Specification 4.4.8, Table 4.4–4, add reference to footnote "**" in entry 1. and add footnote "**" which provides detailed guidance on accepted methodology to determine "gross radioactivity"; and add reference to footnote "***" in entry 3. and add footnote "***" which provides detailed guidance on methodology to determine the "average disintegration energy".

116. Pages 3/4 4–29, 3/4 4–30 and 3/4 4–31, add "and the setpoint of Technical Specification 3.4.9.3a" at the end of Surveillance Requirement 4.4.9.1.2, and change the period for the material curves in Figures 3.4–2 and 3.4–3, Specification 3.4.9.1, to "6 EFPY."

117. Page 3/4 4–32, Table 4.4–5, insert "Unit 1" under the title, and add the Unit 2 reactor vessel material surveillance withdrawal schedule to make the table applicable to both units.

118. Page 3/4 4–34, in Specification 3.4.9.3, delete existing item 1, and combine the existing items b and c to create a new item a. To correspond to the above change, delete ACTION item a and redesignate the letters of the following ACTION items. These changes are made to conform with NRC requirements as described in Diablo Canyon SSER–21.

119. Page 3/4 4–35, delete items d and e in Surveillance Requirement 4.4.9.3.1.

120. Page 3/4 5–1, in Specification 3.5.1 change items a and c to "The isolation valve open, and power removed," and "A boron concentration of between 1900 and 2200 ppm, and", respectively; and change the last two lines of ACTION item b to ". . . or be in HOT STANDBY within 6 hours and in HOT SHUTDOWN within the following 6 hours."

121. Page 3/4 5–2, in Surveillance Requirement 4.5.1.1c replace the RCS pressure with "1000 psig", and delete Surveillance Requirement 4.5.1.1d.

122. Page 3/4 5–8, in Surveillance Requirement 4.5.3.1 insert "Surveillance" between "applicable" and "requirements".

123. Page 3/4 5–8, in the second line of Surveillance Requirement 4.5.3.2 replace "required" with "allowed," and delete "per Specification 4.0.5" in the footnote.

124. Page 3/4 5–9, change item b of Specification 3.5.4.1 to "A boron concentration of between 20,000 and 22,500 ppm, and".

125. Page 3/4 5–11, in Specification 3.5.5, the OPERABILITY requirements on the RWST, and the ACTION statement are editorially modified without changing the applicable provisions.

126. Pages 3/4 6–1, 3/4 6–7, and 3/4 6–8, in Technical Specification 3/4.6.1.1 replace "primary containment" with "containment".

127. Page 3/4 6–1, change Surveillance Requirement 4.6.1.1b to "By verifying that each containment air lock is in compliance with the requirements of Specification 3.6.1.3; and".

128. Page 3/4 6–2, in Specification 3.6.1.2, and "as applicable," at the end of item a.1) and delete "(a)" and "(b) with" in ACTION statement.

129. Page 3/4 6–3, in Surveillance Requirement 4.6.1.2, insert "as applicable," after "0.75L_a" in lines 1, 4 and 7 of item b, and replace the second and third lines of item c.1) of

Surveillance Requirements 4.6.1.2 with ". . . supplemental test results L_c, minus the sum of the Type A and the superimposed leak, L_o, is equal to or less than 0.25 L_a, or 0.25 L_t, as applicable."; and change item c.3) to "Requires that the rate at which gas is injected into the containment or bled from the containment during the supplemental test is between 0.75 L_a and 1.25 L_a, or 0.75 L_t and 1.25 L_t, as applicable."

130. Page 3/4 6–4, replace "per" with "by the requirements of" in item e to Surveillance Requirement 4.6.1.2.

131. Page 3/4 6–6, the second footnote in Surveillance Requirement 4.6.1.3 is change to "** This represents an exemption to Appendix J,Paragraph III.D.2 of 10 CFR Part 50."

132. Page 3/4 6–7, Specification 3.6.1.4, replace the statement "Primary containment internal pressure shall be maintained between −3.5 and +0.3 psig." with "Containment internal pressure shall be maintained between −1.0 and +0.3 psig."

133. Page 3/4 6–9, the third line in Surveillance Requirement 4.6.1.6.2 is changed to ". . . Commission in a Special Report pursuant to Specification 6.9.2 within 15 days. This report shall include a . . ."

134. Page 3/4 6–1, in Items C.1) and C.2) of Surveillance Requirement 4.6.2.1, "Containment isolation phase "B" is replaced with "Phase "B" Isolation".

135. Page 3/4 6–15, delete "containment" from the first line in items a and b of Surveillance Requirement 4.6.3.2, and insert "its isolation" between "to" and "position" in the second line of item b.

136. Pages 3/4 6–19, 3/4 6–20, and 3/4 6–21, Specification 3.6.3, in Table 3.6–1, delete the "1" for all manual valves showing a Unit 1 designation, to make the table applicable to both units. On page 3/4 6–20, delete the D from Valve RCS–512 and change the Function to Isolating Valve FI–927 OC.

137. Page 3/4 6–24, Specification 3.6.3, Table 3.6—1, replace the last 16 entries with Diablo Canyon plant specific valve designations, add "Unit 1 only" to valve FP–180, and add valve "VAC–252 FP–867 Containment Fire Water IC-Unit 2 only."

138.Page 3/4 6–26, delete "containment" from the first line of Specification 3.6.4.2.

139. Page 3/4 7–1, the last line of ACTION item a in Specification 3.7.1.1 is changed to "and in HOT SHUTDOWN within the following 6 hours."

140. Page 3/4 7–2, Specification 3.7.1.1, for each entry in Table 3.7–1 add a reference to a new footnote "* Unless the Reactor Trip system breakers are in the open position."

141. Page 3/4 7–6, Specification 3.7.1.3, footnote "*", which applies to MODE 3 in the APPLICABILITY section is deleted.

142. Page 3/4 7–8, Surveillance Requirement 4.7.1.4, Table 4.7–1 is revised to incorporate administrative changes.

143. Page 3/4 7–9, in the ACTION for Specification 3.7.1.5, the end of the statement for MODE 1 is changed to ". . . within 4 hours; otherwise be in HOT STANDBY within the next 6 hours and in HOT SHUTDOWN within the following 6 hours."; and the ACTION statement for MODES 2 and 3 is changed editorially and eliminates the exemption from the requirements of Specification 3.0.4, when the plant is in MODE 2 or 3 and the MSIV becomes inoperable.

144. Page 3/4 7–9, insert "The provisions of Specification 4.0.4 are not applicable for entry into MODE 3." at the end of Surveillance Requirement 4.7.1.5.

145. Page 3/4 7–11, replace "containment isolation phase "B" with "Phase "B" Isolation" in item b of Surveillance Requirement 4.7.3.1.

146. Page 3/4 7–13, in Specification 3.7.5.1 add a reference to footnote "*The Control Room Ventilation System is common to both units" after "System" in the first line, and in the existing footnote replace "on the plant site" at the end of the paragraph with "within the SITE BOUNDARY."

147. Pages 3/4 7–14 and 3/4 7–15, in Surveillance Requirements 4.7.5.1c.3, 4.7.5.1e.4, 4.7.5.1f, and 4.7.5.1g, which apply to the Control Room Ventilation System; page 3/4 7–17, in Surveillance Requirements 4.7.5.1b.4, 4.7.6.1d.3, 4.7.6.1e, 4.7.6.1f, which apply to the Auxiliary Building Safeguards Air Filtration System; pages 3/4 9–14 and 3/5 9–15, in Surveillance Requirements 4.9.12b.4, 4.9.12e and 4.9.12f which apply to the Fuel Handling Ventilation System; on pages B 3/4 7–13, which provides the basis to support Specifications 3.4.7.5 and 3.4.7.6; and B 3/4 9–3, which provides the basis for Specification 3/4.9.12 change the applicable standards from "ANSI Standard N510–1975" to "ANSI Standard N510–1980."

148. Page 3/4 7–26, ACTION items a and b in Specification 3.7.9.1 are changed to remove the requirements to submit Special Reports pursuant to Specification 6.9.2 when portions of the Fire Suppression Water System are inoperable.

149. Page 3/4 7–27, Surveillance Requirement 4.7.9.1, add reference in item c to footnote: "*Except valves which are located inside the containment and are locked, sealed, or otherwise secured in position. These valves shall be verified in the correct position during each COLD SHUTDOWN except such verification need not be performed more often than once per 92 days.", after "valve" in the first line, and item d is changed to "At least once per 6 months by performance of a system flush of the outside distribution loop to verify no flow blockage."

150. Page 3/4 7–28, in Specification 3.7.9.2, delete reference to pumps "2 and 3" in item e, and insert the following two additional Spray and/or Sprinkler systems:

"f. Centrifugal Charging Pump Area, and"

"h. Containment Penetration Area."

151. Pages 3/4 7–28, 3/4 7–30, 3/4 7–32, 3/4 7–33 and 3/4 7–36, in ACTION a to Specifications 3.7.9.2, 3.7.9.3, 3.7.9.4, 3.7.9.5 and 3.7.10, all of which refer to fire protection, delete the requirement for a Special Report pursuant to Specification 6.9.2 in case diverse portions of the system cannot be restored to OPERABLE status within 14 days.

152. Page 3/4 7–31, Table 3.7–3 is replaced by a revised Table 3.7–3 which incorporates the CO_2 system Unit 2 data.

153. Pages 3/4 7–34 and 3/4 7–35, Table 3.7–14 is replaced with a revised Table 3.7–4 which incorporates information on the fire hose stations for Unit 2.

154. Page 3/4 7–36, the APPLICABILITY statement in Specification 3.7.10 is changed to "Whenever the equipment protected by the fire barrier penetrations is required to be OPERABLE.", to conform to the current NRC position as presented in the April 5, 1984 Regional Appendix R Workshop.

155. Page 3/4 7–37, Specification 3.7.11 is changed to "3.7.11 the temperature of each area shown in Table 3.7–5 shall not be exceeded for more than 8 hours or by more than 30°F".

156. Page 3/4 7–37, in Specification 3.7.11, the format of ACTION items a and b is changed, and ACTION item a is revised to exempt the licensee from the provisions of Specifications 3.0.3 and 3.0.4 when the temperature limits of Table 3.7–5 are exceeded in one or more areas for more than 8 hours.

157. Page 3/4 7–38, revise entry 15 in Table 3.7–5 to indicate that the Diesel Generator No. 3 Room is common to both units.

158. Page 3/4 7–39, in Specification 3.7.12 add a reference to footnote "*The

UHS is common to both units" after (UHS) in the first line.

159. Page 3/4 7–40, in Specification 3.7.13 add a reference to footnote "*Both breakwaters are common to both units" after "(east and west)" in the first line.

160. Page 3/4 8–1, Specification 3.8.1.1, the footnote is changed to "*OPERABILITY of the third (common) diesel generator shall include the capability of functioning as a power source for the required Unit upon automatic demand from that Unit" to make it unit nonspecific.

161. Page 3/4 8–2, Specification 3.8.1.1, ACTION C, add "If these conditions are not satisfied within 2 hours be in at least HOT STANDBY within the next 6 hours and in COLD SHUTDOWN within the following 30 hours.

162. Page 3/4 8–3, in footnote "*" to Surveillance Requirement 4.8.1.1.2, replace "for Unit 1" in the second line with "for one Unit" and "for Unit 2" in the fourth line with "for the other Unit" to make it unit nonspecific, and change footnote "***" to Surveillance Requirement 4.8.1.1.2 to "May be the associated bus in the other Unit if that Unit is in Mode 1, 2, 3 or 4".

163. Page 3/4 8–7, the second line in Surveillance Requirement 4.8.1.1.4 is changed to "be reported as a Special Report within 30 days to the Commsision pursuant to Specification 6.9.2".

164. Page 3/4 8–8, the last sentence in the footnote to the Table 4.8–1 is changed to "For the purpose of this schedule, only valid tests conducted after the completion of the preoperational test requirements of Regulatory Guide 1.108, Revision 1, August 1977, shall be included in the computation of the "last 100 valid tests".

165. Page 3/4 8–11, in Specification 3.8.1.2, item b.3) is deleted, and item b.2) is changed to "One supply train of the Diesel Fuel Oil Storage and Transfer System with 8000 gallons of fuel in addtion to the fuel required for the other Unit" to make it unit nonspecific.

166. Page 3/4 8–11, in Surveillance Requirement 4.8.1.2 the last line is changed to ". . . for ESF timers, b.6), b.7), b.10) and b.11)."

167. Page 3/4 8–12, Specification 3.8.2.1d, e. f, g, h, i, j, k, l, m, n, o, which, is reference to onsite power distribution, describe the electric busses that must be energized, delete the "l" immediately following the words "Bank" and "Bus", to make the statements applicable to both units.

168. Page 3/4 8–12, Specification 3.8.2.1, at the end of items m, n, and o, add "and its associated full capacity charger".

169. Page 3/4 8–12a, after "associated Battery Bank" in the first and second lines of ACTION item c of Specification 3.8.2.1 add "and full-capacity charger".

170. Page 3/4 8–13, add "and full-capacity charger" at the end of item c of Specification 3.8.2.2.

171. Page 3/4 8–15, in Surveillance Requirement 4.8.3.1, items b.2) and c.3), replace "250 micro-ohms" with "150 x 10^{-6} ohm*" and add the footnote "*The resistence of cell-to-cell connecting cables does not have to be included."

172. Page 3/4 8–16, Surveillance Requirement 4.8.3.1, Table 4.8.3, in footnote (b) replace "5 amps" with "2 amps".

173. Page 3/4 8–15, Surveillance Requirement 4.8.3.1 item e, which addresses the 60 month surveillance test to verify battery capacity, insert "required by Specification 4.8.3.1;" after "service test".

174. Page 3/4 8–15, Surveillance Requirement 4.8.3.1 item f, the first and second lines are changed to "At least once per 18 months during shutdown by giving performance discharge tests of battery capacity to any battery that shows . . .".

175. Page 3/4 8–18, in Surveillance Requirement 4.8.4.1, item 1, replace "CHANNEL FUNCTIONAL" with "TRIP ACTUATION DEVICE OPERATIONAL".

176. Pages 3/4 8–19, 3/4 8–20 and 3/4 8–21, Specification 3.8.4.1, Table 3.8.1, for all components identified by a two-digit designation (e.g. SI pump 11 and Accumulator 14), delete the first "1", to make the data in the table applicable to both units. Add a footnote * indicating that FCV–601 is common to both units.

177. Page 3/4 8–22 through 3/4 8–26, a new Specification 3.8.4.2, and corresponding Surveillance Requirement 4.8.4.2, which apply to Containment Penetration Conductor Overcurrent Protective Devices is added.

178. Page 3/4 9–1, Specification 3.9.1, delete "With the reactor vessel head closure bolts less than fully tensioned or with the head removed," in the introductory statement.

179. Page 3/4 9–2, Surveillance Requirements 4.9.2 items b and c are changed to "An ANALOG CHANNEL OPERATIONAL TEST . . ."

180. Page 3/4 9–6, Surveillance Requirements 4.9.6.1 and 4.9.6.2, which apply to the manipulator crane and auxiliary hoist during refueling operations, respectively, in the third line of each replace "to the start of such operations" with "to removal of the reactor vessel head".

181. Page 3/4 9–7, Specification 3.9.7, delete the reference to footnote "**" and the footnote.

182. Page 3/4 9–7, Specification 3.9.7, the existing ACTION becomes ACTION item "a", and a new ACTION item b is added as "b". The provisions of Specification 3.0.3 and 3.0.4 are not applicable.

183. Page 3/4 9–8, delete Surveillance Requirement 4.9.8.1.1 "The required RHR trains shall be demonstrated OPERABLE pursuant to Specification 4.0.5" and renumber the next surveillance requirement to "4.9.8.1".

184. Page 3/4 9–9, Specification 3.9.8.2, add a reference to footnote "*" at the end of the statement, add a new footnote "*" Prior to initial criticality, the RHR train may be removed from operation for up to 1 hour per 8-hour period during performance of CORE ALTERATIONS in the vicinity of the reactor vessel hot legs".

185. Page 3/4 9–9, change Surveillance Requirement 4.9.8.2 to "At least one RHR loop shall be verified in operation and circulating reactor coolant at a flow rate greater than or equal to 3000 gpm at least once per 12 hours."

186. Page 3/4 9–10, Specification 3.9.9, the existing ACTION becomes ACTION item a and "The provisions of Specification 3.0.4 are not applicable" in the last sentence is deleted, and a new ACTION item b, "b. The provisions of Specifications 3.0.3 and 3.0.4 are not applicable" is added.

187. Page 3/4 9–11, in Specification 3.9.10, change the APPLICABILITY statement to "During movement of fuel assemblies or control rods within the containment when either the fuel assemblies being moved or the fuel assemblies seated within the reactor vessel are irradiated while in MODE 6."

188. Page 3/4 9–11, in Surveillance Requirement 4.9.10 delete "within the reactor vessel" at the end of the requirement.

189. Page 3/4 9–12, in Specification 3.9.11, the existing ACTION becomes ACTION item a and "above" is inserted before "specification" in the first line, and a new ACTION item b, "b. The provisions of Specification 3.0.3 and 3.0.4 are not applicable." is added.

190. Page 3/4 9–13, Specification 3.9.12, ACTION item c is changed to "The provisions of Specifications 3.0.3 and 3.0.4 are not applicable."

191. Page 3/4 9–16, Specification 3.9.13 is changed to "No spent fuel shipping cask handling operation near the spent fuel pool (i.e., any movement of a cask located north of column line 12.9 for Unit 1 or south of column line 23 1 for Unit 2) shall be performed unless spent fuel in all locations in Racks 5 and 6 has decayed for at least 1000 hours since shutdown."

192. Page 3/4 10–1, in Surveillance Requirements 4.10.1.1 and 4.10.1.2, add "control" between "full-length" and "rod".

193. Page 3/4 10–2, editorial changes in Surveillance Requirements 4.10.2.1 and 4.10.2.2 are made.

194. Page 3/4 10–3, in Surveillance Requirement 4.10.3.2, replace "a CHANNEL FUNCTIONAL TEST" with "an ANALOG CHANNEL OPERATIONAL TEST".

195. Page 3/4 10–4, Technical Specification 3/4.10.4, which addresses Special Test Exceptions for RCS loops during natural circulation tests is deleted.

196. Page 3/4 10–5, Specification 3.10.5, item a is incorporated into the introductory statement, item b and the applicable footnote are deleted; add "and during surveillance of digital position indication for OPERABILITY" to the APPLICABILITY, and, to account for the deletion of Technical Specification 3/4.10.4 (see 195 above), redesignate this Specification to 3.10.4, and the corresponding Surveillance Requirements to 4.10.4.

197. Page B 3/4 0–1, add to the introductory paragraph "In the event of a disagreement between the requirements in these Technical Specifications and those stated in the applicable FEDERAL REGULATION or ACT, the requirements stated in the applicable FEDERAL REGULATION or ACT shall take precedence and shall be met except where a specific exemption to the Regulation has been granted in the Technical Specifications or Facility License."

198. Page B 3/4 0–1, in Bases for Specification 3.0.3, information is added to provide additional guidance to understand how to consider the time alloted in ACTION statements to initiate and complete a reduction in Operational Modes, particularly for those circumstances not specifically provided for in ACTIONs.

199. Page B 3/4 0–1, a new Bases to support the addition of Specification 3.0.5, "3.0.5 This specification delineated the applicability of each specification to Unit 1 and Unit 2 operation." is added.

200. Page B 3/4 0–2, in Bases for Surveillance Requirement 4.0.3, a clarification of how inoperability can be determined, and the timing of surveillance requirements, and the corresponding ACTION statements, is added.

201. Page B 3/4 0–3, a new Bases to support the addition of Specification 4.0.6: "4.0.6 This specification delineates the applicability of the surveillance activities to Unit 1 and Unit 2 operations." is added.

202. Page B 3/4 1–2, in the Bases for Specification 3/4.1.1.4, delete item (3) "the P–12 interlock is above its setpoint", and renumber subsequent items.

203. Page B 3/4 1–2, in the Bases for Specification 3/4.1.2, insert "Boron" ahead of Injection System" in the first line of the third paragraph.

204. Page B 3/4 1–3, in Bases for Specification 3/4.1.3, add to the first paragraph, "Group Demand position can be determined from (1) the group step counters, (2) the plant computer, or (3) for control rods, and P to A Converter at the rod control cabinet."

205. Page B 3/4 2–4, correct a typographical error in the Bases for Specifications 3/4.2.2 and 3/4.2.3, Item 1., and by changing " ±13 steps" to read "±12 steps."

206. Page B 3/4 2–4, in Bases for Specifications 3/4.2.2 and 3/4.2.3, which support hot channel factor limits, in the bottom paragraph: replace "R_1" by "R" in the first line, and delete "R_2 as defined, allows for the inclusion of a penalty for Rod Bow on DNBR Only." in lines 5 and 6.

207. Page B 3/4 2–5, in the Bases for Specifications 3/4.2.2 and 3/4.2.3, change the existing paragraph to "Fuel rod bowing reduces the value of DNB ratio. Credit is available to offset this reduction in the generic margin. The generic margin totaling 9.1% DNBR is derived from the difference between the design and required values on the following items: (a) design DNBR limit, (b) grid spacing multiplier, (c) thermal diffusion coefficient, (d) DNBR spacer factor multiplier and (e) pitch reduction. The rod bow penalty is calculated with the method described in WCAP–8691, Revision 1, and is completely compensated by the available margin of 9.1%", and replace "Specification 6.9.1.14" in the bottom paragraph with "Specification 6.9.1.8."

208. Page B 3/4 2–6, in the Bases for Specification 3/4.2.4 delete "A limiting tilt of 1.025 can be tolerated before the margin for uncertainty in F_Q is depleted." in the second paragraph.

209. Page B 3/4 3–1, in the Bases for Specifications 3/4.3.1 and 3/4.3.2, delete item (12) at the end of the third paragraph.

210. Page B 3/4 3–3, in the Bases for Specification 3/4.3.3.3, change the last two lines to ". . . . pursuant to Appendix A of 10 CFR Part 100. The instrumentation is consistent with the recommendations of Regulatory Guide 1.12, "Instrumentation for Earthquakes," April 1974."

211. Page B 3/4 3–3, in the Bases for Specification 3/4.3.3.6, replace the last two lines with ". . . is consistent with the recommendations of Regulatory Guide 1.97, Revision 3, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant Conditions During and Following an Accident," May 1983, and NUREG–0737, "Clarification of TMI Action Plan," November 1980."

212. Page B 3/4 4–2, in the Bases for Specification 3/4.4.2., add "In addition, the Overpressure Protection System (relief valves) provides a diverse means of protection against RCS overpressurization at low temperatures," at the end of the top paragraph.

213. Page B 3/4 4–3, in the Bases for Specification 3/4.4.5, in the bottom paragraph, change the reporting requirements to ". . . these results will be reported to the Commission as a Special Report pursuant to Specification 6.9.2 prior to . . ."

214. Page B 3/4 4–4, in the Bases for Specification 3/4.4.6.2, Operational Leakage, are modified administratively and two paragraphs at the end are inserted addressing the importance of leakage through the RCS pressure isolation valves, as part of IDENTIFIED LEAKAGE.

215. Page B 3/4 4–5 and B 3/4 4–6, the Bases for Specification 3/4.4.8. are modified administratively, and two paragraphs are inserted before the last paragraph to explain the reasons for excluding radioiodines from the determination of gross specific activity and the average disintergration energy, and the allowable time of 2 hours between sample and completing the initial analysis.

216. Page B 3/4 4–6 to B 3/4 4–11, the Bases for Specification 3/4.4.9. is revised administratively; "Unit 1" is added to the Title of Table B 3/4 4–1a to accommodate introducing Table B 3/4 4–1b, which is the equivalent table for Unit 2; deleting Tables B 3/4.4–1c, B 3/4.4–1d, and B 3/4.4–2, which are not referred to in the text; and adding a new Figure B 3/4.4–2.

217. Page B 3/4 –12, in the Bases for Specification 3/4.4.9, replace the second paragraph with "The fracture toughness testing of the ferritic materials in the reactor vessel were performed in accordance with the 1966 Edition for Unit 1, and 1968 Edition for Unit 2, of the ASME Boiler and Pressure Vessel Code, Section III. These properties are then evaluated in accordance with the NRC Standard Review Plan. ". In the third paragraph, change the third line to ". . .6 effective full power years of service life. The 6 EFPY service . . .", In the fourth paragraph change the second line to ". . . are shown in Table B 3/4.4–

1a for Unit 1 and Table B 3/4.4-1b for Unit 2 Reactor . . ." In line 5, replace "and copper content" with "copper and phosphorous content," and in lines 6, 7 and 8, replace the reference with "The largest value of Delta RT $_{NDT}$ computed by either the Regulatory Guide 1.99 Trend Curves from the Regulatory Guide 1.99, Revision 1, "Effects of Residual Elements on Predicted Radiation Damage to Reactor Vessel Materials: or the Westinghouse Copper Trend Curves shown by Figure B 3/4.4.2." In the last line of this paragraph also change "4.5 EFPY" to "6 EFPY" as the limiting service life for Delta RT_{NDT} determination. In the last paragraph; insert a sentence defining the "lead factor" as it applies to the reactor vessel material surveillance program.

218. Page B 3/4 4-13 and B 3/4 4-16, in the Bases for Specification 3/4.4.9, delete the reference to "WCAP-7924A" in the top paragraph of page B 3/4 4-13, and delete the top paragraph, and insert a new section to support the provisions used for "low temperature overpressure protection" on page B 3/4 4-16.

219. Page B 3/4 5-2, in the Bases for Specifications 3/4.5.2 and 3/4.5.3, the top and next two paragraphs are reversed.

220. Page B 3/4 6-1, editorial changes are made in the Bases for Specification 3/4.6.1, and the Bases for Specification 3/4.6.1.4, is changed to "The maximum peak pressure expected to be obtained from a LOCA event is 46.91 psig.. This include the limit of 0.3 psig for initial positive containment pressure. The total pressure is less than design pressure and is consistent with the safety analysis."

221. Page B 3/4 6-2, change the containment maximum pressure in the Bases for Specification 3/4.6.1.6 to "46.91 psig."

222. Page B 3/4 6-3, update the reference to Regulatory Guide 1.7 to "control of Combustible Gas Concentrations in Containment Following a Loss-of-Coolant-Accident", Revision 2, November 1978."

223. Page B 3/4 7-2, perform the following administrative changes: Bases for Specification 3/4.7.1.2, in the second paragraph, line 1, insert "motor" after "electric"; Bases for Specifications 3/4.7.1.4, in line 1, insert "coolant" after "secondary", replace "limits" in line 3 by "dose guideline values," "primary" by "reactor" in line 4, and "accident" by "safety" in the last line.

224. Page B 3/4 7-3, in the Bases for Specification 3/4.7.4 replace "accident conditions within acceptable limits." with "safety analysis."

225. Page B 3/4 7-6, in the Basis for Specification 3/4.7.8, replace the reference to "10 CFR 70.39(c)" in the second line with "10 CFR 70.39(a)(3)."

226. Page B 3/4 7-7, Bases for Specification 3/4.7.9, which addresses OPERABILITY requirements for fire suppression systems, delete the last sentence, "The requirement for a twenty-four hour report to the Commission provides for prompt evaluation of the acceptability of the corrective measures to provide adequate fire protection capability for the continued operation of the nuclear plant."

227. Page B 3/4 8-1, under Bases 3/4.8.1, 3/4.8.2, and 3/4.8.3, reword the information on Third Diesel Generator testing to make it unit nonspecific by changing from ". . . from Unit 2 is maintained during surveillance testing on Unit 1, then the third (common) Diesel Generator Unit shall be considered to be OPERABLE for Unit 2." to ". . . from one Unit is maintained during surveillance testing on the other Unit, then the third (common) Diesel Generator Unit shall be considered to be OPERABLE for that Unit."

228. Page B 3/4 8-2, in the Bases for 3/4 8.4, additional information is provided to support the provisions added to protect containment electrical penetrations and penetration conductors, and the Surveillance Requirements applicable to lower voltage circuit breakers.

229. Page B 3/4 9-1, at the end of the Bases for Specification 3/4.9.1., replace "accident analysis" with "safety analysis".

230. Page B 3/4 9-2, in the Bases for Specification 3/4.9.7, replace "SPENT FUEL STORAGE" in the title by "FUEL HANDLING".

231. Page B 3/4 9-3, at the end of the Bases for Specification 3/4.9.13 add "the location of Racks 5 and 6 is shown in Figure 9.1-2 of the FSAR."

232. Page B 3/4 10-1, the Bases for Specification 3/4.10.4 is deleted.

233. Page 5-1, delete "The Reactor" and "building" from the first line in Specification 5.2.2.

234. Page 5-5, replace Specification 5.4.2 with "The total water and steam volume of the reactor coolant system is "12,811±100 cubic feet at a nominal T_{avg} of 576°F for Unit 1 of 12,903±100 cubic feet at a nominal T_{avg} of 576°F for Unit 2."

235. Pages 6-1 through 6-25, replace "unit" with "plant" throughout Specification 6.0, Administrative Controls, and on pages 6-6 and 6-8 delete the heading "AUTHORITY".

236. Pages 6-2, Specification 6.2.1, Figure 6.2-1, Offsite Organization, replace "on site" by "plant," delete the position of "Manager, Nuclear Plant Operations"; "Technical Assistant to Vice President, Nuclear Power Generation", and "Quality Assurance Engineer, become "Manager, Nuclear Operations Support" and "Director, Quality Support," respectively. Figure 6.2.2 Plant Organization, replace "Technical Assistant to Vice President" and "Quality Assurance Engineers" with "Manager, Nuclear Operations Support" and "Director, Quality Support", respectively.

237. Page 6-5, in Specification 6.2.3.1, insert the statement in Specification 6.2.3.4: "The OSRG shall make detailed recommendations for revised procedures, equipment modifications, maintenance activities, operations activities or other means of improving plant safety to the Manager, Nuclear Operations Support.", which is deleted from its original location as Section 6.2.3.4 on page 6-6.

238. Page 6-6, Specification 6.3.1 is redesignated "6.3", revised editorially, and the minimum qualifications for licensed operator and senior operators are introduced.

239. Page 6-6, delete "identified by the OSRG" at the end of Specification 6.4.1.

240. Page 6-7, Specification 6.5.1.6, replace "Manager of Nuclear Plant Operations" with "Vice-President, Nuclear Power Generation" in item c, and item f with "Review of all REPORTABLE EVENTS".

241. Page 6-8 in Specification 6.5.1.8, replace "Manager of Nuclear Plant Operations" with "Vice-President Nuclear Power Generation", and delete "Chairman of".

242. Page 6-9, add to Specification 6.5.2.1, "The GONPRAC shall report to and advise the Executive Vice President, Facilities and Electric Resources Development, on those areas of responsibility specified in Sections 6.5.2.7 and 6.5.2.8." at the end, and delete it from its original location as entry 6.5.2.9.

243. Page 6-9, in Specification 6.5.2.2, which lists the composition of GONPRAC, replace "Project Manager, Diablo Canyon" with "Manager, Nuclear Engineering and Construction Services," replace "Technical Assistant to the Vice President, Nuclear Power Generation" with Director, Nuclear Administration and Support Services," replace "Manager, Nuclear Plant Operations," with "Assistant to the Vice President, Nuclear Power Generation," add "Manager, Nuclear Operations Support," and "Director, Nuclear Regulatory Affairs," as members of GONPRAC to reflect organizational changes and delete the footnote.

244. Page 6–10 in Specification 6.5.2.7, change item g. to all "ALL REPORTABLE EVENTS" and replace item i. with "Reports and meeting minutes of the Plant Staff Review Committee and the Onsite Safety Review Group."

245. Page 6–12, Specification 6.6, in the title "OCCURRENCE" is replaced with "EVENT" and the specification is revised to incorporate the REPORTABLE EVENT requirements and clarify the role of the PSRC and CONPRAC, and reflect organization changes.

246. Page 6–12, Specification 6.7, is modified to reflect organization changes and administrative changes to be taken when safety limits are violated.

247. Page 6–13, change items b through g in Specification 6.8.1 to

"b. The emergency operating procedures required to implement the requiremens of NUREG–0737 and Supplement 1 to NUREG–0737 as stated in Generic Letter No. 82–33,

c. Security plan implementation,

d. Emergency plan implementation,

e. PROCESS CONTROL PROGRAM implementation,

f. ODCP and ERMP implementation, and

g. Quality Assurance Program for effluent and environmental monitoring."

248. Page 6–15, in Specification 6.9.1, "AND REPORTABLE OCCURRENCES" is deleted from the title, "Director" is replaced with "Regional Administrator" and "Inspection and Enforcement" with "the NRC."; and the date for submittal of the Annual Reports is changed to March 31 in Specification 6.9.1.4.

249. Pages 6–19, 6–20 and 6–21, to reflect new reporting requirements and the LER system Specifications 6.9.1.11, 6.9.1.12 and 6.9.1.13 are deleted, and Specification 6.9.1.14 which is revised administratively, is redesignated as "6.9.1.8."

250. Page 6–22, change item c to "ALL REPORTABLE EVENTS" in Specification 6.10.1.

251. All Technical Specifications are revised to correct typographical errors (e.g., replacing "1" by "1", KV by kv and "GPM" by "gpm" throughout), and conform to updated nomenclature (e.g., replacing "percent" by "%," "secs" by "s," "square feet" by "ft ^{2}," use of scientific notation, and spelled out numbers by digits when referring to surveillance time intervals), and notation changes (e.g., replacing i), ii), iii) . . . by 1), 2), 3) . . . in page 3/4 4–19; a, b, c, d, and e by 1, 2, 3, 4, 5 on page 3/4 7–3, Table 3.7–3; (a), (b) and (c) by (4), (5), and (6) on page b, c, . . . by 1, 2, 3, . . . and 1, 2, 3, . . . by a, b, c, . . . on page 3/4 11–2, Table 4.11–1 and page 3/4 11–9, Table 4.11–2; a, b, c, d, by 1, 2, 3, 4 on page B 3/4 2.4, Bases for Specifications 3/4.2.2, 3/4.2.3, and floating notation by decimal notation on part page 3/4 12–5, Table 3.12–2 and page 3/4 12–6, Table 4.12–1).

252. Pages 3–1 through 3–13 and page B 3/4 3–1, revise Section 3/4.3.1, Reactor Trip System Instrumentation, which specifies the surveillance test requirements for the Reactor Trip System Instrumentation channels and interlocks and the automatic trip logic. The changes incorporate new surveillance requirements as recommended by WCAP–10271. Specifically, the proposed changes increase the surveillance intervals of the Reactor Trip System and time that an inoperable Reactor Trip System analog channel may be maintained or bypassed to allow the testing of another channel.

253. Page 3/4 3–44, Surveillance Requirement 4.3.3.3.1, Table 4.3–4, Seismic Monitoring Instrumentation Surveillance Requirements, add the requirement to perform a channel calibration in accordance with ANSI/ANS–2.2–1978 each refueling outage for the triaxial peak accelographs and the triaxial response-spectrum recorders.

254. Page 3/4 3–52, Specification 3.3.3.6, Table 3.3–10, Accident Monitoring Instrumentation, for the PORV Position Indicator, change the required number of channels from 1/valve to 2/valve as a requirement for backup instrumentation. Add footnotes to identify indication as one direct, stem-mounted indicator per valve and one common temperature element.

255. Page 3/4 7–1, Specification 3.7.1.1, Turbine Cycle Safety Valves, delete Action b., which allows a maximum of 19 main steam line safety valves to be made inoperable in Mode 3 to permit insitu testing of the OPERABLE safety valve.

256. Page 3/4 7–18, Surveillance Requirement 4.7.7.1, Snubber Surveillance, change "in lieu of" to "and" in the introductory statement, thus requiring each snubber to be demonstrated OPERABLE by performance of both the augmented inservice program (described subsequently in Surveillance Requirement 4.7.7.1) and the requirements of Specification 4.0.5.

Other changes are aimed at obtaining uniformity of format throughout, such as: replacing "see 1 . . ." with "See item 1 . . ." in entries 3a.20, 3c.3) and 6e of Tables 3.3–3, 3.3–4 and 4.3–2; replacing "REPORTABLE OCCURRENCE" with "REPORTABLE EVENT"; capitalizing the first letter in system designations or technical terms (e.g., Reactor Trip System, Interlock Setpoints, Trip Setpoint, Safety Limits, Low Setpoint, Pressurizer High and Low Water Level, Steam Generator Water Level, Low-Low, Auxiliary Feedwater System, Steam/Feedwater Flow Mismatch, Low Flow Trip Setpoint, Underfrequency Trip Setpoint, Seismic, Safety Injection, Moderator Temperature Coefficient, Refueling Water Storage Tank, Boric Acid Storage System, Control Rod Drive System, Control Banks, Interlock Trip Setpoint, Engineered Safety Features, High-High Setpoint, Alarm/Trip Setpoint, Movable Incore Detection System, Excore Neutron Flux Detection System, Control Room Ventilation System, Turbine Overspeed Protection System, Containment Atmosphere, Particulate Radioactivity Monitoring System, Containment Fan Cooler Collection Monitoring System, Leakage Detection Systems, Containment Structure Sump Level, Reactor Cavity Sump Level, Residual Heat Removal, Centrifugal Charging, Safety Injection, Containment Spray System, Hydrogen Recombiner, Main Steam Line Isolation Valve, Secondary System, Heat Flux Hot Channel Factor, Flowrate, Nuclear Enthlpy Rise Hot Channel Factor, Land Use Census, Steam Dump System and Low-Low T_{avg}); and capitalizing defined terms (e.g., STARTUP, SITE BOUNDARY and OPERABLE).

Additional format modifications include a greater use of abbreviations (e.g., Effective Full Power Days (EFPD) in page 3/4 1–2, Power Operated Relief Valve (PORV), Reactor Coolant System (RCS), Moderator Temperature Coefficient (MTC), Refueling Water Storage Tank (RWST), and Axial Flux Difference (AFD); breaking up Table 4.8–2, page 3/4 8–9 and 3/4 8–10, into one table listing ESF Timers (Table 4.8–2a) and one for Auto Transfer Timers (Table 4.8–2b) for clarity; modifying table headings (e.g., Tables 3.3–3, 3.3–4, 3.3–5, 3.3–7, 4.3–4, 3.3–8, 4.3–5, 3.3–12, 4.3–8, 3.3–13, 4.3–9, 3.7–1, 3.12–1, 3.12–2 and 4.12–1) for consistency of format, to renumber footnotes to agree with their order in the text (e.g., Table 4.8–3, page 3/4 8–16), and deleting "0" after a decimal point to avoid giving the impression of greater accuracy than is needed (e.g., 1.0 changes to 1 and 2.0 to 2). Minor editorial changes to make the Technical Specifications applicable to both units (e.g., changing the footnote in all pages to "Diablo Canyon-Units 1 and 2") are also incorporated.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As stated above, the Commission proposes to determine that the proposed changes do not involve significant hazards consideration. In this regard, the Commission has provided guidance concerning the application of standards for determining whether or not a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendment considered not likely to involve significant hazards considerations. The examples include: (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature; (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement; (iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met; (vi) A change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method; (vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The proposed changes to the Technical Specifications are similar to these examples in that they are either administrative (i), are more restrictive (ii), grant relief upon demonstration of acceptable operation (iv), are within the Standard Review Plan acceptance criteria (vi), or respond to changes in regulations (vii). On this basis, Commission proposes that these changes do not involve significant hazards considerations. The following is a description of how the proposed change items are similar to the examples of 48 FR 14870. (Note: items are enumerated the same as above).

The proposed changes in the Technical Specifications for the items listed below are for eliminating typographical errors, correcting punctuation, adjusting nomenclature, additional clarification, improving consistency, minor changes, and including Unit 2 Specifications as necessary to reflect operation of Units 1 and 2. They are encompassed by the Commission's example (i) of actions not likely to involve significant hazards considerations. The proposed changes are in Items 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48, 50, 51, 52, 54, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 89, 92, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 113, 115, 117, 120, 122, 123, 124, 125, 126, 127, 130, 131, 134, 135, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 149, 150, 152, 153, 155, 156, 157, 158, 159, 160, 162, 164, 165, 166, 167, 171, 173, 175, 176, 178, 179, 180, 181, 182, 183, 186, 187, 188, 189, 190, 191, 192, 193, 194, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 207, 209, 212, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 241, 242, 243, 244, 245, 246, 247, 248, 249, and 251.

Proposed changes 45, 49, 65, 69, 73, 74, 76, 93, 116, 120, 121, 132, 139, 141, 143, 161, 164, 168, 169, 170, 172, 177, 185, 195, 208, 228, 238, 253, 254, 255, and 256 introduce additional operational controls and restrictions, surveillance testing and verification requirements, and more restrictive ACTION items than those presently included in the Technical Specifications. These proposed changes are thus similar to example (ii) of 48 FR 14870 in that they provide additional restrictions and controls not presently included in the Technical Specifications. On this basis, the Commission proposes to determine that the changes do not involve a significant hazards consideration since the changes incorporate addition of restrictions and controls that are not currently included in the Technical Specifications.

Proposed changes 53, 55, 56, 58, 59, 60, 61, 62, 63, 70, 71, 77, 94, 206, 207, 217, and 252 represent a request for relief from an operating restriction, control or limitation on the basis that acceptable operation under the proposed conditions has been demonstrated. The proposed changes are similar to example (iv) of 48 FR 14870, in that the original restrictions had been imposed because acceptable operation had not been yet demonstrated, and are thus not likely to involve a significant hazards consideration.

The proposed changes presented in Items 38, 67, 79, 90, 91, 121, 128, 129, 154, 174, 184, 196 and 217 constitute changes to previously analyzed occurrences, but the results of the changes are clearly within all acceptable criteria with respect to the system or the component as specified in the Standard Review Plan. The proposed changes are thus similar to example (vi) of 48 FR 14870 of actions not likely to involve a significant hazards consideration.

The proposed changes presented in Items 7, 8, 9, 88, 106, 107, 114, 118, 119, 133, 148, 151, 154, 163, 210, 211, 213, 223, 225, 226, 240, 244, 245, 249 and 250 constitute changes made to conform to changes in the regulations and are thus similar to example (vii) of 48 FR 14870 of actions not likely to involve a significant hazards consideration.

Of the above proposed changes, most have already been incorporated by the Commission into the current Unit 2 Technical Specifications issued with the low-power license DPR-81. Incorporation of these same changes into Unit 1 Technical Specifications will upgrade the specifications for Unit 1 and make the Unit 1 Technical Specifications essentially equivalent in terms of content, style and format. Several additional changes have been proposed for both the Unit 1 and the Unit 2 Technical Specifications to incorporate information into each necessary to achieve a common Technical Specifications document, clarify certain requirements, and correct minor errors. These additional changes are addressed into whole or in part for Unit 1 by the following items enumerated as above: Items 1, 6, 10, 12, 14, 25, 29, 30, 38, 46, 48, 54, 56, 57, 59, 60, 61, 62, 63, 64, 68, 72, 89, 90, 91, 103, 104, 117, 128, 129, 137, 152, 153, 160, 161, 162, 165, 171, 176, 177, 191, 199, 201, 216, 217, 227, 234, and 251. Of these items, all but Items 39, 90, 91, and 177 are administrative changes previously noted to be encompassed by the Commission's example (i) of actions not likely to

involve significant hazards considerations. The following is a description of each of the four nonadministrative changes and how each is similar to one of the examples in 48 FR 14870.

The proposed changes noted in Item 38 to revise the movable control assemblies specification still meet the basis that ensure that (1) acceptable power distribution limits are maintained, (2) the minimum shutdown margin is maintained, and (3) the potential effects of rod misalignment on associated accident analysis are limited. The reworded action statements permit the same variations from the basic requirements, with the only difference being the addition of a relaxation for electrically immovable rods that are still trippable and within alignment. This relaxation is justifiable in that the previously mentioned basis is not violated. The benefits of these reworded specifications are increased clarity and additional operational flexibility by allowing of repair without curtailment to operation of an identifiable electrical failure to multiple movable control assemblies that does not affect trip ability or alignment. The proposed change is similar to example (vi) of 48 FR 14870 in that the results of the change are clearly within all acceptance criteria with respect to the system or component safety function. On this basis, the Commission proposes to determine that the change does not involve a significant hazards consideration.

The proposed changes in Items 90 and 91 involve changing the applicability statement for the Noble Gas Activity Monitor (RM–14A or 14B) in Tables 3.3–13 and 4.3–9 associated with the Containment Purge System from "*At all times" to "***MODES 1–4; also MODE 6 during CORE ALTERATIONS or movement of irradiated fuel within containment." The new applicability statement is added to the Table Notations for Tables 3.3–13 and 4.3–9. The proposed changes only affect the "automatic termination" feature of the monitor (RM–14A or 14B), since the same monitor, with alarm, is required to be available for the Plant Vent System in Tables 3.3–13 and 4.3–9. When containment integrity is not required, in MODE 5 and a limited time in MODE 6, there is no need to provide automatic termination of release for the Containment Purge System. The proposed change is similar to example (vi) of 48 FR 14870 in that the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan. Furthermore, this change is more conservative than the example, in that the probability and consequences of previously-analyzed accidents are not increased and safety margins are not reduced. On this basis, the Commission proposes to determine that the change does not involve a significant hazards consideration.

The proposed change presented in Item 177 involves adding containment penetration conductor overcurrent protective devices for four additional penetrations in the Unit 2 containment. By adding these penetrations to those covered by Specification 3/4.8.4.2, all penetrations of the Unit 2 containment protected by circuit breakers are not included in Table 3.8–2. The proposed change is similar to example (ii) of 48 FR 14870 in that it provides additional restrictions and controls not presently included in the Technical Specifications. On this basis, the Commission proposes to determine that the change does not involve a significant hazards consideration since the changes incorporate addition of restrictions and controls that are not currently included in the Technical Specifications.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By July 18, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.174, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding; and (4) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment

and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to G. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and to Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix Arizona 85064.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding office or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. The determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and the California Polytechnic State University Library, Document and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 12th day of June 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-14641 Filed 6-17-85; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Withdrawal

The Nuclear Regulatory Commission has withdrawn five regulatory guides. These guides all deal with the accountability of plutonium in the nuclear fuel cycle. At this time, however, there are no current plutonium licensees in the nuclear fuel cycle, and none are predicted in the foreseeable future. Furthermore, the guides were issued more then 10 year ago and are now obsolete. Therefore, these guides are no longer being applied in the licensing process and are no longer needed.

Regulatory Guide 5.6, "Standard Methods for Chemical, Mass Spectrometric, and Spectrochemical Analysis of Nuclear-Grade Plutonium Dioxide Powders and Pellets and Nuclear-Grade Mixed Oxides ([U, $Pu]O_2$)," was issued in 1973. It endorses two out-of-date ASTM standards.

Regulatory Guide 5.16, "Standard Methods for Chemical, Mass Spectrometric, Spectrochemical, Nuclear, and Radiochemical Analysis of Nuclear-Grade Plutonium Nitrate Solutions and Plutonium Metal," was revised in 1975. It also endorses two out-of-date ASTM standards.

Regulatory Guide 5.19, "Methods for the Accountability of Plutonium Nitrate Solutions," was issued in 1974. It endorses WASH 1282, which is no longer state of the art.

Regulatory Guide 5.40, "Methods for the Accountability of Plutonium Dioxide Powder," was issued in 1974. It endorses WASH 1335, which is no longer state of the art.

Regulatory Guide 5.47, "Control and Accountability of Plutonium in Waste Material," was issued in 1975. It is not only out of date technically, but it cites a section of the regulations that, by virtue of a major amendment of 10 CFR Part 73, is no longer applicable to the subject of this guide.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 11th day of June 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-14636 Filed 6-17-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

The Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61 issued to The Connecticut Yankee Atomic Power Company, (the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

The amendment would revise the technical specifications to update the pressure/temperature limit curves for hydrostatic and leak rate testing and for heatup and cooldown rates. All of these curves are being updated to show the required limitations out to 22.0 effective full power years (EFPY). This amendment was requested in the licensee's application dated June 11, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determiantion that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means

that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would change the technical specifications to update the pressure/temperature limit curves for hydrostatic and leak rate testing and for heatup and colldown rates to show the required limitations out to 22.0 effective full power years. The current heatup and cooldown curves in the technical specifications will be outdated when the Haddam Neck Plant reaches 14.0 EFPY which is expected to occur no earlier than July 19, 1985.

The heatup and cooldown limit curves are calculated using the most limiting value of RT_{NDT} (reference nil-ductility temperature), the temperature where material exhibits ductile behavior. During the service life of the reactor vessel the RT_{NDT} increases above the initial value because of neutron irradiation. The change, delta RT_{NDT}, is determined from fluence measurements, calculations, and trend curves based on tests of irradiated specimens that predict the effect of neutron irradiation.

Transition temperature shifts in the reactor vessel materials due to radiation exposure have been obtained directly from a reactor vessel surveillance capsule program. Once the RT_{NDT} value has been established, a stress intensity factor, K_{IR}, can be determined. At any time during the heatup or cooldown transient, K_{IR} is determined by the metal temperature at the tip of the postulated flaw, the appropriate value for RT_{NDT}, and the reference fracture toughness curve. The thermal stresses resulting from temperature gradients through the vessel wall are calculated and then the corresponding thermal stress intensity factor, K_{IT}, for the reference flaw is computed. From Appendix G of the ASME Code, the pressure stress intensity factors are obtained, and, from these, the allowable pressures are calculated.

The temperature and pressure changes during the heatup and cooldown are limited in accordance with the above-mentioned curves which are consistent with the requirements given in the ASME Boiler and Pressure Vessel Code, Section III, Appendix G, and 10 CFR Part 50, Appendix G. Allowable combinations of pressure and temperature for specific temperature change rates are below and to the right of the limit lines. These curves define limits to assure prevention of nonductile failure only. For normal operation, other inherent plant characteristics, e.g., pump heat addition and pressurizer heater capacity, may limit the heatup and cooldown rates that can be achieved over certain pressure-temperature ranges.

The licensee has evaluated the proposed technical specification changes and has determined that they do not represent a significant hazards consideration. The licensee concluded that neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety (either previously evaluated or not) would be increased, nor would the margin of safety as defined in the basis of Technical Specification by reduced.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples of actions not likely to involve significant hazards considerations is example (ii) which is a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The staff has reviewed the licensee's proposed amendment and concluded that it falls within the envelope of example (ii) because the proposed heatup and cooldown curves are more restrictive than the existing curves. For the same reactor pressure, the proposed curves require a higher reactor coolant temperature than the existing curves. The additional restrictions are necessary to assure conformance with 10 CFR Part 50, Appendix G, and to ensure continued reactor pressure vessel integrity. Additionally, this change has no effect on the assumptions or consequences of any previously evaluated accident; it does not affect the operability of any control system, protection system, safeguards system, or support system and the basis of the new curves is the same as the basis of the current curves, merely updated to reflect an interval of time later in the service life of the reactor pressure vessel.

Based on the above, the staff therefore proposes that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 18, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be

litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requriements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in dderating or shutdown of the faciity, the Commision may issue the license amendment before the expiration of the 30-day notice priod, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested taht the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski, Branch Chief, Operating Reactors Branch No. 5, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petiton and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That datermination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C. and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 14th day of June 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5 Division of Licensing.

[FR Doc. 85–14767 Filed 6–17–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14572; 812-6110]

Chicago Pacific Corp.; Application for an Order for Exemption

June 11, 1985.

Notice is hereby given that Chicago Pacific Corporation ("Applicant") 200 South Michigan Avenue, Chicago, Illinois 60604, A Delaware corporation, filed an application on May 6, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act, or in the alternative, for an order pursuant to section 3(b)(2) of the Act declaring the Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning holding or trading in securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant states that it is the successor in interest to the Chicago, Rock Island and Pacific Railroad Company (the "Railroad") which underwent reorganization proceedings pursuant to section 77 of the federal Bankruptcy Act in the United States District Court for Northern Illinois, Eastern Division. On June 1, 1984, the plan of reorganization ("Reorganization") was consummated and the Board of Directors ("Board") appointed by the court elected the management of Applicant.

Applicant states that after Reorganization, more than 40 percent of the value of its total assets, exclusive of government securities and cash items, could be deemed to be investment securities as defined by the Act, and that absent an applicable exemption, Applicant could have been considered an investment company as defined by the Act. Applicant states it has relied on Rule 3a–2 and consistent therewith, Applicant's Board on June 26, 1985, adopted a resolution declaring that Applicant's intention was to engage primarily in a business other than the business of investing, reinvesting, owning, holding or trading in securities. Applicant states that since Reorganization, it has engaged in a twofold business program: (1) Liquidation of the Railroad's remaining assets, and (2) an acquisition program.

According to the application, the Railroad's assets, including certain real properties, have been sold or liquidated during bankruptcy. From July 1, 1984, through March 31, 1985, Applicant completed transactions valued in excess of $85 million. Applicant expects the liquidation program will be substantially completed prior to 1986, with the possible exception of certain rural properties, the value of which is not material, and certain investments in affiliated companies which have limited marketability. Railroad assets held for sale by Applicant include a 60-acre tract located south of the Loop in Chicago; the

Railroad's 30-acre South Chicago railyard; 440 acres of Railroad yards in Silvis and Blue Island, Illinois, and Inver Grove, Minnesota; three sites in Chicago consisting of two acres of land and a 10 story office building; a 172-acre tract in Marseilles, Illinois; and, a four-acre depot site in Morris, Illinois. Applicant also owns other properties it believes to be marketable, comprised of numerous small parcels, abandoned rights-of-way, railyards and collateral properties excluded from prior sales. All of Applicant's rolling stock has been sold with deliveries to be made by mid-1985.

Applicant's program and intent to acquire one or more operating companies was publicly communicated to its shareholders and the investing public by the report to shareholders dated July 31, 1984. Applicant states that it retained the investment banking firm of Goldman, Sachs & Co. to assist in the selection and review of potential acquisition candidates. On September 28, 1984, Applicant entered into a $350 million credit agreement with a consortium of banks which may be utilized solely to finance the acquisition of operating companies.

According to the application, the Board, subject to shareholder approval, has adopted a plan that provides for the issuance of 200,000 shares of common stock and a proposal to amend Applicant's Restated Certificate of Incorporation to increase the number of authorized preferred shares from 200,000 to 2,500,000, to increase the number of authorized common shares from 4,500,000 to 25,000,000 shares and a proposal to increase the number of directors. Applicant states that additional directorship positions provides flexibility in acquisition strategy because it is a common practice to nominate senior operating subsidiary officers to board membership. Applicant also states that it is comtemplating a public offering of subordinated debentures in order to raise additional capital for its acquisition efforts. It is expected that Applicant will use all or a significant portion of the proceeds from this offering together with its available cash balances and other borrowed funds or newly issued securities in order to acquire operating companies.

Applicant states that it has reviewed numerous proposals and acquisiton candidates as presented by many of the leading investment banking firms. Applicant further states that it has made two publicly disclosed offers to acquire operating companies. The first attempted acquisition was in October 1984, fo Textron, a diversified manufacturing company with annual sales of approximately $3 billion. Textron's announcement that Applicant's bid was unacceptable caused Applicant to withdraw the offer and Applicant subsequently sold its holding of Textron common. Applicant's second attempted acquisition was made in December, 1984, for Scovill, a diversified manufacturing corporation with annual sales of approximately $750 million. Scovill subsequently accepted a competitive offer and Applicant did not acquire any shares in connection with its offer.

In addition to the publicly disclosed offers, Applicant represents that it has considered acquiring approximately 25 other operating companies. Among the potential companies to be acquired, Applicant states that it has considered acting as a "white knight" for companies involved in unsolicited takeover attempts. Applicant has also been contacted by investment bankers and other interested third parties about the possible acquisition of certain operating companies or divisions thereof. In most of its analyses of potential acquisition companies, Applicant states that it prepared detailed projections as well as entered confidentiality agreement that prohibit identification of the parties involved.

Applicant avers that it will not be an investment company within the meaning of section 3 (a)(1) or 3(a)(3) of the Act during the period for which it is seeking exemptive relief. Applicant asserts that its actions since June 1, 1984, when it emerged from Reorganization, are consistent with Commission criteria established in public pronouncements as to whether a transition period in excess of one year is reasonable. Applicant argues that its inability to complete a transition into a new operating business within one year is in large measure due to factors beyond Applicant's control. Applicant represents that the activities of its management reflect good faith efforts by Applicant to become engaged in non-investment company business. Applicant states that management spends very limited time on investment decisions relating to current assets. Applicant also represents that its investment assets were made with an objective to preserve value pending application of such assets to an acquisition. Applicant represents that it has not engaged in trading securities for short-term speculative purposes.

Registration under the Act, according to the application, would involve unnecessary burdens and expenses for Applicant and its shareholders. The changes necessitated by registration under the Act in the interim period pending acquisition of operating companies would confuse Applicant's shareholders and, moreover, impair Applicant's ability to effect an acquisition.

Applicant believes that it meets the conditions of section 6(c) of the Act for its exemption request. Applicant submits that the granting of the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits in the alternative, that an order pursuant to section 3(b)(2) of the Act is appropriate because, since the Reorganization, it has been actively pursuing to become operating in a new business or businesses.

Applicant asserts that the uncertainty of its status under the Act might impair its ability to negotiate acquisitions. Applicant states that it is preparing a registration statement for the subordinated debenture offering, and uncertainty as to its status under the Act might impair Applicant's ability to register and issue such debentures. Applicant anticipates that it should be able to complete its transition to new operating businesses by June 1, 1986, and that if not completed by that date, Applicant will have made sufficient progress in that regard to support further exemptive relief.

Applicant undertakes that during the period for which an exemption is provided: (1) Applicant will not engage in trading in securities for short-term speculative purposes, and (2) Applicant will continue its intention to become primarily engaged in new operating businesses as soon as reasonably possible.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 2, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14582 Filed 6-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22130; File No. SR-NSCC-85-5]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation Relating to Fees

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 May 31, 1985, NSCC 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 NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend National Securities Clearing Corporation's Fee Schedule as follows: (*Italic* Indicates addition; [brackets] indicate deletion)

I. Trade Comparison and Recording Service Fees

* * * * *

[D. Paper Input:

1. Each item submitted in paper form where alternate machine readable input systems do not exist (includes trade input after T+1)—$.12 per item.

2. Each item submitted in paper form where alternate machine readable input systems exist (includes T+1 trade input)—$.25 per item.]

II. Trade Clearance Fees

* * * * *

[H. Paper Input:

1. Each item submtted in paper form where alternate machine readable input systems do not exist (includes buy-ins, interface exemptions and interface inclusions)—$.12 per item.

2. Each item submitted in paper form where alternate machine readable input systems exist (includes CNS exemptions and priorities)—$.25 per item.]

III Delivery Service Fees

* * * * *

[F. Each item submitted in paper form where alternate machine readable input systems do not exist (includes New York State Transfer Taxes and dividend settlement input)—$.12 per item]

IV. Other Service Fees

* * * * *

[L. (1) Each item submitted in paper form where alternate machine readable input systems do not exist (includes cage movements)—$.12 per item

(2) Each item submitted in paper form where alternate machine readable input systems do exist (includes P&S trade input)—$.25 per item]

V. Pass-Through and Other Fees

* * * * *

E. Paper Input

Each item submitted in paper form (except Envelope Settlement Service, Funds Only Settlement Service, Dividend Settlement Service and Correspondent Delivery and Collection Service)—$.25 per item.

Amend Addendum C, NSCC Automated Stock Borrow Procedures, Paragraph 7 as follows:

NSCC Automated Stock Borrow Procedures

* * * * *

7. The only fees to participants for the program will be normal short cover (when a borrow is made) and long allocation (when a borrow is returned) charges *and, if instructions are received other than in machine readable input, fees for proceessing paper input.*

II. Self-Regulatory Organization's Statement of, Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's fee structure presently specifies two fees for processing paper input depending on whether alternative machine readable input systems exist, which fees are specified in various sections of the fee schedule. If alternative machine readable input systems do not exist the fee is $.12 per item and, if they do exist, the fee is $.25 per item. NSCC now has the capability to accept automated input for practically all activity submitted to clearing with certain limited exceptions. Accordingly, NSCC has determined to eliminate a dual fee structure for paper input. Since a uniform fee of $.25 is to be charged for processing paper input, regardless of activity, the purpose of the rule change is to delete the $.12 charge and create a new category to cover the $.25 charge for all types of processing.

NSCC's Automated Stock Borrow Procedure currently provides that the only fees to be charged are those for short covers and long allocations. NSCC has determined that the $.25 processing fee for paper input should apply to the Automated Stock Borrow Procedures. Accordingly, a second purpose of the rule change is to modify these Procedures to specify that the service will be subject to the $.25 processing charge if instructions are submitted in paper format.

NSCC's present discount policy, when revenues exceed costs, is to discount the fees for Trade Comparison and Recording Services, Trade Clearance and Delivery Services at a percentage which will be twice as great as for the discount for Other Service Fees. Accordingly, NSCC's present discount policy for paper input fees is to discount the fees associated with Trade Comparison and Recording Services, Trade Clearance and Delivery Services at a full discount and to discount the fees associated with Other Services as a half discount. NSCC intends to standardize the discount for paper input fees so it will be equal to a half discount.

The proposed changes to NSCC's rate structure are consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder applicable to the self-regulatory organization in that they allow for the equitable allocation of fees among NSCC's Participants. Inasmuch as the proposed rule change relates only to NSCC's rate structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change have been solicited or received although NSCC has informed Participants, by Important Notice dated March 27, 1985, (a copy of which is attached as Exhibit 2) of NSCC's ability to receive direct transmission as well as magnetic tape, diskette and card input for the processing of input. If any comments are received, they will be forwarded to the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the 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 writting submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 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 July 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 10, 1985.

[FR Doc. 85–14581 Filed 6–17–85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/04–0295]

Mansfield Capital Corp.; License Surrender

Notice is hereby given that Mansfield Capital Corp. (Mansfield), Naples, Florida, has surrendered its license and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Mansfield was licensed by the Small Business Administration on January 22, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was effective September 19, 1984, 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: June 13, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–14596 Filed 6–17–85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2192; Amdt. #1]

Pennsylvania; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 24339, June 10, 1985) is amended in accordance with the President's declaration of June 3, 1985, to include Clearfield County, Pennsylvania, because of damage from severe storms, high winds, and tornadoes beginning on or about May 31, 1985. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on August 2, 1985, and for economic injury until the close of business on March 3, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 5, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85–14537 Filed 6–17–85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 43065; Order 85–6–44]

Pacific Division Transfer Case; Order Instituting Investigation

Issued by the Department of Transportation on the 13th day of June 1985.

On April 22, 1985, Pan American World Airways, Inc. and United Airlines, Inc. applied to the Department of Transportation for approval of an acquisition of assets and a transfer of route authority pursuant to sections 408 and 401(h) of the Federal Aviation Act of 1958, as amended.[1]

Pan American has agreed to sell United its International Pacific Division as an operating, ongoing business. Pan American would transfer to United for $750 million its underlying Pacific route authority, along with the aircraft, spare parts, facilities, real property, personnel, and other assets of its Pacific division. The two carriers request expeditious processing of their application and confidential treatment for many of the documents they have filed.

The agreement has several provisions that attempt to assure an orderly transition and avoid suspension of U.S.-flag service in the Pacific. In addition, United is to undertake to offer employment to approximately 2,700 Pan American employees; Pan American is to withdraw from the lawsuit against United relating to the latter's computer reservations system; and United is to afford Pan American "most favored nation" status on that system and in interline matters.

By its terms, the agreement will terminate if the carriers fail to secure the necessary government approvals, or if conditions are imposed on these approvals that would affect either carrier's business materially and adversely. In this regard, United would accept five-year temporary authority for Pan American's routes in lieu of Pan American's permanent authority,[2] but

[1] Section 412 of the Act sets out the standards for approval of agreements filed with the Department. The submission of an agreement under section 412, however, is discretionary and the applicants have chosen not to file under section 412. Nor have they requested antitrust immunity under section 414.

[2] Agreement at 5 (Article 1, definition of "Final U.S. Government Approval").

the carriers would not accept labor protective provisions.[3] If the transaction is not approved, Pan American indicates that it will continue to operate its Pacific division as before.

On May 1, 1985, by Order 85–5–17, the Department directed interested persons to comment on the application. We also announced our intention to process the application via an expedited hearing before an Administrative Law Judge. We granted the Applicants' motion for confidential treatment of documents, subject to reconsideration at any time for good cause shown, and we provided for immediate *in camera* inspection of the confidential documents by counsel for other parties. Finally, we stated our initial conclusion that the application should not be rejected as incomplete.

Responses to the Application

In response to Order 85–5–17, we received comments from two civic entities, the Port Authority of New York and New Jersey and the City of Los Angeles, Department of Airports. We also received comments from the following labor groups: Flight Engineers International Association and its Pan Am Chapter, Master Executive Council of United Pilots, Pan American Master Executive Council, ALPA, Independent Union of Flight Attendants, Association of Flight Attendants, Transport Workers Union of America, International Association of Machinists, Former National Airlines' Pilots, International Brotherhood of Teamsters, FEIA–NAL Chapter, and Air Line Pilots Association, International.[4] The carriers that filed comments are Eastern, Transamerica, Delta, American, Northwest, Federal Express, and Continental. We also received comments from the Department of Justice (DOJ).

We received replies from Delta, Continental, the Port of Portland and DOJ, as well as the Applicants. Matters raised by the comments, replies and various procedural motions are addressed in this order.

Summary

By this order we retitle docket 43065 as the *Pacific Division Transfer Case*, establish the procedures to be employed in deciding this case and describe major issues for the parties to address. After an expedited oral evidentiary hearing before an Administrative Law Judge, the record in this case will be certified to the Decisionmaker. We will set August 12, 1985 as the deadline for certification of the record. Briefs to the Department will be due four weeks after the record is certified. We hope to issue a tentative decision on which parties may comment by October 7.

With respect to the issues raised by the application, we expect parties to consider the effects of the transaction on actual and potential competition in any relevant markets. We reject, therefore, applicants' efforts to narrow the competitive focus to only the markets in which actual competition might be eliminated. Similarly, parties should address the public interest issues raised by the application. We will not, however, consolidate various applications for authority Pan Am now holds or applications for new authority recently negotiated with the Japanese (or any other applications for route authority) into this proceeding. Such action would substantially expand the scope and change the nature of this case. Although parties should address international aviation policy implications of the case, including the factors set forth in section 102 of the Act, we will not permit the parties to introduce evidence on the foreign aviation policy "cost" of approval of this transaction. Anticipation of possible foreign government reaction to the transaction is speculative. Moreover, the question of foreign aviation policy "cost" is entirely a policy issue and, thus, not susceptible or appropriate for evidentiary submissions or further factual development. Finally, parties should address whether Labor Protective Provisions (LPP's) should be imposed in this case in light of our current standard for their imposition (which is to say, parties should consider whether this transaction meets the standard enunciated in the *Midway-Air Florida Case* (Order 85–6–33, June 11, 1985)), and whether that standard is appropriate in this proceeding.

Procedures

We have also received numerous petitions for leave to intervene in this proceeding and answers in opposition to three requests to intervene. We have decided to grant all requests to intervene. Each petitioner has demonstrated an interest that warrants its participation in this proceeding. We will deny, then, the requests of the Pan American and United Master Executive Councils that we preclude the participation of the former National Airlines Pilots, Pacific Cockpit, and the Flight Engineers International Association. Their arguments that these groups are not legitimate labor representatives under the Railway Labor Act are not dispositive of whether intervention in this proceeding should be permitted. Rather, that determination depends on the variety of factors set out in Rule 15 of our Rules of Practice (14 CFR 302.15(b), 50 FR 2389, January 16, 1985) and we have determined that the challenged intervenors satisfy these factors. A list of the petitions for intervention we are granting is attached as Appendix A. Any additional requests to intervene shall be filed by June 17 and will be ruled upon by the ALJ.

In their application, Pan American and United requested expedited consideration of this case. They proposed an extremely ambitious schedule that would have led to a final decision by August 1985. In their view, expedition is warranted because the transaction will provide significant public benefits that should not be delayed.

The complex and important issues this case presents preclude the imposition of the extremely truncated procedures the Applicants contemplated. While we will endeavor to decide this case as quickly as possible, we have decided to generally employ the CAB's traditional administrative procedures, except that we will not have a Recommended Decision.

Our reason for directing that the record be certified relates primarily to the time constraints we face in reaching a decision in a case of this importance. Absent certification, the Decisionmaker would have only about a month to receive briefs and issue a final decision after the issuance of the R.D.

We envision the following procedural schedule:

Additional intervention petitions—June 17
Prehearing conference—June 19
Information responses—June 27
Exchange of direct exhibits—July 9
Exchange of rebuttal exhibits—July 25
Hearing—July 29
Certification of the record—August 12
Briefs to Department—September 9
Tentative Decision—October 7

Consistent with the target date for certification of August 12, the ALJ may adjust the other dates as he finds appropriate.

To reduce delay in the conduct of the proceeding and for the convenience of the Administrative Law Judge and the parties, we have attached as Appendix B * to this order a proposed evidence

[3] Exhibit W at 1 (Response to § 303.34 of the Department's Procedural Regulations).

[4] ALPA filed its comments on May 16 with a motion for leave to file late, which we will grant.

* Appendix B filed as a part of the original document.

request. The ALJ at his discretion may entertain motions to alter the request, so long as the alterations are consistent with our goal of expedition. The Office of Aviation Enforcement and Proceedings of the Office of General Counsel and the Public Proceedings Division of the Office of Aviation Operations are made the public counsel party in this case,[5] and the information they are to provide is detailed in Appendix B. All information responses specified in Appendix B will be due 14 days after the date of issuance of this order.

The information responses required by Appendix B are not intended to preclude a prehearing conference. However, the information directives we have attached should significantly simplify the prehearing conference process in this case. We ask the ALJ assigned to this proceeding to hold any prehearing conference by June 19th.

With respect to the information the Applicants have submitted, Northwest asks us to reconsider our conclusion that the Applicants have submitted enough information for us to begin processing the application. In its view, the Applicants can impair other parties' ability to prepare their cases if all the information required by our rules is not submitted with the initial application. In this regard Northwest notes that the Applicants have decided to withhold certain information and have limited their search for other documents. Northwest believes that these omissions make the application substantially incomplete. It, therefore, asks us to dismiss the application without prejudice.

We will not grant Northwest's request. We believe that any omissions which may exist can be corrected relatively quickly and that such additions to the record will not unduly burden the proceeding or otherwise be unfair to the parities. In Appendix B we have detailed the additional information we are directing the Applicants to supply. Much of the information Northwest seeks is included in that directive, including, for example, certain omitted studies, reports and analyses of the proposed transaction.[6] We believe that these additional documents, as well as the others listed in Appendix B, can be produced quickly, thereby avoiding delay in the proceeding. Of course, if the Applicants are unable to produce the documents within the time specified by this Order, the presiding ALJ may consider whether a suspension of the proceedings is necessary to ensure that other parties' ability to make their cases is not unduly impaired.

In addition, because we have concluded that the additional information set out in Appendix B is necessary in order to establish a complete record, we will also deny the Applicants' request for an exemption from our information requirements.

We also reject the Applicants' assertion, in their reply comments, that Northwest's dismissal request must be rejected as untimely. By Order 85–5–17, we intended to provide interested persons until May 15, 1985; to argue the dismissal issue. Thus, Northwest's request was timely filed.

American, in its comments, and Continental, in its reply, have requested that we reconsider our decision to grant Applicants' request for confidential treatment of certain documents. American has specified a number of documents that it believes should be disclosed, either because they are central to an informed decision or are merely factual summaries. In their reply, the Applicants take strong issue with the American and Continental position and assert that the confidentiality of the documents should be preserved. We will not change our interim determination on the confidentiality issue. However, upon the assignment of the proceeding to the ALJ he may reconsider the appropriateness of affording individual documents confidential treatment.[7]

Finally, Delta and Continental ask that we allow parties' experts and paralegals to inspect the United and Pan Am confidential documents upon the submission of an appropriate affidavit. We will permit experts to examine the confidential documents, so long as an appropriate affidavit is submitted. (*See* 14 CFR 303.24). We will also permit paralegals to have access to the documents if they submit an appropriate affidavit and are working under the supervision of an attorney who has also filed such an affidavit.

Substantive Matters

A. The Statutory Framework

The statutory framework for this proceeding is established by sections 408 and 401(h). Section 408 includes two tests that this transaction must meet in order to be approved. First, we must find that the transaction is not inconsistent with the public interest. In addition, we must find that the transaction will not have a significantly adverse effect on competition.[8] If we cannot make these findings, we cannot approve the transaction, unless we find further that the anticompetitive effects are outweighed by its probable effect in meeting significant transportation conveniences and needs of the public that may not be attained by reasonably available alternatives having materially less anticompetitive effects. Under section 401(h) we cannot approve a transfer of route authority unless we find it to be "consistent with the public interest."

The Applicants and many commenting parties have attempted to define and limit the issues and analyses we should employ under these sections. The Applicants focus on section 408 and Civil Aeronautics Board and Department precedent to support their argument that the primary consideration in assessing a merger is its competitive ramifications. They cite the *Texas International-Continental Acquisition Case* and the Department's show-cause order in the *Southwest-Muse Acquisition* for the proposition that the Department should not use the public interest test as a basis for second guessing carrier judgment on the advisability of a merger.[9] In their view, if the transaction passes muster under competition standards, our analysis is largely at an end.

The Department of Justice also focuses on competition in its comments. On the basis of its preliminary analysis of the increased concentration in certain city-pair markets, DOJ concludes that the transaction could adversely affect competition for scheduled passenger air service through gateways between the United States and Japan and between the United States and Hong Kong. In their comments, Northwest and Delta raise similar considerations.

In their reply comments the Applicants maintain that the only significant issue in this proceeding is whether United's purchase of Pan Am's Pacific division will substantially damage competition in the Pacific.

We cannot agree with the Applicants that our competition inquiry should be so limited. Obviously our immediate concern is whether the transaction will lessen actual competition in Pacific markets. However, parties are free to explore the transaction's effects on potential competition in the Pacific or

[5] See 14 CFR 302.9, 50 FR 2388, January 16, 1985.

[6] The Applicants only provided documents with regard to the Pacific area.

[7] *See e.g.*, Orders 84–11–130 at 4, 82–2–37 at 2, 80–9–130 at 2 and 14 CFR 303.24(a).

[8] Primarily, we cannot approve a transaction if its effect "in any region of the United States may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade." 49 U.S.C. 1378(b).

[9] Order 81–10–66 at 4, August 14, 1981 and Order 85–5–28 at 22–23.

competitive effects in other markets. We ask parties to develop a full factual record on their general and particular concerns. Nevertheless, we want to caution parties that the ALJ has full authority to exclude or limit presentations that will not materially assist our consideration of this transaction.

Nor can we subscribe to the Applicants' contention that this transaction is not subject to a public interest review. While there is substantial precedent to the effect that the public interest standard would cause a merger or acquisition to be disapproved "only in highly unusual circumstances," [10] these cases almost invariably involved domestic air carrier transactions. Where international routes are involved, the policies of foreign governments can frequently preclude reliance on free market forces. Consequently, the transfer of foreign route authority must sometimes be tested for consistency with the policies developed by the United States to deal with such restrictions.[11]

The Department will examine route transfers such as the transfer proposed here on a case-by-case basis to determine whether the proposal is in the public interest. Our public interest inquiry will focus on the effects of the transaction, including "whether international aviation policy considerations . . . warrant disapproval of the route transfer even if it [is] not found to be anticompetitive under [section 408] or, conversely, whether there [are] international aviation policies that might require approval of an anticompetitive [acquisition] under the 'savings' clause." [12] We will also permit labor parties to argue that the transaction's effect on wages and working conditions requires disapproval. However, we will not permit an open-ended public interest inquiry. Rather, we intend to focus the inquiry on whether the sale of the routes involved in this transaction for cash is in the public interest, whether international aviation policy considerations warrant disapproval of the route transfer and whether the imposition of particular conditions is necessary as a precondition of approval.[13] We will not, therefore, consider whether the transaction is reasonable or whether Pan Am is receiving fair market value for the assets being transferred.[14] This is exactly the kind of second guessing of air carrier management decisions that the Airline Deregulation Act of 1978 (Pub. L. 95-504, 92 Stat. 1705) was intended to eliminate, regardless of the nature of the transaction.[15]

Continental, in particular, asserts that this transaction, if approved, will impair our aviation relations with foreign governments. Moreover, it maintains that some governments will demand significant concesssions in exchange for permitting United to replace Pan Am. While these are factors to be considered in our assessment of the public interest ramifications of this transaction, any conclusions one might reach on this subject would be highly speculative and involve essentially policy matters not susceptible to factual development in the record of an administrative hearing.

Finally, with respect to asserted effects on wages and working conditions, parties should bear in mind that other agencies are responsible for determining whether an employer's conduct is consistent with its Railway Labor Act obligations and, as explained above, that the public interest test does not give the Department broad discretion to judge the wisdom of a carrier transaction.

B. Competing Route Applications

In their answers, Continental and Eastern request that we consolidate applications of other carriers for authority to serve the Pacific routes at issue in this proceeding.[16] In addition, Continental requests that this proceeding also consider applications for new routes available to U.S. flag carriers on April 30, 1985, as a result of the recent Memorandum of Understanding reached with the Government of Japan.

In its answer, Federal Express opposes consolidation of any applications for new authority. In their replies, the Applicants and the Department of Justice indicate they are opposed to the Continental and Eastern requests.[17]

We will not consolidate any competing route applications into this proceeding, including applications for new routes available to U.S. carriers. First, there is no basis for awarding Pan Am's Pacific authority to another carrier. Service in these markets will not cease if the transaction is not approved. Rather, in that event, Pan Am has indicated that it will continue to provide service. Second, consolidation would significantly expand the issues raised and change the fundamental nature of the proceeding. In this regard, consolidation would mean that the Applicants would have to demonstrate that United is offering the best route proposal in the Pacific markets it proposes to serve. Congress clearly did not intend this result. By establishing route transfers as a separate category of route-related activity under section 401(h), Congress meant to distinguish transfers from awards of route authority under section 401(d).[18]

Continental's assertion that *Ashbacker* principles,[19] which require contemporaneous consideration of mutually exclusive applications, mandate consolidation of competing certificate applications, is without merit for some of the same reasons. A rule of procedural fairness, *Ashbacker* does not require consolidation if it would change the fundamental purpose of the proceeding.[20] Consolidation would have the effect here of injecting issues of public convenience and necessity that are different from the standards for approval of a route transfer and that would change the nature of this case. In this respect, this case is indistinguishable from the *Braniff-South American Route Transfer Case*.[21]

Insofar Continental argues that consolidation is necessary to demonstrate that there are less anticompetitive alternatives to the proposal and other carriers are willing to offer lower fares than United, and that consolidation will give the President alternatives to consider pursuant to section 801 of the Act, these arguments are also based upon the assumption that route transfer requests and new route applications involve the same considerations. As we explained above, they do not.

However, parties are free to submit evidence in support of the position that this transaction should be disapproved

[10] *See e.g.*, Order 85-5-28 at 22-23.

[11] *See* Order 82-9-81 at 9; and Order 81-10-66 at 9 and 16-21.

[12] *Braniff South American Route Transfer Case*, Order 82-9-81, at 9.

[13] Order 82-9-81 at 9.

[14] For this reason, we are rejecting American's and Delta's request that we direct the Applicants to submit a valuation of assets, as well as a full statement of the cost of the transaction to United.

[15] Order 85-5-28 at 22-23.

[16] Continental is an applicant for U.S.-Japan authority in Docket 42836. On May 15, 1985, it moved for consolidation and contemporaneous consideration of the proceedings. Eastern is an applicant for Pacific authority in Docket 43038.

[17] The DOJ pleading was accompanied by a motion for leave to file late, which we will grant.

[18] Order 82-9-81 at 10.

[19] *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

[20] *Eastern Air Lines v. CAB*, 247 F.2d 562, 565 (D.C. Cir. 1957).

[21] Order 82-9-81, September 22, 1981.

under the standards of section 408 and 401(h). Thus, parties may present evidence on how they would serve a route or routes involved in this transaction. Such evidence will not be used as the basis for awarding Pan American's Pacific authority to another carrier in this proceeding, but rather will be considered in the context of our overall public interest analysis of whether this transaction should be approved in whole or in part.

C. Terms, Conditions and Limitations

Section 408 permits us to impose, as a precondition to approval, such terms and conditions as are just an reasonable. A number of commenters have asked us to impose certain conditions on this transaction.

Virtually all of the labor organizations ask us to impose Labor Protective Provisions as a condition required by the public interest for approval of this transaction. They argue that LPP's engender stability, improve morale, and increase productivity in the workforce. In addition, many of the commenting labor parties ask us not to apply the standard for imposition of LPP's set out in recent section 408 proceedings. Specifically, we have recently indicated our intention to impose LPP's only if they are shown to be necessary to mitigate possible labor strife that would adversely affect air transportation as a whole.[22] In their reply comments, the Applicants have indicated their continued opposition to the imposition of LPP's.

We will not rule on the labor parties' requests at this time. Rather, the issue should be developed during the course of the oral evidentiary hearing. Our tentative view is that the standard for imposition of LPP's developed by the CAB in post-deregulation section 408 cases and adopted by us in the *Midway-Air Florida Acquisition Show Cause Proceeding*, Order 85-6-33 and, tentatively, in the *Southwest-Muse Acquisition*, Order 85-5-28, should be applied here, for the reasons set out in those orders. The labor parties may attempt to demonstrate that that standard is met in this case or that special circumstances require that is not be applied in this instance.

We also caution all parties that the oral evidentiary proceeding does not constitute a forum in which minute details of how this transaction will affect particular labor interests are to be determined.[23]

A number of other possible conditions on approval have been suggested by commenting parties. Some commenters have suggested that competitive or public interest considerations might require that either United or Pan Am divest itself of one or more Pacific routes.[24] The Port Authority of New York and New Jersey, the City of Los Angeles, Department of Airports, and the Port of Portland suggest that the transaction be approved only on the condition that the Applicants provide assurances that international service to their respective cities will not be curtailed as a consequence of this transaction. Parties should consider fully the need for these and other conditions. Parties also should consider specifically whether a limitation on the duration of transferred authority should be imposed as a precondition to approval of the transfer of route authority.

Accordingly:

1. We retitle the proceeding in Docket 43065 as the *Pacific Division Transfer Case* and set the case for an oral evidentiary hearing before an Administrative Law Judge of the Department;

2. We direct parties to submit information as provided in Appendix B on June 27, 1985;

3. We direct the Administrative Law Judge assigned to this proceeding to certify to the Decisionmaker the record compiled in this proceeding by August 12, 1985.

4. Briefs to the Department will be due four weeks after the record is certified;

5. We deny Continental Airlines' Motion to Consolidate this proceeding and Docket 42836;

6. We grant the motions of the Air Line Pilots Association, Continental Airlines, the Department of Justice, and the Port of Portland to file untimely documents;

7. We deny Northwest Airlines' request that we reconsider Order 85-5-17;

8. We make the Office of Aviation Enforcement and Proceedings of the Office of the General Counsel, together with the Public Proceedings Division of the Office of Aviation Operations, a party to this case;

9. We deny Applicants' request for an exemption from the information requirements of 14 CFR Part 303;

10. We grant the petitions for leave to intervene in Appendix A; order that all additional requests to intervene be filed not later than June 17, 1985; and authorize the ALJ to rule on any such requests;

11. Except to the extent granted, deferred or set for hearing here, we deny all other motions, petitions and requests for relief;

12. We will not entertain petitions for reconsideration of this order; and

13. This order shall be published in the Federal Register.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

Appendix A

Intervenors

We have received petitions for leave to intervene in this proceeding from the following: American Airlines, Inc.; Continental Air Lines, Inc.; Trans World Airlines, Inc.; the International Brotherhood of Teamsters; Northwest Airlines, Inc.; Flight Engineers' International Association, AFL-CIO; Western Airlines' Inc.; Delta Air Lines, Inc.; Air Line Pilots Association, International; Flight Engineers' International Association, PAA Chapter, AFL-CIO; Transport Workers Union of America, AFL-CIO; Association of Flight Attendants; NAL Chapter, Flight Engineers International Association, AFL-CIO; Master Executive Council of United Pilots; Flying Tiger Line, Inc.; Federal Express Corporation; USAir, Inc.; DHL Airways, Inc.; Eastern Air Lines, Inc.; Hawaiian Airlines, Inc.; Philippine Airlines, Inc.; Independent Union of Flight Attendants; Transamerica Airlines, Inc.; American Society of Travel Agents, Inc.; International Association of Machinists and Aerospace Workers; Former National Airlines' Pilots; Pan American Master Executive Council, ALPA; Pacific Cockpit; Association of Retail Travel Agents, Ltd; Port of Seattle; the Department of Justice; the Dallas/Forth Worth Parties; and a joint petition of the State of Georgia, City of Atlanta and the Atlanta Chamber of Commerce.

[FR Doc. 85-14681 Filed 6-17-85; 8:45 am]
BILLING CODE 4910-62-M

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[22] See Orders 85-5-28 at 25-26 and 85-43.

[23] In this regard, we have concluded that some of the information the Association of Flight Attendants, the International Association of Machinists and Aerospace Workers, and the Master Executive Council of United Pilots have asked us to direct the Applicants to provide goes beyond that reasonably required to reach a conclusion on whether LPP's should be imposed in this case. Consequently, except as provided in Appendix B, their requests are denied.

[24] DOJ makes this argument in its comments, and Delta and Continental have supported that position in their replies.

Federal Aviation Administration

Flight Service Station at New Orleans, LA; Closing

Notice is hereby given that on or about September 30, 1985, the Flight Service Station (FSS) at New Orleans, Louisiana, will be closed. Services to the general aviation public of New Orleans, formerly provided by this FSS, will be provided by the Automated Flight

Service Station (AFSS) in DeRidder, Lousiana. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-14523 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at McAlester, OK; Closing

Notice is hereby given that on or about August 30, 1985, the Flight Service Station (FSS) at McAlester, Oklahoma, will be closed. Services to the general aviation public of McAlester, formerly provided by this FSS, will be provided by the Automated Flight Service Station (AFSS) in McAlester, Oklahoma. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-14522 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Houston, TX; Closing

Notice is hereby given that on or about September 30, 1985, the Flight Service Station (FSS) at Houston, Texas, will be closed. Services to the general aviation public of Houston, formerly provided by this FSS, will be provided by the Montgomery County Automated Flight Service Station (AFSS) in Conroe, Texas. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-14521 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147—Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance System to be held on July 9-10, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Meeting Held February 13-14, 1985; (3) Review of TCAS I Working Group Activities; (4) Briefing on the International Civil Aviation Organization (ICAO) Secondary Surveillance Radar Improvements and Collision Avoidance Systems Panel Activities; (5) Review of Proposed Changes to RTCA Document DO-185 "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment"; (6) Review of Task Assignments from Previous Meeting; (7) Assignment of New Tasks; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 10, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-14526 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 154—Airborne Thunderstorm Detection Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 154 on Airborne Thunderstorm Detection Equipment to be held on July 11-12, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fifth Meeting Held on March 14-15, 1985; (3) Review Task Assignments From Previous Meetings; (4) Review Revision One to the Third Draft Report on Minimum Operational Performance Standards for Airborne Thunderstorm Detection Equipment; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 10, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-14524 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. S-768]

Lykes Bros. Steamship Co., Inc.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Participation in a Space-Charter Agreement With a Foreign-Flag Carrier

Lykes Bros. Steamship Co., Inc. (Lykes), by application dated May 6, 1985, requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), if a waiver is necessary, for Lykes' participation in a space charter agreement with an Italian-flag carrier, Costa Armartori S.P.A. (Costa).

The Costa-Lykes Space Charter and Equipment Interchange Agreement, for purposes of identification referred to as Agreement 217-010751, would permit the parties to charter space and equipment on each other's vessels for the carriage of cargo and equipment in the trade between United States Atlantic and gulf ports and inland points via such ports, and ports and inland points in Italy, Spain, and France. The term "equipment" includes containers (partially or fully loaded or empty), chassis, trailers, barges, and other cargo handling equipment.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif

Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on July 8, 1985. This notice is published as a matter of discretion and publication should in no way be considered a favorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: June 12, 1985.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-14452 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-81-M

Office of Hearings

[Docket No. 43065]

Pacific Division Transfer Case; Notice of Prehearing Conference

Notice is hereby given that, pursuant to Order 85-6-44, served June 14, 1985, a Prehearing Conference in the above-entitled proceeding is assigned to be held on June 19, 1985, at 9:30 a.m. (local time), in Room 2232, Nassif Bldg., 400 7th Street, SW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

The matters to be considered in the Prehearing Conference will include: (1) Additional requests for evidence falling within the guidelines of the instituting order; (2) service and exhibit exchange list for the proceeding; (3) ground rules for the submission of exhibits and the hearing; and (4) procedural schedule. In view of the time constraints imposed by the instituting order, the submission of written comments and recommendations on these items in advance of the prehearing conference is not feasible. A concurrent order is being issued by the undersigned providing further information on the above matters to facilitate the conduct of the Prehearing Conference.

Dated at Washington, D.C. June 14, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-14670 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 43065]

Pacific Division Transfer Case; Notice of Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426-5560.

Dated Washington, D.C., June 14, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-14680 Filed 6-17-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Cir. Public Debt Series—No. 18-85]

Treasury Notes; June 30, 1987, Series W-1987

Washington, June 13, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code; invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of June 30, 1987, Series W-1987 (CUSIP No. 912827 SJ 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 1, 1985, and will accrue interest from that date, payable on a semiannual basis on December 31, 1985, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the International Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000 and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, June 19, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, June 18, 1985, and received no later than Monday, July 1, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue

prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposits from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 90.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each successful competitive tender allotted will be determined and each successful competitive bidder will be required to pay the piece equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yeild. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is overpar.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, July 1, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immdeiately avaialble to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 27, 1985. In addition, Treasury Tax and Loan Note Opinion Depositories may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, July 1, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the paramount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-14723 Filed 6-17-85; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 117
Tuesday, June 18, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, June 19, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Criteria for ranking carcinogens.

The staff will brief the Commission on a procedure for ranking of carcinogenic chemicals in consumer products.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–14649 Filed 6–14–85; 8:50 am]

BILLING CODE 6355–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, June 20, 1985, see times below.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

8:30 a.m.

1. *Commission Staff Briefing*

The staff will brief the Commission on various matters.

9:30 a.m.

2. *FY 87 Priorities*

The Commission will consider Fiscal Year 1987 Priorities.

Closed to the Public

3. *Compliance Status Report*

The staff will brief the Commission on various Compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

Dated: June 12, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–14650 Filed 6–14–85; 8:45 am]

BILLING CODE 6355–01–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

DATE AND TIME: Monday, June 24, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Litigation Authorization: GC Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: June 13, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued June 13, 1985.

[FR Doc. 85–14677 Filed 6–14–85; 11:57 am]

BILLING CODE 6750–06–M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, June 25, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: June 13, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued June 13, 1985.

[FR Doc. 85–14678 Filed 6–14–85; 11:57 am]

BILLING CODE 6750–06–M

5

FEDERAL COMMUNICATIONS COMMISSION

June 14, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, June 21, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Private Radio—1—Title: *Order* in the Matter of Future Public Safety Telecommunications Requirements. Summary: The FCC will consider the adoption and publication of a report on the future telecommunications requirements of public safety entities.

Common Carrier—1—Title: Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans—CC Docket No. 84–1235. Summary: The Commission will consider proposed guidelines for dominant carriers'

alternative MTS rate and rate structure proposals.

Common Carrier—2—Title: ACCUNET Packet Service, CC Docket No. 84-906. Summary: The Commission will consider the results of the Common Carrier Bureau investigation of AT&T Communications' ACCUNET Packet Service offering.

Common Carrier—3—Title: Regulatory Treatment of Preoperational Expenses Incurred by Western Electric Co. Relating to the Development of Customer Premises Equipment (ENF 83-9). Summary: The Commission will consider whether AT&T should be required to reimburse to ratepayers all or part of the CPE development expenses incurred by Western Electric Co. from May 2, 1980 to December 31, 1982.

Common Carrier—4—Title: Rulemaking Regarding the Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes. Summary: This NPRM proposes procedural modifications to strengthen the uniform settlements policy and to decrease instances of its avoidance. The NPRM also considers the scope of application of the policy to, for example, new services, and attempts to clarify certain definitions, such as "parallel," which are germane to the policy's application.

Mass Media—1—Title: Modified Frequency Offset Criteria and Monitoring Requirements to Prevent Cable Television Signal Leakage Interference to Aeronautical Communications Systems. Summary: The Commission will consider seven petitions for reconsideration in this matter.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-14717 Filed 6-14-85; 2:12 pm]

BILLING CODE 6712-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 12, 1985, 49 FR 24736.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 13, 1985.

CHANGE IN THE MEETING: The following item was added:

Docket No. RM81-19-000, Interstate Pipeline Blanket Certificates for Routine Transactions

Docket No. RM81-29-000, Sales and Transportation by Interstate Pipelines and Distributors

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14656 Filed 6-14-85; 10:06 am]

BILLING CODE 6717-02-M

7

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 10:30 a.m., Friday June 21, 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 (202-377-6679).

MATTERS TO BE CONSIDERED:

Repurchase Agreement and Reverse Repurchase Agreement Transactions
Classification of Assets
Redeemable Preferred Stock

Jeff Sconyers,

Secretary.

No. 11, June 14, 1985.

[FR Doc. 85-14738 Filed 6-14-85; 3:38 pm]

BILLING CODE 6720-01-M

8

INTERSTATE COMMERCE COMMISSION

Correction

FR Doc. 85-14039, which announced a meeting of the Commission on June 18, 1985, and FR Doc. 85-14040, which announced a meeting of the Commission on June 19, 1985, appeared in the Notices section on page 24598 in the issue of Tuesday, June 11, 1985, and on page 24717 in the issue of Wednesday, June 12, 1985, respectively. They should have appeared in the Sunshine Act Meetings section.

BILLING CODE 1505-01-M

9

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, June 10, 1985.

CHANGE IN THE MEETING: Additional item.

The following item will be considered at an open meeting scheduled for Tuesday, June 18, 1985, at 10:00 a.m.

Consideration of proposals for a Report to Congress concerning oversight of the government securities markets. For further information contact Andrew E. Feldman at (202) 272-2414.

Commissioner Cox, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission Priorities Require Alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barry Mehlman at (202) 272-2648.

Shirley E. Hollis,

Assistant Secretary.

June 13, 1985.

[FR Doc. 85-14685 Filed 6-14-85; 12:19 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
June 18, 1985

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Loach Minnow To Be a Threatened Species and To Determine Its Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Loach Minnow To Be a Threatened Species and To Determine Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a fish, *Tiaroga cobitis* (loach minnow), as a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. Critical habitat is being proposed. A special rule allowing take in accordance with New Mexico and Arizona State laws and regulations, for educational or scientific purposes, enhancement of survival or propagation of the species, zoological exhibition, and other conservation purposes, is proposed. Historically, *Tiaroga cobitis* occurred in the Gila River system upstream from Phoenix, Arizona. Presently it is found only in Aravaipa Creek, Graham and Pinal Counties, Arizona; portions of the Gila River upstream from the Middle Box canyon, Grant and Catron Counties, New Mexico; the San Francisco and Blue Rivers upstream from their confluence, Greenlee County, Arizona, and Catron County, New Mexico; the lower Tularosa River, Catron County, New Mexico; and the lower 1.5 kilometers of Whitewater Creek, a tributary of the San Francisco River, Catron County, New Mexico. The distribution and numbers of *Tiaroga cobitis* have been reduced by habitat destruction, impoundment, channel downcutting, substrate sedimentation, water diversion, ground water pumping, the spread of exotic predatory and competitive species. The species continues to be threatened by proposed dam construction, water losses, habitat alteration, and exotic species. Of the approximately 2,600 kilometers of stream habitat historically occupied by *Tiaroga*, 2,220 kilometers no longer supports the species. A final determination of *Tiaroga cobitis* to be threatened species would implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 19, 1985. Public hearing requests must be received by August 2, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, S.W., Room 4000, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald L. Burton, Endangered Species Biologist, Office of Endangered Species, U.S. Fish and Wildlife Service, Region 2 (See **ADDRESSES** above) (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Tiaroga cobitis was first collected in 1851 from the Rio San Pedro in Arizona, and was described from those specimens in 1856 by Girard. It is a small (less than 80 millimeters), slender, elongated fish, olivaceous in color with dirty white spots at the base of the dorsal and caudal fins. It has a highly oblique terminal mouth and its eyes are markedly upward directed. Breeding males develop vivid red-orange markings. *Tiaroga cobitis* inhabits small to large perennial streams, using shallow turbulent riffles with primarily cobble substrate, swift currents, and growths of filamentous algae. Recurrent flooding is very important to *Tiaroga* biology, keeping the substrate free of embedding sediments, and helping to maintain the competitive edge over invading exotic fish species (Minckley, 1973).

Tiaroga cobitis was once locally common throughout much of the Verde, Salt, San Pedro, San Francisco, and Gila (upstream from Phoenix) River systems, occupying both the mainstream and perennial tributaries up to about 2,200 meters elevation (Minckley, 1973). Because of habitat destruction, and competition and predation by exotic fish species, its range has been reduced and it is now restricted to approximately 24 kilometers of Aravaipa Creek, Graham and Pinal Counties, Arizona; approximately 93 kilometers of the upper Gila River upstream from the Middle Box canyon through the Cliff-Gila Valley, and the area of the confluence of the East, West, and Middle Forks of the Gila, Grant and Catron Counties, New Mexico; approximately 167 kilometers of the San Francisco and Tularosa Rivers, Catron County, New Mexico; the lower 1.5 kilometers of Whitewater Creek, a tributary of the San Francisco River, Catron County, New Mexico; and approximately 95 kilometers of the Blue River, Greenlee County, Arizona. (Anderson, 1978; Barber and Minckley, 1966; Britt, 1982; Silvey, 1978; Propst, in prep.; USDA, 1979). The 380 kilometers of range presently occupied by *Tiaroga* represents approximately 15 percent of its former range.

Land ownership in existing *Tiaroga cobitis* habitat is mixed and is as follows:

Aravaipa Creek

1. USDI Bureau of Land Management—About 75 percent of the perennial length of the stream, most of which is designated as the Aravaipa Canyon Wilderness.

2. Defenders of Wildlife—Most of the perennial stream upstream and downstream from the wilderness area is owned or leased as the George Whittell Wildlife Preserve.

3. Other privately owned—A few scattered parcels along the perennial stream length.

Gila River

1. Privately owned—Most of the Cliff-Gila Valley, and also near Gila Hot Springs and along the East Fork.

2. The Nature Conservancy—A small portion of river upstream from the town of Gila.

3. New Mexico Department of Game and Fish—Approximately 6½ kilometers of river just downstream from the confluence of the West and Middle Forks.

4. U.S. Forest Service—A large portion of the river is in the Gila National Forest with sections flowing through the Gila Wilderness, the Lower Gila River Bird Habitat Management Area, and the Gila River Research Natural Area.

San Francisco and Tularosa Rivers and Whitewater Creek

1. Privately owned—Substantial areas near the towns of Cruzville, Glenwood, Reserve, and Alma.

2. U.S. Forest Service—The major portions of these rivers flow through the Gilda and Apache-Sitgreaves National Forests.

Blue River

1. U.S. Forest Service—The river is almost entirely contained within the Apache-Sitgreaves National Forest, with a large portion flowing through the Blue Range Primitive Area.

2. Privately owned—Interspersed inholdings within Forest Service lands.

The native fish fauna of the Gila River system, including *Tiaroga cobitis*, has been drastically affected by man's alteration of that system, with 35 percent presently federally listed as

endangered and another 35 percent considered to be threatened or endangered by the States of Arizona and New Mexico and/or the American Fisheries Society. *Tiaroga cobitis* has been extirpated from much of the system and was last found in the San Pedro River (except Aravaipa Creek) in 1961, and the Verde River drainage in 1938. It has also retreated at least 60 kilometers upstream in the Gila River in the last 50 years. It was last found in the White River of the Salt River drainage in 1967, however, since then no extensive fishery surveys have been conducted in that area and it may still persist.

The continuing decline in the distribution of *Tiaroga cobitis* has evoked concern over its survival from many sources. It was included by the American Fisheries Society's Endangered Species Committee on their 1979 list (Deacon, *et al.*, 1979) as a species of special concern due to habitat destruction and to competition/predation from exotic species. Prior to that it was listed as rare and endangered on a 1972 list of threatened freshwater fish of the United States, published by the American Fisheries Society and the American Society of Ichthyologists and Herpetologists (Miller, 1972). It has also been listed by the International Union for the Conservation of Nature and Natural Resources in their Red Data Book (Vol. 4) in 1977. Both the States of Arizona and New Mexico include *Tiaroga cobitis* on their lists of threatened and endangered species (New Mexico State Game Comm., 1985; Arizona Game and Fish Comm., 1982). It was included in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454–58460) in category 1. Category 1 includes those taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Because of concern over the survival of and to provide protection for native species, including *Tiaroga cobitis*, land has been acquired on the upper Gila River by The Nature Conservancy and on Aravaipa Creek by the Defenders of Wildlife.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; revised to accommodate the 1982 amendments—see final rule at 49 FR 38900, October 1, 1984) set forth procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Tiaroga cobitis* (loach minnow) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the historic native habitat of *Tiaroga cobitis* has been drastically altered or destroyed by human uses of the rivers, streams, and watersheds. These alterations include: Conversion of flowing waters into still waters by impoundment; alteration of flow regimes (including conversion of perennial waters to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of water temperatures (either up or down); alteration of silt and bed loads; loss of marshes and backwaters; and alteration of stream channel characteristics from well-defined, surface level, heavily vegetated channels with a diversity of substrate and habitats, into deeply cut unstable arroyos with little riparian vegetation, uniform substrate and little habitat diversity. Causes of such alterations include: damming, water diversion, channel downcutting, excessive groundwater pumping, lowering water tables, channelization, riparian destruction, erosion, mining, timber harvest, grazing, and other watershed disturbances. Of the approximately 2,600 kilometers of stream habitat historically occupied by *Tiaroga*, 2,200 kilometers no longer support populations of this fish. This loss reduces the range or *Tiaroga* by approximately 85 percent.

The biology of *Tiaroga cobitis* is not well enough understood to determine what specific effects each of these habitat changes or losses have had on the survival of the species. However, the conversion of a large portion of the the habitat into intermittent or lacustrine waters or totally dewatered channels has had an obvious effect on *Tiaroga* populations by totally eliminating usable habitat in those portions of the streams. Because it lives among the cobble on the stream bottom, *Tiaroga cobitis* is also sensitive to the sedimentation that is a common feature of the habitat alteration occurring throughout historic and existing *Tiaroga* habitats. These habitat changes, together with the introduction of exotic fish species (see factors C and E) have resulted in the extirpation of *Tiaroga cobitis* throughout much of its historic range.

Some of the major reasons for specific *Tiaroga* habitat losses are easily identifiable. The San Pedro River, once a perennial stream, is now severely downcut and has only intermittent flow. The lower Salt and Verde Rivers now have a very limited flow or no flow during portions of the year, due to agricultural diversion and upstream impoundments, and both rivers have multiple impoundments in their middle reaches. The Gila River, after leaving the Mogollon Mountains in New Mexico, is affected by agricultural and industrial water diversion, impoundment, channelization, and has been subjected to use of chemicals for fish management from the Arizona border downstream to San Carlos Reservoir. The San Francisco and Tularosa Rivers have suffered from erosion and extensive water diversion and at present have an undependable water supply in much of their length. The Blue River has been subjected to channel downcutting and erosion, particularly in its lower reaches.

Remining *Tiaroga cobitis* habitat is still threatened with further habitat destruction. Aravaipa Creek is relatively protected from further habitat loss because of its status as the USDI Bureau of Land Management Aravaipa Canyon Wilderness. Access and land uses are limited in the canyon and it is managed primarily for natural values and recreation. However, extensive ground water pumping is occurring upstream in the watershed resulting in a continued lowering of the water table that could eventually reduce or eliminate perennial flow in Aravaipa Creek. Channelization and mesquite clearing that is occurring upstream creates excessive sediment which is carried downstream into *Tiaroga* habitat.

Lands along the Gila, San Francisco, Blue, and Tularosa Rivers are primarily owned by the U.S. Forest Service, however, there are significant stretches of privately owned land. *Tiaroga* habitat receives some protection on Forest Service lands that are designated for special uses and thus subject to access and use restrictions. These are the Gila Wilderness and Primitive Areas, the Blue Range Primitive Area, the lower Gila River Bird Habitat Management Area, and the Gila river Research Natural Area. Habitat in multiple use Forest Service portions of these rivers is affected, often adversely, by many past and present uses in the watershed and riparian zone, and by water diversion and water development projects. On privately owned lands along the river there is no statutory control of habitat alteration or destruction. Agricultural use, water diversion, highway and

bridge construction, and flood control measures in these areas impact the habitat. At present, the San Francisco River often goes dry near the town of Glenwood, due to upstream diversion. The U.S. Army Corps of Engineers has recently completed some work in the Cliff-Gila and Glenwood-Reserve areas on the Gila and San Francisco Rivers, under their Emergency Authority, which allows them to replace or restore damaged flood control structures. Other flood control alternatives considered for this area is the past by the Corps have been set aside; the only current plans for flood control in the New Mexico portion of the Gila Basin are in cooperation with the Bureau of Reclamation's Conner Dam study (U.S. Army Corps of Engineers, 1984).

Of particular importance to *Tiaroga cobitis* survival in the Gila River, is the proposed construction of a dam on the Gila River mainstream, as part of the Central Arizona Project Upper Gila Water Supply Study by the U.S. Bureau of Reclamation (USDI, 1972). Currently the Bureau of Reclamation is studying four alternatives (USDI, 1985): a high dam and reservoir at the Conner site on the mainstream Gila River near the lower end of the Middle Box canyon; a small dam and reservoir at the Conner site with a offstream storage reservoir; floodplain storage basins in the Cliff-Gila Valley; and direct pumping from the river in the Cliff-Gila Valley to an offstream storage reservoir. A former alternative, which included a dam on the San Francisco River just downstream from its confluence with the Blue River, has been dropped from current planning. A high dam at the Conner site on the Gila River could have major negative impacts on *Tiaroga cobitis*. Up to 29 kilometers of river, 31 percent of the existing range in the Gila River, would be inundated and thus would no longer support *Tiaroga cobitis*, which lives only in flowing waters. The presence of a dam on the river could also adversely alter habitat downstream from the dam by changing the temperature, bedload, and flow regimes, including the elimination of natural flooding, which is an important factor in riparian and channel maintenance and in the maintanance of the competitive edge of native fish over exotic fish species. Major dam and reservoir construction in the past, on the Salt, Verde, and Gila Rivers, has resulted in the complete extirpation of all *Tiaroga cobitis* downstream of the dam and for up to 65 kilometers above the reservoir. Even with extensive planning for natural flow and temperature maintanance downstream, the construction of a dam on the upper Gila would have a strong impact on *Tiaroga cobitis*. A small dam at the Conner site would inundate an estimated 14 kilometers of river, and would also affect populations upstream and downstream from the reservoir. The effects of direct pumping from the river to offstream storage are not completely known, but may include entrapment of fish in pipelines, impingement of fish on intake screens, and depletion of stream flow below the diversion point. The fourth alternative of floodplain storage basins would require removal of 484 acres of riparian vegetation along the river and would eliminate 18 kilometers of aquatic habitat due to construction of the basins and to channelization and diversion of the river. Downstream from the storage area adverse impacts to *Tiaroga* may include increased sediments and changes in temperature and flow regimes, including the elimination of natural flooding.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known to occur at this time.

C. *Disease or predation.* Historically, predation probably was not a significant factor affecting *Tiaroga cobitis* populations; however, in the past 100 years, introduction of exotic predatory fishes has increased the role that predation plays in *Tiaroga* biology. In Aravaipa Creek, there are only two potential predators—the native roundtail chub and the exotic green sunfish, the latter being primarily restricted to side channel pools and kept at low populations by frequent flooding. Neither are known to be having a significant effect on *Tiaroga cobitis*. Potential predators known to exist in the Blue River are few and include rainbow and brown trout in the upper reaches and channel catfish near the mouth. In the Gila, San Francisco, and Tularosa Rivers, the native roundtail chub and several exotic fish (black and yellow bullhead, channel catfish, green sunfish, flathead catfish, small and large mouth bass, rainbow and brown trout) are probable predators on *Tiaroga cobitis*. Although predation does not seem to be a threat to *Tiaroga* in good habitat conditions, it is probable that it is a negative factor on their populations under the altered conditions present in much of the existing habitat. The depletion of native fishes in the East Fork of the Gila River, noted in 1983–84 by Propst (in prep.), is probably due to increased numbers of smallmouth bass and catfish in that portion of the river. Construction of dams and reservoirs exacerbates the predation problem by increasing the habitat desirable to exotic predators, decreasing the habitat suitable for *Tiaroga cobitis*, and supplying a ready source of exotic predators from the reservoir. The impact of predation on *Tiaroga* in the Gila River could increase significantly if a dam is constructed as part of the Upper Gila Water Supply Project.

D. *The inadequacy of existing regulatory mechanisms. Tiaroga cobitis* is protected by the States of New Mexico and Arizona. It is listed by New Mexico as an endangered species, Group 2 (New Mexico State Game Comm., 1985), which are those species ". . . whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This provides the protection of the New Mexico Wildlife Conservation Act (Sections 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under the issuance of a scientific collecting permit. *Tiaroga cobitis* is listed by the State of Arizona as a threatened species, Group 3 (Arizona Game and Fish Comm., 1982), which are those species ". . . whose continued presence in Arizona could be in jeopardy in the foreseeable future." This listing does not provide any special protection to the species listed. Protection provided in the Arizona Game and Fish regulations prohibits taking of *Tiaroga cobitis*, except by angling, an unlikely possibility. Neither State provides any protection for the habitat upon which the species depends.

New Mexico water law does not include provisions for the acquisition of instream water rights for protection of fish and wildlife and their habitat, and Arizona water law has only recently recognized such rights. This deficiency has been a major factor in the survival of those species who are dependent upon the presence of that instream water.

State Game and Fish regulations in New Mexico and Arizona allow the use of the red shiner and other live minnows as bait fish in the Gila and San Francisco Rivers in areas containing *Tiaroga cobitis*. This has encouraged the spread of detrimental exotic species, specifically the red shiner, which appears to replace *Tiaroga cobitis* under certain conditions (see factor E).

E. *Other natural or manmade factors affecting its continued existence.* Existing populations of *Tiaroga cobitis* are threatened by the continued introduction and dispersal of exotic species, particularly *Notropis lutrensis* (red shiner), throughout the Gila River system. Although it is not known by what mechanisms these exotic species

affect *Tiaroga*, it is known that the spread of exotic species throughout the Gila system correlates closely to the declining numbers and distribution of *Tiaroga cobitis* and other native species. It has been demonstrated with other native fish that competitive and/or predatory interactions with exotic species have been a major factor in the declining numbers and distribution of those natives. Although *Notropis lutrensis* and *Tiaroga cobitis* generally utilize different habitats, it appears that they are competitors for some habitat factors (Minckley and Carufel, 1967). In suitable unaltered habitat, it is possible that *Tiaroga* is able to hold its own against invasion of *Notropis lutrensis* or other exotic species; however, this balance may be destroyed in extensively altered habitat where *Tiaroga* populations are already under stress. A major factor in the displacement seems to be the disturbance of natural flooding patterns, since native species such as *Tiaroga cobitis* are adapted to and thrive under a regime of frequent moderate to severe flooding, and *Notropis lutrensis* and other exotic species do not. The controlled flow of flood waters, resulting from impoundment, interrupts this natural pattern in downstream reaches and encourages the spread of *Notropis lutrensis* and other exotics at the expense of *Tiaroga cobitis*. The presence of reservoirs also increases the likelihood and rapidity of the spread of *Notropis lutrensis* and other exotics by supplying a ready source of exotic species from the reservoir and its fishery. At present, *Notropis lutrensis* is not found in Aravaipa Creek or the Blue River, but is found in the San Francisco River at least as far upstream as Frisco Hot Springs, and is found in the upper Gila River as far upstream as the Highway 180 bridge near Cliff, New Mexico. In 1978, *Notropis lutrensis* had not yet been found in the Gila River in New Mexico.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Tiaroga cobitis* as threatened. Threatened status seems appropriate because of the greatly reduced and fragmented range of the species, and because of the threats to this fish and its remaining habitat. If the loach minnow is not proposed for listing, it could reasonably be expected to become endangered within the foreseeable future. However, since this species is still extant in 380 kilometers of stream it does not appear to be in danger of extinction within the foreseeable future and thus endangered status would not be appropriate.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) The specific area within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is being proposed for *Tiaroga cobitis* to include:

1. Aravaipa Creek, Graham and Pinal Counties, Arizona. The approximately 24 kilometer long perennial section, which includes both Bureau of Land Management and privately owned lands.

2. Gila River, Catron and Grant Counties, New Mexico. Four sections of river totaling approximately 93 kilometers in length. The first section, approximately 37 kilometers long, extends from from the north side of St. Peters Rock (south boundary Section 21; T17S; R17W) upstream to the confluence with Mogollon Creek; A second section, approximately 12 kilometers long, extends up the West Fork from the confluence with the East Fork upstream to the west boundary of Section 22; T12S; R14W. A third section, approximately 16 kilometers long, extends up the Middle Fork from the confluence with the West Fork upstream to the confluence with Brothers West Canyon. The fourth section, approximately 26 kilometers long, extends up the East Fork from the confluence with the West Fork upstream to the north boundary Section 11; T12S; R13W. These river sections flow through U.S. Forest Service, Bureau of Land Management, New Mexico Department of Game and Fish, and privately owned lands.

3. San Francisco River, Catron County, New Mexico and Greenlee County, Arizona. Two sections of river totaling approximately 21 kilometers in length. The first section, approximately 15 kilometers long, extends from the U.S. Highway 180 bridge upstream to Kelly Flat. The other section, approximately 6 kilometers long, extends from the confluence with Hickey Canyon upstream to the confluence with the Blue River. These areas include U.S. Forest Service and privately owned lands.

4. Tularosa River, Catron County, New Mexico. Approximately 24 kilometers of river from the confluence with Negrito Creek upstream to the town of Cruzville. This area includes U.S. Forest Service and privately owned lands.

5. Blue River, Greenlee County, Arizona and Catron County, New Mexico. Approximately 78 kilometers of river from its confluence with the San Francisco River upstream to the confluence with Dry Blue Creek and Campbell Blue Creek. This area includes U.S. Forest Service and privately owned lands.

6. Campbell Blue Creek, Greenlee County, Arizona and Catron County, New Mexico. An approximately 18 kilometer reach of stream from its junction with Blue River upstream to the confluence with Coleman Creek. This area includes U.S. Forest Service and privately owned lands.

7. Dry Blue Creek, Catron County, New Mexico. Approximately 3 kilometers of stream from its confluence with the Blue River upstream to the springs located in Section 32; T6S; R21W. This area is entirely on U.S. Forest Service lands.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation. Any activity that would lessen the amount of the minimum flow or would significantly alter the natural flow regime in the Blue, San Francisco, Tularosa, or Upper Gila Rivers, or Aravaipa Creek could adversely impact the proposed critical habitat. Such activities include, but are not limited to, excessive groundwater pumping, impoundment, and water diversion. Any activity that would extensively alter the channel morphology in the Blue, San Francisco, Tularosa, or Upper Gila Rivers or Aravaipa Creek could adversely impact the proposed critical habitat. Such activities include, but are not limited to, channelization, excessive sedimentation from mining, timber harvest, grazing, and other watershed disturbances, impoundment, deprivation of substrate source, and destruction of riparian vegetation. Any activity that would significantly alter the water

chemistry in the Blue, San Francisco, Tularosa, or Upper Gila Rivers or Aravaipa Creek could adversely impact the proposed critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release. The introduction, advertent or otherwise, of exotic predatory and competitive fish species could adversely affect *Tiaroga cobitis* populations and could reduce or eliminate them within the critical habitat.

Section (4)(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained at the time of final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Tiaroga cobitis* or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

No Federal activities are known or expected to be affected on Bureau of Land Management lands on Aravaipa Creek, because the Aravaipa Canyon Wilderness is presently being managed to protect and enhance natural values, including *Tiaroga cobitis*.

On U.S. Forest Service lands, little effect is expected from Federal activities from this proposal; however, section 7 consultation may be needed if changes occur in current grazing, mining, timbering, recreational, and other activities affecting *Tiaroga cobitis* and its habitat, or if continuation of present activities are determined to be adversely affecting the species and its critical habitat.

Proposed dam construction or alternative water projects on the upper Gila River, which have been authorized for study as part of the Bureau of Reclamation's Central Arizona Project Upper Gila Water Supply Study, could be affected by this proposal. Any such project would become subject to section 7 consultation and changes in proposed operations of such projects, changes in proposed sites, or a change in choice of alternatives may be necessary to comply with the Act. Proposed projects could be constructed only if such activities were determined not to jeopardize the species or adversely impact its critical habitat.

Known Federal activities on private lands that might be affected by this proposal would be future flood control work funded by the Federal Emergency Management Agency, or carried out by the U.S. Army Corps of Engineers on the Gila River in the Cliff-Gila Valley or on the San Francisco and Tularosa Rivers and Whitewater Creek; federally funded highway and bridge construction; or future federally funded irrigation projects. Federal funding has been used in the past and is expected to be used in the future for pipeline, water diversion, and land-leveling projects on private agricultural lands in the Cliff-Gila Valley, and along the Tularosa and San Francisco Rivers.

The Act an its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has the discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. *Tiaroga cobitis* is threatened primarily by habitat disturbance or alteration, not by intentional direct taking or by commercialization. Since the States currently regulate direct and intentional taking of the species through the requirement of State collecting permits, the Service has concluded that the States' scientific collection permit system is adequate to protect the species from excessive taking so long as such taking is limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to this species, therefore, the special rule allows taking to occur for the above-stated purposes without the need for a Federal permit, if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. The special rule also acknowledges the fact that incidental take of the species by State licensed recreational fishermen is not a significant threat to this species. In fact, angling is an unlikely mode of capture of this species. Therefore, such incidental take would not be violation of the Act if the fisherman immediately returned the individual fish taken to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule (including, but not limited to, take resulting from habitat disturbance or alteration) are prohibited. Without this special rule, all of the prohibitions of 50 CFR 17.31 would apply. This special rule would allow for more efficient management of the species, and thus would enhance the conservation of the species. For these reasons, the Service concludes that this regulatory proposal is necessary and advisable for the conservation of the species.

General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened animal species, under certain

circumstances, are set out at 50 CFR 17.22, 17.23, and 17.32.

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Tiaroga cobitis*;

(2) The location of any additional populations of *Tiaroga cobitis* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Tiaroga cobitis*; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on *Tiaroga cobitis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

The authors of this proposed rule are S.E. Stefferud and Dr. James E. Johnson, Endangered Species staff, Region 2, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

AUTHORITY: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
FISHES							
Minnow, loach	*Tiaroga cobitis*	U.S.A. (AZ, NM), Mexico	Entire	T	*	17.95(e)	17.44( )

3. It is further proposed to add the following as a special rule to § 17.44 (the position of this special rule will be determined at the time the final rule is published in the Federal Register):

§ 17.44 Special rule—fishes.

* * * * *

( ) Loach minnow, *Tiaroga cobitis.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act or, (ii) incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish an wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs ( )(1) through ( )(3) of this section.

* * * * *

4. It is proposed to amend § 17.95(e) by adding the critical habitat of *Tiaroga cobitis* as follows (the position of this entry under § 17.95(e) follows the same sequence as the species occurs in 17.11):

§ 17.95 Critical habitat—fish and wildlife.

(3) * * *

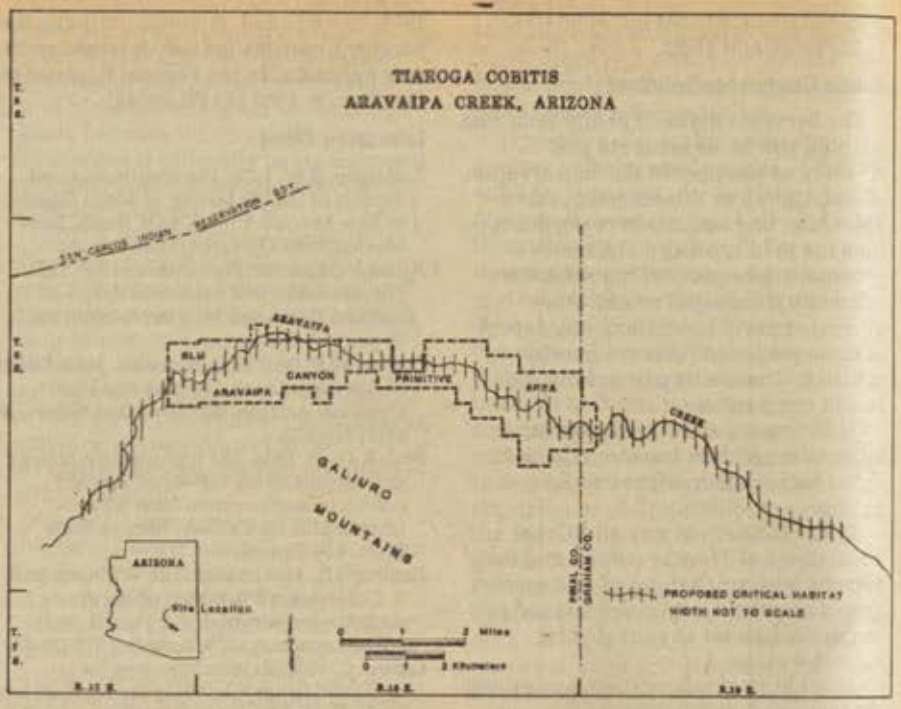
* * * * *

Loach Minnow

(Tiaroga cobitis)

Arizona:

1. *Graham and Pinal Counties:* Aravaipa Creek, approximately 24 kilometers of stream, extending from the N½ of the SW¼ Section 28; T6S; R17E upstream to the W½ of the NE¼ Section 35; T6S; R19E.



2. *Greenlee County:*

a. Blue River, approximately 78 kilometers of river, extending from the confluence with the San Francisco River (SE¼ Section 31; T2S; R31E) upstream to the confluence of Campbell Blue and Dry Blue Creeks (SE¼ Section 6; T7S; R21W) in Catron County, New Mexico.

b. Campbell Blue Creek, approximately 14 kilometers of stream, extending from the confluence with the Blue River (SE¼ Section 6; T7S; R21W) upsteam to the confluence with Coleman Creek (SW¼ of the NE¼ Section 32; T4N, R31E). Approximately 0.8 kilometers of this stretch are located in Catron County, New Mexico.

c. San Francisco River, approximately 6 kilometers of river, extending from the confluence with Hickey Canyon (west boundary of Section 12; T3S; R30E) upstream to the confluence with the Blue River (SE¼ Section 31; T2S; R31E).

New Mexico:

1. *Catron County:*

a. Dry Blue Creek, approximately 3 kilometers of stream, extending from the confluence with the Blue River (SE¼ Section 6; T7S; R21W) upstream to the west boundary of the SE¼ Section 32; T6S; R21W.

b. San Francisco River, approximately 15 kilometers of river, extending from the U.S. Highway 180 bridge (NE¼ of the SW¼ Section 8; T10S; R20W) upstream to the east boundary Section 14; T9S; R20W.

c. Tularosa River, approximately 24 kilometers of river, extending from the confluence with Negrito Creek (SW¼ of the NW¼ Section 19; T7S; R18W) upstream to the town of Cruzville (S½ of the SW¼ Section 1; T6S; R18W).

2. *Grant and Catron Counties:*

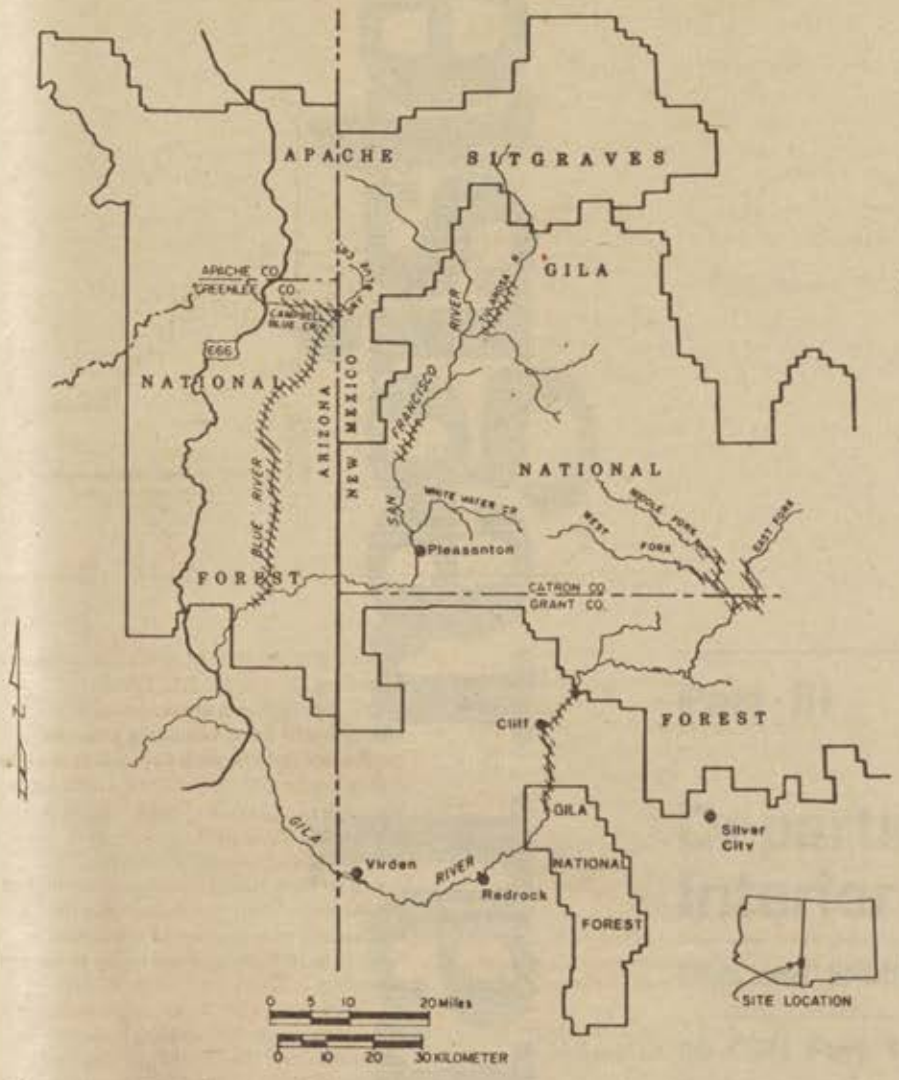
a. East Fork Gila River, approximately 26 kilometers of river extending from the confluence with the West Fork (center of Section 8; T13S; R13W) upstream to the north boundary of Section 11; T12S; R13W).

b. West Fork Gila River, approximately 12 kilometers of river extending from the confluence with the East Fork (center of Section 8; T13S; R13W) upstream to the west boundary Section 22; T12S; R14W.

c. Middle Fork Gila River, approximately 18 kilometers of river, extending from the confluence with the West Fork (SW¼ Section 25; T12S; R14W) upstream to the confluence with Brothers West Canyon (NE¼ Section 33; T11S; R14W).

3. *Grant County:* Gila River, approximately 37 kilometers of river, extending from the south boundary Section 21; T17S; R17W upstream to the confluence with Mogollon Creek (NE¼ Section 31; T14S; T16W).

TIAROGA COBITIS
BLUE, GILA, SAN FRANCISCO, & TULAROSA RIVERS
NEW MEXICO AND ARIZONA



Known constituent elements of all areas proposed as critical habitat are permanent stream flow, unpolluted water, swift turbulent riffles, a depth of at least 3 centimeters over cobble and gravel substrate, and growths of filamentous algae. Periodic flooding is necessary to maintain habitat quality.

* * * * *

Dated: May 28, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-14472 Filed 6-17-85; 8:45 am]

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federal register

Tuesday
June 18, 1985

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Spikedace To Be a Threatened Species and To Determine Its Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Spikedace To Be a Threatened Species and To Determine Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a fish, *Meda fulgida* (spikedace), as a threatened species and to determine its critical habitat under the authority contained in the Endangered Species Act of 1973, as amended. A special rule allowing take for certain purposes in accordance with New Mexico and Arizona State laws and regulations is proposed. *Meda fulgida* is endemic to the Gila River system upstream from the city of Phoenix, but is presently found only in Aravaipa Creek, Graham and Pinal Counties, Arizona; sections of the Gila River upstream from the town of Red Rock in Grant and Catron Counties, New Mexico; and in a portion of the upper Verde River, Yavapai County, Arizona. The historic range of *Meda fulgida* included the upper San Pedro River in Sonora, Mexico, but the species has been extirpated there due to dewatering of the river. The distribution and numbers of *Meda fulgida* have been severely reduced by habitat destruction due to damming, channel alteration, riparian destruction, channel downcutting, water diversion, and groundwater pumping. Only approximately 6 percent of the historic range presently supports populations of this species. The species continues to be threatened by proposed dam construction, water losses, and habitat alteration. Survival of the species is also threatened by the introduction and spread of exotic predatory and competitive fish species. A final determination of *Meda fulgida* to be a threatened species would implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 19, 1985. Public hearing requests must be received by August 2, 1982.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. James E. Johnson, Chief, Regional Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (See **ADDRESSES** above) (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Meda fulgida was first collected in 1851 from the Rio San Pedro in Arizona, and was described from those specimens in 1856 by Girard. It is a small (less than 75 millimeters), slim fish, characterized by very silvery sides, and by spines in the dorsal and pelvic fins. Breeding males develop a brassy golden color. *Meda fulgida* is found in moderate to large perennial streams, where it inhabits shallow riffles with gravel and rubble substrates and moderate to swift currents, and swift pools over sand or gravel substrates (Barber and Minckley, 1970). Recurrent flooding is very important in the life history of *Meda* and helps to maintain its competitive edge over invading exotic fish species.

Meda fulgida was once common throughout much of the Verde, Agua Fria, Salt, San Pedro, San Francisco, and Gila (upstream from Phoenix) River systems, occupying habitat in both the mainstreams and moderate gradient perennial tributaries, up to 1800–1900 meters elevation. Because of habitat destruction and competition and predation by exotic fish species, its range and abundance have been severely reduced, and it is now restricted to approximately 24 kilometers of Aravaipa Creek, Graham and Pinal Counties, Arizona; approximately 73 kilometers of the upper Gila River in the Middle Box Canyon, the Cliff-Gila Valley and the lower end of the West and Middle Forks, Grant and Catron Counties, New Mexico; and approximately 57 kilometers of the Verde River from below Sullivan Lake downstream to just below the mouth of Sycamore Canyon, Yavapai County, Arizona (Anderson, 1978; Minckley, 1973; Barrett, *et al.*, in prep.; Propst, in prep.). The historic range of *Meda fulgida* included approximately 2600 kilometers of river. The 154 kilometers of presently occupied range represent only 6 percent of the historic range.

Land ownership in existing *Meda fulgida* habitats is mixed and is as follows:

Aravaipa Creek

1. *Bureau of Land Management*—about 75 percent of the perennial length of the stream, most of which is designated as the Aravaipa Canyon Wilderness.
2. *Defenders of Wildlife*—most of the perennial stream above and below the Wilderness is owned or leased as the George Whittell Wildlife Preserve.
3. *Other privately owned*—a few scattered parcels along the perennial stream length.

Gila River

1. *Bureau of Land Management*—approximately 4 kilometers of river just downstream from the Middle Box canyon which is part of a designated Area of Critical Environmental Concern. An additional ½ kilometer is located below Cliff, New Mexico.
2. *Privately owned*—most of the Cliff-Gila Valley, also near Gila Hot Springs.
3. *The Nature Conservancy*—a small portion of river upstream from the town of Gila.
4. *New Mexico Department of Game and Fish*—approximately 6½ kilometers of river just downstream from the confluence of the West and Middle Forks.
5. *U.S. Forest Service*—a large portion of the river is in the Gila National Forest with sections flowing through the Gila Wilderness, the Lower Gila River Bird Habitat Management Area, and the Gila River Research Natural Area.

Verde River

1. *U.S. Forest Service*—Prescott National Forest.
2. Privately owned—interspersed inholdings within Forest Service lands, and along the river below Sullivan Lake.
3. *State of Arizona*—approximately 3½ kilometers of scattered State lands are located along the Verde River below Sullivan Lake.

The native fish fauna of the Gila River system, including *Meda fulgida*, has been drastically affected by man's alteration of that system, with 35 percent presently federally listed as endangered, and another 35 percent considered to be threatened or endangered by the States of Arizona and New Mexico and/or the American Fisheries Society. *Meda fulgida* has been extirpated from much of the system and was last found in the Salt River drainage in 1972, in the San Pedro River drainage (except Aravaipa Creek) in 1967, in the Agua Fria drainage in

1943, and in the San Francisco River drainage in 1950. In the Gila River downstream from Red Rock, New Mexico, scattered individual *Meda* have been found as late as 1984, but no permanent populations of *Meda* have occupied this stretch of river since 1951. A 1978 study (Anderson, 1978) documented the distribution of *Meda fulgida* in New Mexico and noted its absence from the San Francisco River system, the Gila River downstream from Red Rock, and the major tributaries of the Gila River upstream from Red Rock. The study noted that the range of *Meda fulgida* has receded 25 kilometers upstream in the Gila River in the last 26 years. Those findings were confirmed by a study conducted in 1983 and 1984 by the New Mexico Department of Game and Fish (Propst, in prep.). In addition, that study documented a loss of 40 percent in the range of *Meda* in the Gila River since 1978. This decline includes loss of *Meda* from the East Fork of the Gila River, as well as an additional 10 kilometer recession upstream from Red Rock to the mouth of the Middle Box canyon.

The continuing decline in the numbers and distribution of *Meda fulgida* has evoked concern over its survival from many sources. *Meda fulgida* was listed in 1973, as a species of concern, by the Bureau of Sport Fisheries and Wildlife (USDI, 1973) the predecessor to the Fish and Wildlife Service. It was included by the American Fisheries Society's Endangered Species Committee on their 1979 list (Deacon, *et al.*, 1979) as threatened species due to habitat destruction and competition/predation from exotic species. Prior to that, it was listed as rare and possibly endangered on a 1972 list of threatened freshwater fish of the United States, published by the American Fisheries Society and the Society of Ichthyologists and Herpetologists (Miller, 1972). It has also been listed as vulnerable by the International Union for the Conservation of Nature and Natural Resources in their Red Data Book (Vol. 4) in 1977. Both the States of Arizona and New Mexico include *Meda fulgida* on their lists of threatened and endangered species (New Mexico State Game Comm., 1985; Arizona Game and Fish Comm., 1982). It was included in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454–58460) in category 1. Category 1 includes those taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Because of concern over the survival of and to provide protection for native species, including *Meda fulgida*, land has been acquired on the upper Gila River by The Nature Conservancy and on Aravaipa Creek by the Defenders of Wildlife.

The Service was petitioned on March 14, 1985, by the American Fisheries Society (AFS), and on March 18, 1985, by the Desert Fishes Council (DFC) to list *Meda fulgida* as threatened. Evaluation of the AFS petition by the Service revealed that substantial information was presented indicating that the petitioned action might be warranted. Publication of this proposed rule constitutes the required finding that the petitioned action is warranted. Because the species was already under active petition by AFS, the DFC petition was accepted only as a letter of comment.

Summary of Factors Affecting The Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; revised to accommodate 1982 Amendments—see final rule at 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Meda fulgida* (spikedace) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The majority of the historic native habitat of *Meda fulgida* has been drastically altered or destroyed by human uses of the rivers, streams, and watersheds. These alterations include: Conversion of flowing waters into still waters by impoundment; alteration of flow regimes (including conversion of perennial waters to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of water temperatures (either up or down); alteration of silt and bed loads; alteration of stream channel characteristics from well-defined, surface level, heavily vegetated channels with a diversity of substrate and habitats, into deeply cut, unstable arroyos with little riparian vegetation, uniform substrate and little habitat diversity; and loss of marshes and backwaters. Causes of such alterations include: damming, water diversion, channel downcutting, excessive groundwater pumping, lowering water tables, channelization, riparian vegetation destruction, erosion, mining, grazing, and other watershed disturbances.

The biology of *Meda fulgida* is not well enough understood to determine what specific effects each of these habitat changes or losses has had on the survival of the species. However, the conversion of a large portion of the habitat into intermittent or lacustrine waters or totally dewatered channels has had an obvious effect on *Meda* populations by totally eliminating usable habitat in the impacted areas. These habitat changes, together with the introduction of exotic fish species (see factors C and E) have resulted in the extirpation of *Meda fulgida* throughout most of its historic range.

Some of the major reasons for specific *Meda* habitat losses are easily identifiable. The San Pedro River, once a perennial stream, is now severely downcut and has only intermittent flow. The lower Salt and Verde Rivers now have a very limited or no flow during portions of the year due to agricultural diversion and upstream impoundments, and both rivers have several impoundments in their middle reaches. The Gila River, after leaving the Mogollon Mountains in New Mexico, is affected by agricultural and industrial water diversion, impoundment, channelization, and has been subjected to use of chemicals for fish management from the Arizona border downstream to San Carlos Reservoir. The San Francisco River has suffered from erosion and extensive water diversion and at present has an undependable water supply throughout much of its length.

Remaining *Meda fulgida* habitat is still threatened with further habitat destruction. Aravaipa Creek is relatively protected from further habitat loss because of its status as a Bureau of Land Management Wilderness and as a Defenders of Wildlife Preserve. Access and land uses are limited in the canyon, and it is managed primarily for natural values and recreation. However, it is affected by upstream uses in the watershed, primarily groundwater pumping resulting in a continued lowering of the water table, which could eventually reduce perennial flow in Aravaipa Creek.

In the upper Gila River, *Meda fulgida* habitat is somewhat protected along the portions of the river that flow through the U.S. Forest Service Gila Wilderness and the Gila River Research Natural Area which have use and access restrictions. However, both wilderness and non-wilderness portions of the river in the National Forest are still affected

by past and present uses of the watershed and riparian zone, and by water diversion for public and private uses. On privately owned lands along the river there is no statutory control of habitat alteration or destruction. Agricultural use, water diversion, and flood control measures in these areas have a heavy impact on the habitat. The U.S. Army Corps of Engineers (Corps) has recently completed work in the Cliff-Gila area under their Emergency Authority, which allows them to replace or restore damaged flood control structures. Other flood control alternatives considered for this area in the past by the Corps have been set aside; the only current plans for flood control in the New Mexico portion of the Gila River are in cooperation with the Bureau of Reclamation's Conner Dam study (U.S. Army Corps of Engineers, 1984).

Of particular importance to *Meda fulgida* survival in the Gila River is the proposed construction of a dam on the Gila mainstream, as part of the Central Arizona Project Upper Gila Water Supply Study by the Bureau of Reclamation (USDI, 1972). Currently the Bureau of Reclamation is studying four alternatives (USDI, 1985); a high dam and reservoir at the Conner site on the mainstream Gila River near the lower end of the Middle Box canyon; a small dam and reservoir at the Conner site with an offstream storage reservoir; floodplain storage basins in the Cliff-Gila Valley; and direct pumping from the river in the Cliff-Gila Valley to an offstream storage reservoir. A high dam at the Conner site on the Gila River could have major negative impacts on *Meda fulgida*. Up to 29 kilometers of river, 40 percent of the existing range in the Gila River, would be inundated and thus would no longer support *Meda fulgida*, which lives only in flowing waters. The presence of a dam on the river could also adversely alter habitat downstream from the dam by changing the temperature, bedload, and flow regimes, including the elimination of natural flooding which is an important factor in riparian and channel maintenance and in the maintenance of the competitive edge of native over exotic fish species. Major dam and reservoir construction in the past, on the Salt, Verde, and Gila Rivers, has resulted in the complete extirpation of all *Meda fulgida* downstream of the dam and for up to 65 kilometers above the reservoir. Even with extensive planning for natural flow and temperature maintenance downstream, the construction of a dam on the upper Gila would have a strong impact on *Meda fulgida*. A small dam at the Conner site would inundate an estimated 14 kilometers of river, and would also affect populations upstream and downstream from the reservoir. The effects of direct pumping from the river to offstream storage are not completely known, but may include entrapment of fish in pipelines, impingement of fish on intake screens, and depletion of stream flow below the diversion point. The fourth alternative of floodplain storage basins would require removal of 484 acres of riparian vegetation along the river and would eliminate 18 kilometers of aquatic habitat due to construction of the basins and to channelization and diversion of the river. Downstream from the storage area, adverse impacts to *Meda* may include increased sediments and changes in temperature and flow regimes, including the elimination of natural flooding.

Future threats to *Meda fulgida* on the Verde River are found in watershed disturbances, increasing silt in the river bed, deteriorating water quality due to upstream communities, and future water developments. The Bureau of Reclamation, as part of the Central Arizona Project (CAP), is currently working on plans for water rights exchanges between upstream and downstream water rights holders, and subsequent diversions of water from the upper Verde River. There are eight potential CAP water exchangers on the upper Verde River, but of these, only two, the city of Prescott and the Yavapai-Prescott Indian Reservation, are within or upstream from the portion of the Verde River where *Meda* is known to still exist. The Bureau of Reclamation is planning to address the cumulative impacts of all eight exchanges together, however, at present only the city of Prescott and the Yavapai-Prescott Indian Reservation have submitted proposed plans. These two entities have jointly proposed removal of water from the Verde River about 4 kilometers below Sullivan Lake by means of an infiltration gallery buried in the riverbed. The joint allocation for these two entities is 7,627 acre-feet per year, and the proposed plans call for a maximum diversion rate of 13 cubic feet per second. The effects of this diversion have not yet been studied, but the loss of the maximum planned diversion rate from the river during low flows would be significant. Average median monthly discharge near the diversion point is estimated to be 10 cubic feet per second or less for 10 months of the year (Barrett, *et al.*, in prep.). Such a reduction in flows could result in crowding, increased predation and competition, increased water temperatures, and other negative impacts to *Meda* and other aquatic fauna.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known to exist at this time.

C. *Disease or predation.* Historically, predation was not a significant factor affecting *Meda fulgida* populations; however, in the past 100 years, introduction of exotic predatory fish species has increased the role that predation plays in *Meda* biology. In Aravaipa Creek, there are two potential predators, the native roundtail chub and the exotic green sunfish, the latter being primarily restricted to side channel pools, and kept at low population numbers by frequent flooding. Neither are known to have a significant effect on *Meda fulgida*. In the Gila and Verde Rivers, the native roundtail chub and several exotic fish (black and yellow bullhead, channel catfish, green sunfish, flathead catfish, small and large mouth bass, and rainbow and brown trout) are probable predators on *Meda fulgida*. Although predation may not be a major threat to *Meda* in good habitat conditions, it is undoubtedly a negative factor to populations under the altered conditions present in much of the existing habitat. It has been noted that the present downstream limit of *Meda fulgida* in the Gila River closely corresponds to an increasing abundance of flathead and channel catfish (Anderson, 1978); that in the vicinity of lakes in the upper Gila drainage where game fish are heavily stocked, the populations of *Meda fulgida* are depleted (LaBounty, 1972), and that the recent extirpation of the *Meda* population in the East Fork of the Gila River is probably due to the increased numbers of smallmouth bass and catfish in that portion of the river (Propst, in prep.). In 1983 and 1984 Propst found abundant smallmouth bass and catfish in the East Fork, but few native species. Under unfavorable habitat conditions, caused by changes in flow, temperature, substrate, flooding, etc., it is likely that predation becomes an important factor in *Meda* survival. Construction of dams and reservoirs exacerbates the predation problem by increasing the habitat desirable to exotic predators, decreasing the habitat suitable for *Meda fulgida*, and supplying a ready source of predators from the reservoir and its fishery of stocked exotic fishes. The effect of predation on *Meda* in the Gila River could increase significantly if a

dam is constructed by the Bureau of Reclamation.

D. *The inadequacy of existing regulatory mechanisms. Meda fulgida* is protected by the States of New Mexico and Arizona. It is listed by New Mexico as an endangered species, Group 2 (New Mexico State Game Comm., 1985), which are those species ". . . whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This provides the protection of the New Mexico Wildlife Conservation Act (Section 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under the issuance of a scientific collecting permit. *Meda fulgida* is listed by the State of Arizona as a threatened species, Group 3 (Ariz. Game and Fish Comm., 1982), which are those species ". . . whose continued presence in Arizona could be in jeopardy in the foreseeable future." This listing does not provide any special protection to the species listed. Protection provided in the Arizona Game and Fish Regulations prohibits taking of *Meda fulgida* except by angling, an unlikely method for their capture. Neither State provides any protection of the habitat upon which the species depends.

New Mexico water law does not include provisions for the acquisition of instream water rights for protection of fish and wildlife and their habitat, and Arizona water law has only recently recognized such rights. This deficiency has been a major factor in the survival of those species dependent upon the presence of instream water.

State Game and Fish regulations in New Mexico allow the use of the red shiner and other live minnows as bait fish in the Gila River, in areas containing *Meda fulgida*. This has encouraged the spread of detrimental exotic species, specifically the red shiner, which appears to replace *Meda fulgida* under certain conditions (see Factor E.).

E. *Other natural or manmade factors affecting its continued existence.* Existing populations of *Meda fulgida* are threatened by the continued introduction and dispersal of exotic species, particularly *Notropis lutrensis* (red shiner), throughout the Gila River system. Although it is not known by what mechanisms these exotic species affect *Meda*, it is known that the spread of exotic species throughout the Gila system correlates closely to the declining numbers and distribution of *Meda fulgida* and other native species, and that *Notropis lutrensis* now occupies much of what was once *Meda* habitat. It has been demonstrated with other native fish that competitive and/or predatory interactions with exotic species have been a major factor in the declining numbers and distribution of native fishes, and apparently *Notropis lutrensis* is a competitor with *Meda fulgida* for some habitat factors (Minckley and Deacon, 1968). In suitable unaltered habitat, it is possible that *Meda* is able to hold its own against invasion of *Notropis lutrensis* or other exotic species; however, in extensively altered habitats where *Meda* populations are already under stress, it appears that *Notropis lutrensis* has a competitive advantage and thereby replaces *Meda fulgida*. A major factor in the displacement seems to be the disturbance of natural flooding patterns, since native species such as *Meda fulgida* are adapted to and thrive under a regime of frequent moderate to severe flooding, and *Notropis lutrensis* and other exotic species do not. The controlled flow of flood waters, resulting from impoundment, interrupts this natural pattern in downstream reaches and encourages the spread of *Notropis lutrensis* at the expense of *Meda fulgida*. The presence of reservoirs also increases the likelihood and rapidity of the spread of *Notropis lutrensis* and other exotics by supplying a ready source of exotic species from the reservoir and its fishery. At present, *Notropis lutrensis* is not found in Aravaipa Creek, but is found in the Verde River along with *Meda fulgida*, and is found in the upper Gila River as far upstream as Cliff, New Mexico. In 1978, *Notropis lutrensis* had not yet been found in the Gila River in New Mexico.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Meda fulgida* as threatened. Because this fish is still locally abundant throughout approximately 154 kilometers of stream it does not appear to be in danger of extinction and therefore does not fit the definition of endangered. However, because of the drastic loss of range which this species has undergone, and the imminent threats to all major portions of its presently occupied range, threatened status is appropriate for the species.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat for *Meda fulgida* is proposed in the following areas:

1. Aravaipa Creek, Graham and Pinal Counties, Arizona. The perennial stream portion (approximately 24 kilometers long). This area includes Bureau of Land Management and privately owned lands.

2. Verde River, Yavapai County, Arizona. Approximately 57 kilometers of river extending from approximately 0.8 kilometers below the confluence with Sycamore Creek upstream to Sullivan Lake. This area includes U.S. Forest Service, private, and State lands.

3. Sycamore Creek, Yavapai County, Arizona. Approximately 1½ kilometers of stream near the confluence with the Verde River. This includes U.S. Forest Service and privately owned lands.

4. Gila River, Grant and Catron Counties, Arizona. Three sections of river totaling approximately 73 kilometers in length. The first section, approximately 50 kilometers long, extends from the mouth of the Middle Box canyon upstream to the confluence with Mogollon Creek. A second section, approximately 11½ kilometers long, extends up the West Fork from the confluence with the East Fork upstream to the west boundary of Section 22, T.12S., R.14W. The last section, approximately 11½ kilometers long, extends up the Middle Fork from its mouth upstream to the confluence with Big Bear Canyon. These river sections flow through U.S. Forest Service, Bureau of Land Management, New Mexico Department of Game and Fish, and privately owned lands.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Any activity that would lessen the amount of the minimum flow or would significantly alter the natural flow regime in

Aravaipa Creek or the upper Gila or Verde Rivers could adversely impact the proposed critical habitat. Such activities include, but are not limited to, excessive groundwater pumping, impoundment, and water diversions. Any activity that would extensively alter the channel morphology in Aravaipa Creek or the upper Gila or Verde Rivers could adversely impact the proposed critical habitat. Such activities include, but are not limited to, channelization, excessive sedimentation from mining, grazing, and other watershed disturbances, impoundment, deprivation of substrate source, and riparian destruction. Any activity that would significantly alter the water chemistry in Aravaipa Creek or the upper Gila or Verde Rivers could adversely impact the proposed critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release. The introduction, advertent or otherwise, of exotic predatory and competitive fish species, could adversely affect *Meda fulgida* populations and could reduce or eliminate them within the critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained at the time of final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies, and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

No Federal activities are known or expected to be affected on Bureau of Land Management lands on Aravaipa Creek, because the Aravaipa Canyon Wilderness is presently being managed to protect and enhance natural values.

On U.S. Forest Service lands on the Gila and Verde Rivers, little effect is expected on Federal activities from this proposal; however, Section 7 consultation may be needed if changes occur in current grazing, mining, timbering, recreational, or other activities affecting *Meda fulgida* and its habitat.

On Bureau of Land Management lands on the upper Gila River, little effect is expected on present Federal activities because the area involved is designated an Area of Critical Environmental Concern, which requires management to protect natural values.

Proposed dam construction or alternative water projects on the upper Gila River, which have been authorized for study as part of the Bureau of Reclamation's Upper Gila Water Supply Study, could be affected by this proposal, as could the Bureau's tentative plans for water development on the upper Verde River as part of the Central Arizona Project. Any such project would become subject to Section 7 consultation requirements.

Known Federal activities on private lands that might be affected by this proposal would be future flood control work funded by the Federal Emergency Management Agency or carried out by the U.S. Army Corps of Engineers in the Cliff-Gila Valley, or future federally funded irrigation projects. Federal funding has been used in the past and is expected to be used in the future for pipeline, water diversion, and land leveling projects on private agricultural lands in the Cliff-Gila Valley.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has the discretion under Section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. *Meda fulgida* is threatened primarily by habitat disturbance or alteration, not by intentional direct taking or by commercialization. Given this fact and the fact that the States currently regulate direct taking of the species through the requirement of State collecting permits, the Service has concluded that the States' collection permit systems are more than adequate to protect the species from excessive taking, so long as such takes are limited to: Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, a special rule is proposed which allows take to occur for the above stated purposes without the need for a Federal permit, if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. This special rule also acknowledges the fact that incidental take of the species by State-licensed recreational fishermen is not a significant threat to this species, and that such incidental take would not be a violation of the Act, if the fisherman immediately returned the individual fish taken to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. This special rule would allow for more efficient management of the species, and thus would enhance the conservation of the species. For these reasons, the Service concludes that this

regulatory proposal is necessary and advisable for the conservation of *Meda fulgida*.

General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened animal species, under certain circumstances, are set out at 50 CFR 17.22, 17.23, and 17.32.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or the lack thereof) to *Meda fulgida*;

(2) The location of any additional populations of *Meda fulgida* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Meda fulgida*; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on *Meda fulgida* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final rule that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 to the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
Spikedace	*Meda fulgida*	U.S.A. (AZ, NM) MEXICO	Entire	T		17.95(e)	17.44( )

3. It is further proposed to add the following as a special rule to § 17.44 (the position of this special rule will be determined at the time the final rule is published in the **Federal Register**):

§ 17.44 Special rules—fishes.

* * * * *

( ) Spikedace, *Meda fulgida*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or, (ii) incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs. ( )(1) through ( )(3) of this section.

* * * * *

4. It is further proposed to amend § 17.95(e), "Fishes," by adding the critical habitat of *Meda Fulgida* as follows (the position of this entry under § 17.95(e) follows the same sequence as the species occurs in § 17.11):

§ 17.95 Critical habitat—fish and wildlife.

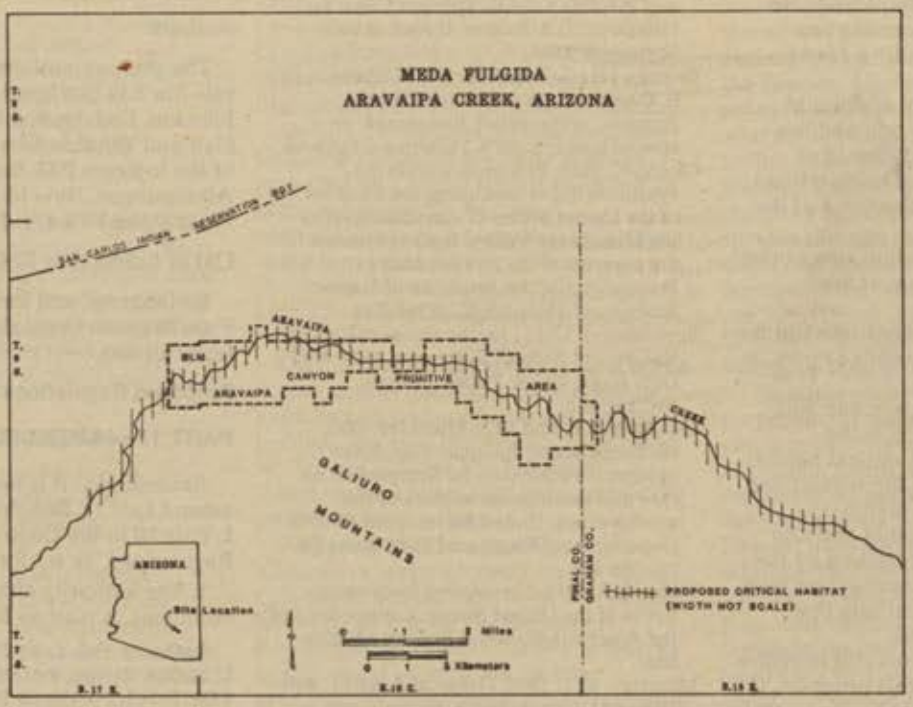
(e) * * *

* * * * *

Spikedace *(Meda fulgida)*

Arizona:

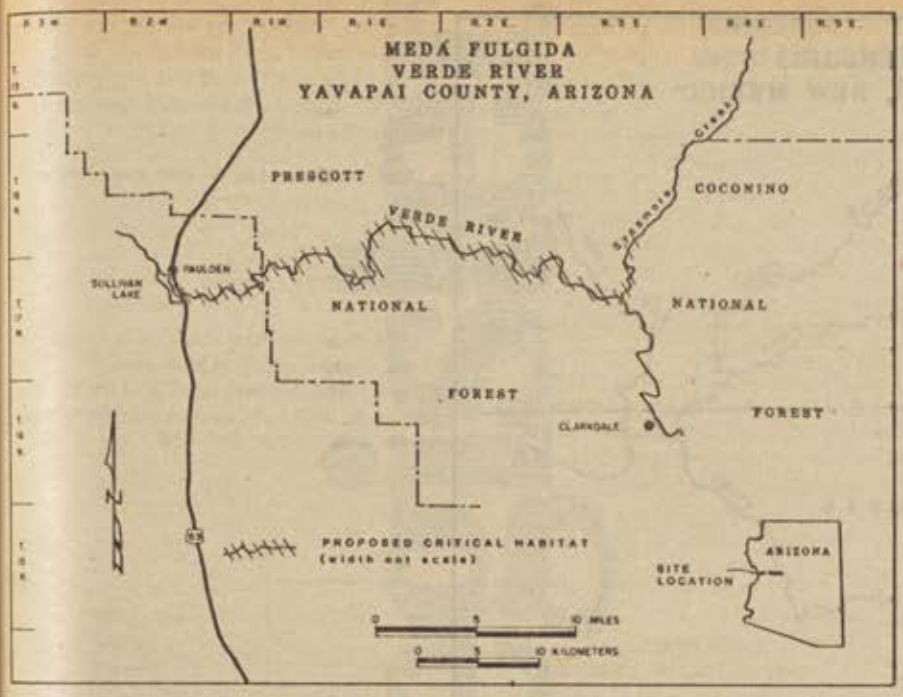
1. *Graham and Pinal Counties:* Aravaipa Creek, approximately 24 kilometers of stream, extending from the N½ of the SW¼ Section 26, T6S; R17E upstream to the W½ of the NE¼ Section 35, T6S; R19E.



2. *Yavapai County:*

a. Verde River, approximately 57 kilometers of river, extending from about 0.8 kilometers below the confluence with Sycamore Creek (south boundary of the NW¼ Section 17, T17N; R3E) upstream to the Sullivan Lake dam (NE¼ of the NW¼ Section 15, T17N; R2W).

b. Sycamore Creek, approximately 1½ kilometers of stream, extending upstream from the confluence with the Verde River to the north boundary of Section 8, T17N; R3E.

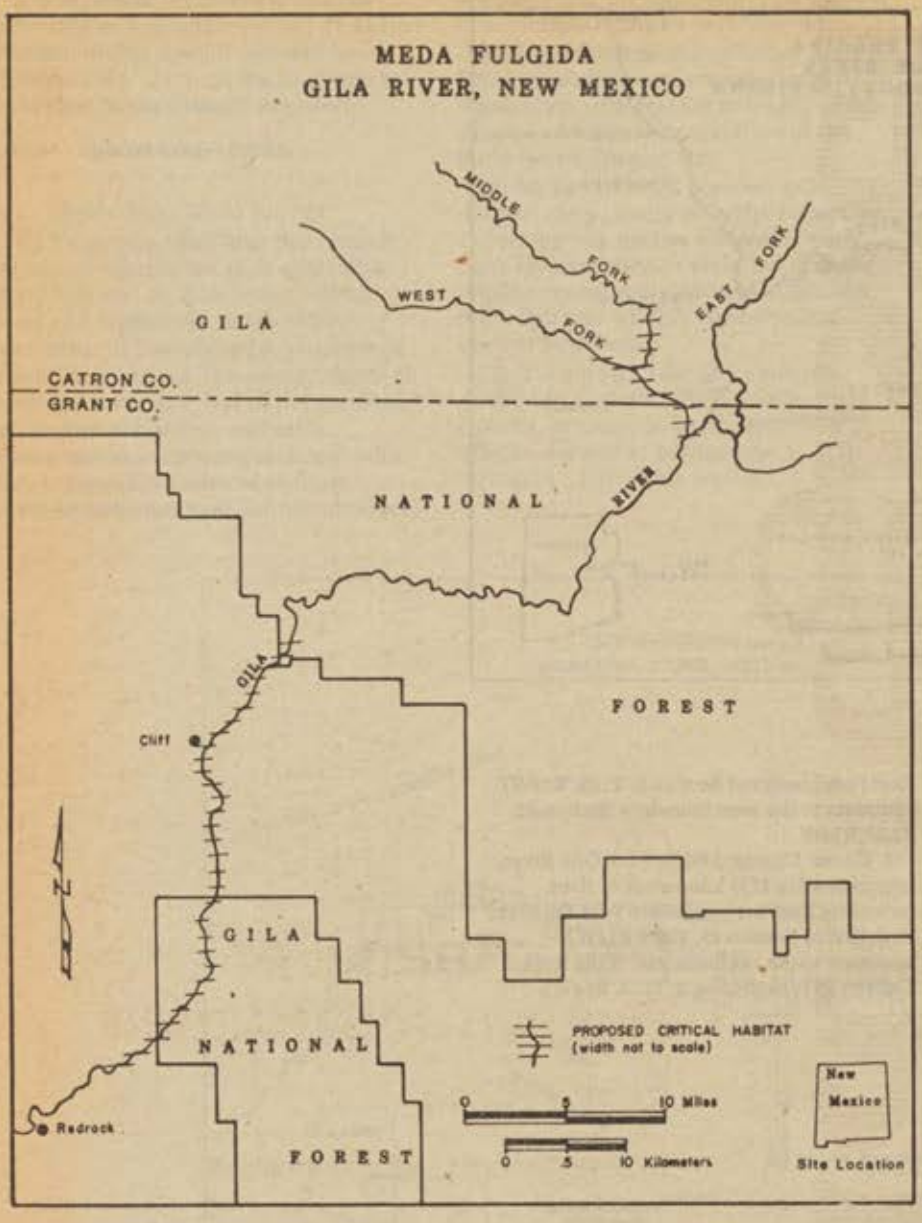


New Mexico:

1. *Grant County:* Gila River, approximately 50 kilometers of river extending from the mouth of the Middle Box canyon (MW¼ of the SW¼ Section 23, T18S; R18W) upstream to the confluence with Mogollon Creek (NE¼ Section 31, T14S; R16W).

2. *Grant and Catron Counties:* West Fork Gila River, approximately 11½ kilometers of river, extending from the confluence with the East Fork (center of Section 8, T13S; R13W) upstream to the west boundary Section 22, T12S; R14W.

3. *Catron County:* Middle Fork Gila River, approximately 11½ kilometers of river, extending from the confluence with the West Fork (SW¼ Section 25, T12S; R14W) upstream to the confluence with Big Bear Canyon (NW¼ Section 2, T12S; R14W).



Constituent elements, for all areas proposed as critical habitat, include permanent water with moderate to swift velocity; a depth of at least 10 centimeters over sand, gravel, and rubble substrate; and both pool and riffle components.

* * * * *

Dated: May 28, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-14471 Filed 6-17-85; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

Tuesday
June 18, 1985

Part IV

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regs. Nos. 4 and 16]

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: Section 15 of the Social Security Disability Benefits Reform Act of 1984, Pub. L. 98–460 (the 1984 Disability Amendments) requires the Secretary to issue regulations which establish the rules to be used to schedule reviews of continuing entitlement of persons receiving benefits because of disability or blindness. Section 221(i) of the Social Security Act requires that all persons with nonpermanent impairments receiving benefits because of disability must generally be reviewed at least once every 3 years. Section 221(i) also requires that the eligibility of persons having permanent impairments be reviewed at such times as the Secretary deems appropriate. There is no definition of "permanent impairment" in the statute. The identification of impairments now considered permanent is based on administrative experience with continuation rates for certain impairments and age groups or combinations thereof. The categories of impairments considered permanent will be continually modified with increased experience and medical developments. In addition there is a body of cases involving medical conditions which we expect to improve within a short time. These are referred to as medical reexamination diary cases and under administrative procedures are diaried for review. These rules set forth the standards pursuant to which continuing disability reviews (CDR) will be scheduled so that those receiving disability benefits may better understand the review process and its timing. Appropriate definitions are provided, including definitions of permanent and nonpermanent impairments. These proposed regulations also implement section 6 of the 1984 Amendments, which requires notice to individuals preceding the continuing disability review of his or her case. These proposed rules apply to persons receiving benefits because of disability or blindness under title II or title XVI of the Act.

DATE: Comments must be received on or before August 2, 1985.

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

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

SUPPLEMENTARY INFORMATION: Section 15 of the 1984 Disability Amendments requires the Secretary to publish in regulations the standards to be used in determining the frequency of reviews under section 221(i) of the Social Security Act. Prior to the Social Security Disability Amendments of 1980, Pub. L. 96–265 (the 1980 Disability Amendments), which added section 221(i) to the Act, there was no requirement for a periodic review of disability for all persons who were receiving disability benefits. SSA generally reviewed only those individuals whose conditions were expected to improve. In determining whether such a medical reexamination was appropriate, the nature of the impairment, whether significant medical improvement could be expected, and the individual's age were all considered. Such an initial medical reexamination diary would generally be set for not less than 6 months or more than 18 months folowing the most recent decision. A rediary following such a reexamination which resulted in a person's benefits being continued would be established when there was clear reason to expect subsequent improvement and was usually set for a shorter period than the initial diary, generally less than 12 months.

In the 1980 Disability Amendments Congress expressed its concern that looking only at individuals whose conditions were expected to improve was not adequate. Congress, therefore, mandated a review of all individuals who were receiving disability benefits under title II at least once every 3 years for those whose impairments were not permanent and on a schedule to be determined by the Secretary for those whose impairments were permanent. The 1982 Amendments (Pub. L. 97–455) provided the Secretary flexibility in carrying out continuing disability reviews. In determining the number of cases to be reviewed by any given State over a specific period of time, the Secretary may consider backlogs of pending reviews as well as current and projected staffing levels in the field offices and State agency and the availability of adequate medical resources which are necessary to do a complete and accurate review. In the 1984 amendments Congress required the Secretary to publish regulations which explain the frequency with which the various continuing disability reviews will be conducted. This mandate was in response to Congressional concern that disabled beneficiaries be generally aware of when their claims will be reviewed and that such reviews not be conducted soon after an individual establishes continuing eligibility following a lengthy appeal.

Present Policy

A continuing disability review may be conducted if one or more of the following events occurs:

(1) The individual has been scheduled for a medical reexamination diary review;

(2) The individual has been scheduled for a periodic review;

(3) We need a current medical report to see if the individual's disability continues;

(4) The individual returned to work and successfully completed a trial work period;

(5) Substantial earnings are reported to the individual's wage record;

(6) The individual tells us that he or she has recovered from his or her disability or has returned to work;

(7) A State vocational rehabilitation agency reports that the individual's training has been completed or that the individual has returned to work or is able to return to work;

(8) Someone in a position to know reports that the individual has returned to work or is not disabled and it appears the report could be substanitally correct; or

(9) The individual is selected for a special review.

Other than administrative guidelines which provide that medical reexamination diary cases generally will be reviewed between 6 and 18 months following entitlement and that nonpermanent periodic review cases will be reviewed every 3 years, SSA has

not published specific rules with respect to frequency of review.

Proposed Policy

These proposed regulations apply to persons receiving benefits because of disability or blindness under either title II or title XVI of the Social Security Act. Although § 221(i) of the Act does not mandate periodic eligibility reviews of persons receiving benefits under title XVI because of disability or blindness, these proposed regulations extend the continuing disability review procedures to title XVI blind and disabled beneficiaries. This extension is within the Secretary's regulatory authority under title XVI of the Social Security Act, sections 1631(d)(1) and 1633, and is in accord with the legislative history of the 1980 Amendments to the Act which added section 221(i). The report of the Senate Committee on Finance, which was followed by the Conference Committee, states:

> The committee believes that such [periodic review] procedures should be applied on the same basis to the DI and SSI programs.

We plan to periodically review the eligibility of persons receiving benefits solely under title XVI because of disability or blindness with the same frequency as with the eligibility of persons receiving disability benefits under title II. This will establish uniform consistency in the operation of the disability programs. When we begin the periodic review of these cases is dependent on such considerations as the backlog of pending reviews, the projected number of new applications, and the availability of resources needed to ensure careful and accurate reviews. Before we begin these periodic reviews we will notify the public of the beginning date of the review program by publication of a Notice in the **Federal Register**.

These proposed regulations also reflect section 6 of Pub. L. 98–460, which requires that when we begin a review of an individual's eligibility to benefits we inform the individual of the nature of the review, the possibility that the review could result in termination of his or her benefits, and his or her right to submit medical evidence for our consideration during the review. Proposed changes to §§ 404.1589 and 416.989 reflect this policy.

We are also proposing revisions to §§ 404.1589 and 416.989 which explain that we will conduct continuing disability reviews from time to time. In §§ 404.1590(c) an 416.990(c) we have defined "permanent" (medical improvement not expected) and "nonpermanent" (medical improvement possible) impairments, discussed the frequency with which we will conduct CDR's, and provided for potential changes in the classification of a person's impairment. We propose that a nonpermanent impairment that does not require a medical reexamination diary will be reviewed at least once every 3 years and a permanent impairment at least once every 7 years, but no more frequently than once every 5 years unless a question of continuing eligibility is raised. We also explain in §§ 404.1590(f) and 416.990(f) that we will not conduct a review earlier than 3 years following establishment of continuing eligibility by an administrative law judge or the Appeals Council or a Federal Court, unless the case is scheduled for an earlier reexamination diary or a question of continuing eligibility is raised.

Regulatory Procedures

Executive Order No. 12291

These proposed regulations have been reviewed under Executive Order No. 12291 and we have determined that they do not create costs of $100 million or more yearly, or otherwise meet the threshold of the Executive Order. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

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

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they primarily affect only disabled or blind individuals who are receiving title II or title XVI benefits because of disability or blindness. These proposed regulations should have little or no effect on the States since they reflect the present title II frequency of review cycles. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: April 9, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: April 22, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 to Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart P of Part 404 is revised to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended 53 Stat. 1368, as amended, 68 Stat. 1080, 1081, and 1082, as amended, 70 Stat. 815 and 817, as amended, 49 Stat. 647, as amended (42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302); sec. 505 (a) and (c) of Pub. L. 96–265, 94 Stat. 473, secs. 6 and 15 of Pub. L. 98–460, 98 Stat. 1802, and 98 Stat. 1808.

2. Section 404.1589 is revised to read as follows:

§ 404.1589 We may conduct a review to find out whether you continue to be disabled.

After we find that you are disabled, we must evaluate your impairment(s) from time to time to determine if you are still eligible for disability cash benefits. We call this evaluation a continuing disability review. We may begin a continuing disability review for any number of reasons including your failure to follow the provisions of the Social Security Act or these regulations. When we begin such a review, we will notify you that we are reviewing your eligibility for disability benefits, why we are reviewing your eligibility, that our review could result in the termination of your benefits, and, where applicable, that you have the right to submit medical and other evidence for our consideration during the continuing disability review. In doing a medical review we will develop a complete medical history of at least the preceding 12 months in any case in which a determination is made that you are no longer under a disability. If this review shows that we should stop payment of your benefits, we will notify you in writing and give you an opportunity to appear. In § 404.1590 we describe those events that may prompt us to review whether you continue to be disabled.

3. Section 404.1590 is revised to read as follows:

§ 404.1590 When and how often we will conduct a continuing disability review.

(a) *General.* We conduct continuing disability reviews to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits or a period of disability ends if the medical or other evidence shows that you are not disabled as determined under the standards set out in section 223(f) of the Social Security Act.

(b) *When we will conduct a continuing disability review.* A continuing disability review will be started if—

(1) You have been scheduled for a medical reexamination diary review;

(2) You have been scheduled for a periodic review in accordance with the provisions of paragraph (d) of this section;

(3) We need a current medical or other report to see if your disability continues. (This could happen when, for example, an advance in medical technology, such as improved treatment for Alzheimer's disease or a change in vocational therapy or technology raises a disability issue or it appears that a decision may have been erroneous);

(4) You return to work and successfully complete a period of trial work;

(5) Substantial earnings are reported to your wage record;

(6) You tell us that you have recovered from your disability or that you have returned to work;

(7) Your State Vocational Rehabilitation Agency tells us that—

(i) You have completed your training;

(ii) You have returned to work; or

(iii) You are able to return to work;

(8) Some one in a position to know of your physical or mental condition tells us that your are not disabled, that you are not following prescribed treatment, that you have returned to work, or that you are failing to follow the provisions of the Social Security Act or these regulations, and it appears that the report could be substantially correct; or

(9) Evidence we receive raises a question as to whether your disability continues.

(c) *Definitions.* As used in this section—

"Medical reexamination diary"—refers to a case which is "diaried" for review at a later date because the condition of the beneficiary is expected to improve. Generally the diary period is not set for less than 6 months or for more than 18 months. Examples of cases likely to be scheduled for medical reexamination diary are fractures and cases in which corrective surgery is planned and recovery can be anticipated.

"Permanent impairment"—refers to a case in which any medical improvement in the person's impairment(s) is not expected. This means an extremely severe condition determined on the basis of our experience in administering the disability programs to be at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications, and unlikely to improve so as to permit the individual to engage in substantial gainful activity. The interaction of the individual's age, impairment consequence and the lack of recent attachment to the labor market may also be considered in determining whether an impairment is permanent. Examples of permanent impairments are:

(1) Parkinsonian Syndrome which has reached the level of severity necessary to meet the Medical Listing in Appendix 1.

(2) Amyotrophic Lateral Sclerosis which has reached the level of severity necessary to meet the Medical Listing in Appendix 1.

(3) Diffuse pulmonary fibrosis in an individual age 55 or over which has reached the level of severity necessary to meet the Medical Listing in Appendix 1.

"Nonpermanent impairment"—refers to a case in which any medical improvement in the person's impairment(s) is possible. This means a condition for which improvement cannot be predicted based on current experience and the facts of the particular case but which is not at the level of severity of an impairment that is considered permanent.

(d) *Frequency of review.* If your condition is expected to improve, generally we will review your continuing eligibility for disability benefits at intervals from 6 months to 18 months following our most recent decision. Our notice to you about the review of your case will tell you more precisely when the review will conducted. If your disability is not considered permanent but is such that any medical improvement in your impairment(s) cannot be accurately predicted, we will review your continuing eligibility for disability benefits at least once every 3 years. If your disability is considered permanent we will review your continuing eligibility for benefits no less frequently than once every 7 years but no more frequently than once every 5 years. Regardless of your classification, we will conduct an immediate continuing disability review if a question of continuing disability is raised pursuant to paragraph (b) of this section.

(e) *Change in classification of impairment.* If the evidence developed during a continuing disability review demonstrates that your impairment has improved, is expected to improve, or has worsened since the last review, we may reclassify your impairment to reflect this change in severity. We may also reclassify certain impairments because of improved tests, treatment, and other technical advances concerning those impairments.

(f) *Review after administrative appeal.* If you were found eligible to receive, or to continue to receive disability benefits on the basis of a decision by an administrative law judge, the Appeals Council or a Federal Court, we will not conduct a continuing disability review earlier than 3 years after that decision unless your case is scheduled for a medical reexamination diary review or a question of continuing disability is raised pursuant to paragraph (b) of this section.

(g) *Waiver of Time Frames.* All cases involving a nonpermanent condition will be reviewed by us at least once every 3 years unless we, after consultation with the State agency, determine that the requirement should be waived to ensure that only the appropriate number of cases are reviewed. The appropriate number of cases to be reviewed is to be based on such considerations as the backlog of pending reviews, the projected number of new applications, and projected staffing levels of the State agency. Such waiver shall be given only after good faith effort on the part of the State to meet staffing requirements and to process the reviews timely. Availability of independent medical resources may also be a factor. A "waiver" in this context refers to our administrative discretion to determine the appropriate number of cases to be reviewed on a State by State basis. Therefore, your continuing disability to review may be delayed longer than 3 years following our original decision or other review under certain circumstances. Such a delay would be based on our need to ensure that backlogs, reviews required to be performed by the Social Security Disability Benefits Reform Act (Pub. L. 98–460), and new disability claims workloads are accomplished within available medical and other resources in the State agency and that such reviews are done carefully and accurately.

PART 416—[AMENDED]

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

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

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 88 Stat. 52, 86 Stat. 1475 (42 U.S.C. 1302, 1382, and 1383); secs. 6 and 15 of Pub. L. 98–460, 98 Stat. 1802, and 98 Stat. 1808.

2. Section 416.989 is revised to read as follows:

§ 416.989 We may conduct a review to find out whether you continue to be disabled or blind.

After we find that you are disabled or blind, we must evaluate your impairment(s) from time to time to determine if you are still eligible for payments based on disability or blindness. We call this evaluation a continuing disability review. We may begin a continuing disability review for any number of reasons including your failure to follow the provisions of the Social Security Act or these regulations. When we begin such a review, we will notify you that we are reviewing your eligibility for payments, why we are reviewing your eligibility, that our review could result in the termination of your payments, and, where applicable, that you have the right to submit medical and other evidence for our consideration during the continuing disability review. In doing a medical review we will develop a complete medical history of at least the preceding 12 months in any case in which a determination is made that you are no longer under a disability or blind. If this review shows that we should stop your payments, we will notify you in writing and give you an opportunity to appeal. In § 416.990 we describe those events that may prompt us to review whether you continue to be disabled or blind.

3. Section 416.990 is revised to read as follows:

§ 416.990 When and how often we will conduct a continuing disability review.

(a) *General.* We conduct continuing disability reviews to determine whether or not you continue to meet the disability or blindness requirements of the law. Payment ends if the medical or other evidence shows that you are not disabled or blind as determined under the standards set out in section 1614(a) of the Social Security Act if you receive benefits based on disability or § 416.986 of this subpart if you receive benefits based on blindness.

(b) *When we will conduct a continuing disability review.* A continuing disability review will be started if—

(1) You have been scheduled for a medical reexamination diary review;

(2) You have been scheduled for a periodic review in accordance with the provisions of paragraph (d) of this section;

(3) We need a current medical or other report to see if your disability continues. (This could happen when, for example, an advance in medical technology, such as improved treatment for Alzheimer's disease, or a change in vocational therapy or technology raises a disability issue, or it appears that a decision may have been erroneous);

(4) You return to work and successfully complete a period of trial work;

(5) Substantial earnings are reported to your wage record;

(6) You tell us that you have recovered from your disability or blindness or that you have returned to work;

(7) Your State Vocational Rehabilitation Agency tells us that—

(i) You have completed your training;

(ii) You have returned to work; or

(iii) You are able to return to work;

(8) Some one in a position to know of your physical or mental condition tells us that you are not disabled or blind, that you are not following prescribed treatment, that you have returned to work, or that you are failing to follow the provisions of the Social Security Act or these regulations, and it appears that the report could be substantially correct; or

(9) Evidence we receive raises a question as to whether your disability or blindness continues.

(c) *Definitions.* As used in this section—

"Medical reexamination diary"—refers to a case which is "diaried" for review at a later date because the condition of the beneficiary is expected to improve. Generally the diary period is not set for less than 6 months or for more than 18 months. Examples of cases likely to be scheduled for medical reexamination diary are fractures and cases in which corrective surgery is planned and recovery can be anticipated.

"Permanent impairment"—refers to a case in which any medical improvement in the person's impairment(s) is not expected. This means an extremely severe condition determined on the basis of our experience in administering the disability programs to be at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications, and unlikely to improve so as to permit the individual to engage in substantial gainful activity. The interaction of the individual's age, impairment consequences and the lack of recent attachment to the labor market may also be considered in determining whether an impairment is permanent. Examples of permanent impairments are:

(1) Parkinsonian Syndrome which has reached the level of severity necessary to meet the Medical Listing in Appendix 1 of Subpart P of Part 404 of this chapter.

(2) Amyotrophic Lateral Sclerosis which has reached the level of severity necessary to meet the Medical Listing in Appendix 1 of Subpart P of Part 404 of this chapter.

(3) Diffuse pulmonary fibrosis in an individual age 55 or over which has reached the level of severity necessary to meet the medical Listing in Appendix 1 of Subpart P of Part 404 of this chapter.

"Nonpermanent impairment"—refers to a case in which any medical improvement in the person's impairment(s) is possible. This mean a condition for which improvement cannot be predicted based on current experience and the facts of the particular case but which is not at the level of severity of an impairment that is considered permanent.

(d) *Frequency of review.* If your condition is expected to improve, generally we will review your continuing eligibility for payments based on disability or blindness at intervals from 6 months to 18 months following our most recent decision. Our notice to you about the review of your case will tell you more precisely when the review will be conducted. If your disability is not considered permanent but is such that any medical improvement in your impairment(s) cannot be accurately predicted, we will review your continuing eligibility for payments at least once every 3 years. If your disability is considered permanent we will review your continuing eligibility for payments no less frequently than once every 7 years but no more frequently than once every 5 years. Regardless of your classification we will conduct an immediate continuing disability review if a question of continuing disability is raised pursuant to paragraph (b) of this section.

(e) *Change in classification of impairment.* If the evidence developed during a continuing disability review demonstrates that your impairment has improved, is expected to improve, or has worsened since the last review, we may reclassify your impairment to reflect this change in severity. We may also

reclassify certain impairments because of improved test, treatment, and other technical advances concerning those impairments.

(f) *Review after administrative appeal.* If you were found eligible to receive, or to continue to receive, payments on the basis of a decision by an administrative law judge, the Appeals Council or a Federal Court, we will not conduct a continuing disability review earlier than 3 years after that decision unless your case is scheduled for a medical reexamination diary review or a question of continuing disability is raised pursuant to paragraph (b) of this section.

(g) *Waiver of Time Frames.* All cases involving a nonpermanent condition will be reviewed by us at least once every 3 years unless we, after consultation with the State agency, determine that the requirement should be waived to ensure that only the appropriate number of cases are reviewed. The appropriate number of cases to be reviewed is to be based on such considerations as the backlog of pending reviews, the projected number of new applications, and projected staffing levels of the State agency. Such waiver shall be given only after good faith effort on the part of the State to meet staffing requirements and to process the reviews timely. Availability of independent medical resources may also be a factor. A "waiver" in this context refers to our administrative discretion to determine the appropriate number of cases to be reviewed on a State by State basis. Therefore, your continuing disability review may be delayed longer than 3 years following our original decision or other review under certain circumstances. Such a delay would be based on our need to ensure that backlogs, reviews required to be performed by the Social Security Disability Benefits Reform Act (Pub. L. 98–460), and new disability claims workloads are accomplished within available medical and other resources in the State agency and that such reviews are done carefully and accurately.

[FR Doc. 85–14575 Filed 6–17–85; 8:45 am]

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Tuesday
June 18, 1985

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 373

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals; Supported Employment; Final Regulation

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 373

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals: Supported Employment

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations under section 31(a)(1) of the Rehabilitation Act of 1973, as amended. This program provides financial assistance for projects that expand or otherwise improve vocational rehabilitation services and other rehabilitation services for severely handicapped individuals. These final regulations expressly provide for projects that stimulate the development and provision of supported employment services on a statewide basis.

These final regulations include information about the kinds of activities and services that are to be provided under supported employment projects, and contain separate selection criteria for evaluating applications for this type of demonstration project.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. James Moss, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, Room 3030, Mary E. Switzer Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 732-1286.

SUPPLEMENTARY INFORMATION: The Special Projects and Demonstrations Program for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals is authorized by section 311(a)(1) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777a(a)(1)). This program supports a wide variety of projects that expand or otherwise improve vocational rehabilitation services and other rehabilitation services for severely handicapped individuals, irrespective of their age or vocational potential.

The Secretary will use this authority to assist in the redirection of services for severely disabled individuals who would not be judged to have vocational potential because of the severity of their disabilities. In particular, the Secretary will, on a statewide basis, assist States to move from existing programs to supported employment programs. Supported employment programs would provide specially designed paid work in a variety of integrated settings, particularly regular work sites. The Secretary is convinced that many severely handicapped individuals who, in day activity programs or in other programs are not provided the opportunity to earn money or to interact with nonhandicapped employees, could benefit greatly from supported employment programs.

The Secretary believes that the redirection of existing service delivery systems to emphasize supported employment programs can be achieved without substantial additional Federal funds. Rather, the Secretary believes that present State and local funding resources can be shifted to supported employment programs and that Federal assistance by the Department under this program is needed only to assist grantees with start-up and other program development costs. The Department plans to make $4.2 million available for these projects in Fiscal Year 1985. *See* House Rep. No. 911, 98th Congress 2nd Session 113 (1984).

A summary of the final regulations and the significant changes adopted in response to the public comments follow:

Section 373.14 describes supported employment projects. Section 373.14(a) describes the purpose of these projects. Section 373.14(b) defines "supported employment" for purposes of Part 373. Section 373.14(c) describes the activities that these projects are authorized to carry out. Section 373.14(d) requires that grantees provide, or ensure the provision of, the ongoing delivery of direct support services from funds other than assistance under this part.

Current § 373.30 is revised and a new § 373.31 is added to describe the selection criteria that the Secretary uses in making awards for supported employment projects. The Secretary authorizes weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected.

Separate selection criteria are authorized for supported employment projects in order to focus the evaluation of applications on programmatic elements which are key to the success of the program. Examples of these key programmatic elements are the applicant's ability to achieve lasting statewide change and the coordination and participation in the projects of groups that are essential to the successful conduct of the project. Existing criteria that apply to all other types of projects under Part 373 do not address these elements that are key to the success of supported employment projects.

In §373.14(b) the word "integrated" was added before "settings" to clarify that the employment outcome should provide some contact with nonhandicapped individuals. Also, the word "unlikely" was replaced with "has not traditionally occurred" to clarify that the focus of this program is to provide severely handicapped individuals with an opportunity to earn substantially more than the traditional wage paid in other settings, such as work activity centers.

In § 373.14(c), the words "day activity" were deleted since all severely handicapped individuals are eligible to be served regardless of the type of program in which they are currently participating, if they meet the requirements of § 373.14(b).

In § 373.14(d)(2)(i), the wording was changed to read "Job site training to enable the handicapped individual to perform work and maintain the job." These changes more clearly state the purpose of the program by defining the location at which the individual receiving supported employment services should be trained; by clarifying the program participants would be receiving supported employment services on the job rather than receiving prework or preparatory training prior to job placement; and by defining the employment goal more clearly.

In § 373.31(h)(2)(iii) the words "private agencies" and "rehabilitation facilities" were added because such organizations represent important segments of the community interested in improving rehabilitation services.

Public Participation

The notice of proposed regulations for this program were published on February 28, 1985 (50 FR 8300). A summary of the comments received in response to that notice and the Secretary's responses to those comments are contained in the appendix to these regulations.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

These regulations do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 373

Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.128, Special Projects and Demonstrations: Supported Employment)

Dated: June 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 373 of Title 34 of the Code of Federal Regulations as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

1. The authority citation for Part 373 continues to read as follows:

Authority: Sec. 12(c) and 311(a)(1) of the Act; 29 U.S.C. 711(c) and 777a(a)(1).

2. A new § 373.14 is added to read as follows:

§ 373.14 What are Supported Employment demonstration projects?

(a) *Purpose.* The purpose of Supported Employment demonstration projects is to stimulate the development and provision of supported employment on a statewide basis for severely handicapped individuals who, because of the severity of their handicap, would not normally receive vocational rehabilitation services.

(b) *Definition.* "Supported employment", as used in this part, means paid work in a variety of integrated settings, particularly regular work sites, especially designed for severely handicapped individuals, irrespective of age or vocational potential—

(1) For whom competitive employment at or above the minimum wage has not traditionally occurred; and

(2) Who, because of their disability, need intensive ongoing post-employment support to perform in a work setting.

(c) *Authorized activities.* Under the Supported Employment demonstration program, the Secretary provides financial assistance for projects that may include—

(1) Program development, including program start-up costs, for new or existing community organizations and employers;

(2) Staff training;

(3) Program evaluation; and

(4) Program reorganization to convert existing programs to programs that offer supported employment services.

(d) *Restrictions on the use of funds.*

(1) Under this program the Secretary does not provide financial assistance for the ongoing delivery of direct supported employment services.

(2) A grantee must provide, on ensure the provision of, the ongoing delivery of those direct services needed by severely handicapped individuals in order for them to maintain employment. These supported employment services include—

(i) Job site training to prepare and enable the handicapped individual to perform work and maintain the job;

(ii) Ongoing supervision of the handicapped individual on the job;

(iii) Ongoing behavior management; and

(iv) Case management, including assistance to coordinate services from various sources.

(Sec. 311(a)(1) of the Act; 29 U.S.C. 777a(a)(1))

3. Section 373.30 is amended by adding introductory text at the beginning of the section to read as follows:

§ 373.30 What selection criteria does the Secretary use under this program?

The Secretary uses the criteria in this section to evaluate applications for all projects under this part, except for Supported Employment demonstration projects. The maximum score for all of the criteria is 100 points.

* * * * *

4. A new § 373.31 is added to read as follows:

§ 373.31 What selection criteria does the Secretary use for Supported Employment demonstration projects?

The Secretary uses the criteria in this section to evaluate applications for Supported Employment demonstration projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness.* (10 points) The secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources.* (5 points) The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Capacity to achieve lasting statewide change.* (15 points) (1) The Secretary reviews each application for information that demonstrates the capacity of the applicant to achieve lasting statewide change in the provision of supported employment for handicapped individuals.

(2) The Secretary looks for information that shows—

(i) The applicant agency has responsibility for programs to be changed or is able to assure that program change will occur;

(ii) The project resources will be used to change how existing service funds are spent, not to supplant those funds; and

(iii) A sufficient number of service programs and work opportunities can be developed within the project period to achieve statewide change.

(g) *Project design.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the project design and approach.

(2) The Secretary looks for information that shows—

(i) The applicant has clearly defined the services and service delivery system which will result from the project and has analyzed in detail how these differ from current services and the current service delivery systems;

(ii) All relevant barriers to implementing the proposed statewide change are identified and appropriate strategies are proposed for eliminating those barriers;

(iii) The project will employ a multifaceted and systematic approach for achieving project objectives, which may include activities such as

dissemination of information, training and technical assistance, start-up of new programs, and development of incentives for employer participation; and

(iv) The project is designed to achieve a range of service approaches that are appropriate for the variety of employment opportunities in the State.

(h) *Participation and coordination.* (15 points) (1) The Secretary reviews each application for information that shows coordination with and participation of all affected groups and agencies.

(2) The Secretary reviews each application for information that demonstrates that—

(i) Handicapped individuals and parents of handicapped individuals participate in project decision-making;

(ii) Potential employers of handicapped individuals are involved in project planning and decision-making; and

(iii) All State agencies whose cooperation and participation are necessary for statewide implementation of supported employment projects are actively collaborating in project management. These agencies may include those responsible for secondary special education, vocational rehabilitation, and day services for individuals with developmental disabilities, as well as private agencies and rehabilitation facilities.

(i) *Impact on other States.* (5 points) (1) The Secretary reviews each application for information that shows the impact the proposed project will have on other States.

(2) The Secretary looks for information that shows—

(i) The approach to be used can be applied to other States; and

(ii) The applicant will disseminate its project information to other States.

(Secs. 12(c) and 311(a)(1) of the Act, 29 U.S.C. 711(c) and 777a(a)(1))

Appendix A—Analysis of Public Comments and Changes in the Final Regulations

Note.—This Appendix will not appear in the Code of Federal Regulations.

The following is a summary of public comments concerning the notice of proposed rulemaking for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals: Supported Employment, published in the **Federal Register** on February 28, 1985 (50 FR 8300) and the Secretary's responses to those comments. A total of 186 comments was received on or before the closing date. Fifty-three percent of these were from private citizens, the remainder came from a variety of public and private nonprofit agencies.

General

Comments: Several commenters suggested the regulations specify the roles and responsibilities of other Departments, particularly the Departments of Labor and Health and Human Services. They also urged interdepartmental coordination and cooperation at the Federal level. Their primary concern was about the actual or potential inflexibilities in programs administered by other agencies which either could result in disincentives for severely handicapped individuals to participate in a supported employment program or would present barriers to the implementation of the supported employment initiative.

Response: No change has been made. It is not the intent of this demonstration to make regulatory changes in other Federal programs. The purpose of this program is to assist States to redirect existing funds controlled by the States into supported employment programs. The regulations of other Federal agencies therefore are not affected by the regulations of the supported employment program. Through an interagency agreement, the Department of Health and Human Services is providing additional funds to support grants made under this program. The Department of Labor plays no direct role in this program. Given these circumstances, it is not necessary for the regulations to specify their roles.

Comments: A number of commenters believed it was the intent of the Congress to focus on three specific disability groups in the Special Projects and Demonstrations program. Therefore, they objected to these regulations as being inconsistent with the existing legislative authority.

Response: No change has been made. Section 304(b)(1) of the Rehabilitation Act of 1973 authorized projects which hold promise of expanding or otherwise improving rehabilitation services to severely handicapped individuals, including persons disabled by deafness and spinal cord injury, and older persons disabled by blindness. During the first three years this program was in operation, all projects served these three disability groups. In subsequent years, the scope of the program was expanded to include all severe disability groups. The 1978 amendments to the Act extended the program to all individuals "irrespective of age or vocational potential, who can benefit from comprehensive services." The intent of the amended legislation is to focus on all severely handicapped individuals and not just the three categories mentioned as examples.

Comments: A number of commenters believed it is the intent of the Congress to emphasize the provision of services under this program, rather than to stimulate the development of statewide supported employment.

Response: No change has been made. Grants approved under section 311(a)(1) of the Rehabilitation act of 1973, as amended are intended to fund projects which hold promise of expanding or otherwise improving rehabilitation services to severely handicapped individuals. The intent of this program is to provide assistance to grantees in extending vocational opportunities to the severely handicapped through supported employment. The Secretary believes that supported employment projects are consistent with the legislative intent because supported employment services will expand employment opportunities for severely disabled individuals not traditionally served by vocational rehabilitation programs.

Section 373.14(a)

Comments: Some commenters felt that the term "severity of their handicap" and "would not normally receive vocational rehabilitation services" in § 373.14(a) are unclear.

Response: No change has been made. The secretary believes that one of the reasons why some severely disabled clients may be denied vocational rehabilitation services under the Title I program, is the determination by States that these individuals cannot attain and maintain vocational goals without receiving long-term or continuing post-employment services. There are durational limits on the provision of vocational rehabilitation services, including post-employment services. The Secretary believes that § 373.14(a) adequately states the purpose of the program which is to target the supported work demonstration on those severely handicapped individuals who would not normally receive vocational rehabilitation services because of their inability to benefit from time-limited services.

Section 373.14(b)

Comment: One commenter suggested the addition of the word "integrated" before "settings" in § 373.14(b).

Response: A change has been made. The word "integrated" has been inserted before "settings" to clarify that the employment outcome should provide daily contact with nonhandicapped

individuals. The intent of the program is to integrate severely handicapped individuals into a normal work environment rather than place them in facilities designed only for handicapped individuals. The Secretary believes that it is very important that the employment settings provide the opportunity for severely handicapped individuals to have daily contact with nonhandicapped peers.

Comment: One commenter did not understand the term "ongoing" as used in §§ 373.14(b) and 373.14(d).

Response: No change has been made. An individual should be considered to be receiving ongoing employment support (a) when public funds are available on a continuing basis to an individual or to a service provider responsible for providing employment support to that individual, and (b) when these funds are used for services directly related to sustaining employment. To be considered "ongoing," services such as job coaching, skill training, behavior management, employer counseling, etc., must be available on a continuing basis and provided as needed.

Comments: Several commenters wanted the definition of supported employment clarified by specifying the types of agencies from which clients could be selected rather than the types of activities that can be supported. Others wanted to define client eligibility in terms of the results of vocational assessments. Still others requested a more specific definition of client participation and one commenter did not want the program limited to any specific population.

Response: No change has been made. The purpose of this program is to focus on providing the employment support needed to permit severely disabled persons to generate income without regard to the prior histories of such persons or the programs from which they came. Severely disabled clients have frequently been denied employment opportunities because State vocational rehabilitation agencies are able to provide only time-limited support rather than the ongoing support that is often needed. Since this program is intended to serve those individual who meet the requirements of § 373.14(b) regardless of the setting in which they are currently placed, a change was not warranted.

Comment: One commenter specifically wanted the definition of eligible clients to mention the elderly, chronically mentally ill, unemployed, and sheltered clients.

Response: No change has been made. These regulations do not preclude the inclusion of these groups provided the individuals meet the criteria contained in § 373.14(b).

Comments: Several commenters urged using the Federal definition of "developmental disabilities."

Response: No change has been made. This program is not limited to providing services to individuals with developmental disabilities. Provided they meet the requirements of § 373.14(b), other individuals can be served.

Comment: One commenter wanted to include supported employment enclaves in industry and work crews in the definition of supported employment.

Response: No change has been made. The examples given are only two of several models which may be used in the implementation of these programs. It would be neither appropriate nor possible to list all models or combinations of models of supported employment which might be appropriate for development within the program. It is the intent of these regulations to allow applicants maximum flexibility and to encourage them to explore new avenues for increasing wages for severely handicapped individuals through the supported employment mechanism.

Comment: One commenter wanted the term "severely handicapped individuals" defined and another asked whether this definition covered both the physically and mentally handicapped.

Response: No change has been made. The term "severely handicapped individual" is defined in 34 CFR 369.4(b). This definition, which includes individuals who have either severe physical or mental disabilities, applies to the supported work program.

Comment: One commenter requested that the definition of supported employment specifically refer to competitive employment in the private sector.

Response: No change has been made. Support within the competitive employment sector is authorized under these regulations. No modification was made because the Secretary does not wish to limit the range of alternatives and options available to applicants in the development of job sites.

Comments: Several commenters suggested changing the language in § 373.14(b)(1) to delete the word "unlikely" and replace it with "has not traditionally occurred.".

Response: A change has been made. The Secretary believes this clarifies an important concept of this program. The focus of this program is to provide severely handicapped individuals with an opportunity to earn substantially more than the traditional wage paid in other settings, such as work activity centers.

Section 373.14(b)(2)

Comments: Several commenters indicated that they believed the restriction to development expenses contained in § 373.14(d) was inconsistent with the provision of post-employment services mentioned in § 373.14(b)(2). They pointed out that post-employment services are a required rehabilitation service and must be provided under an approved State plan.

Response: No change has been made. The commenter is correct that States are required to provide post-employment services as a part of the Title I program under the Rehabilitation Act of 1973, as amended. However, the fact that Federal funds can pay for such services under Title I is not relevant to the services provided through the supported employment program authorized under Section 311 of the same Act.

Comment: One commenter expressed concern that § 373.14(b) seems to imply that an individual's vocational potential be disregarded. The commenter felt that it would not be possible to use Title I funds for the ongoing support of supported employment since vocational potential is a prerequisite to receiving vocational rehabilitation services under Title I of the Rehabilitation Act of 1973, as amended.

Response: No change has been made. In the final regulations, the phrase "irrespective of age and vocational potential" in § 373.14(b) is taken from the language of the Act relating to the special projects and demonstrations authorization. There is no requirement that vocational potential be documented for this program. Eligibility for services under Title I (Section 110 of the Rehabilitation Act) must be determined on an individual basis consistent with the requirements of that Title which would include a determination of vocational potential.

Section 373.14(c)

Comments: Several commenters noted that the term "day activity programs" was too restrictive, and others wanted the term defined. Another commenter felt that there are insufficient numbers of persons in day activity centers who could participate in supported employment.

Response: A change has been made. The words "day activity" have been deleted. It is important to point out that all severely handicapped individuals are eligible to be served regardless of the type of program in which they are

currently participating, if they meet the requirements of § 373.14(b).

Comments: Several commenters believed that the authorized activity of program reorganization designed to convert day activity programs to supported employment programs would require "significant time and effort." They point out the continuing need for day activity programs for large numbers of persons, irrespective of the availability of supported employment programs. One commenter expressed concern about the redirection of scarce day activity resources and the requirement that States meet the needs of persons in day activity programs.

Response: No change has been made. It is not the intent of these regulations to disrupt any existing services for severely handicapped persons. The Secretary is aware of the resources available to serve handicapped individuals. However, the Secretary believes that there are instances where existing services might be modified to enable severely handicapped individuals to reach their maximum vocational potential, regardless of the setting or the modality of services.

Section 373.14(d)

Comments: Several commenters raised questions and suggested changes concerning the scope, mechanics, and amount of funds authorized under this program. Questions were also raised about other sources of funds which could be used for implementation of supported employment programs and whether projects are expected to generate income to lower future funding levels.

Response: No changes have been made. It is anticipated that applicants will coordinate available State and local resources to develop the type of funding mechanisms necessary for supported employment programs (e.g., use of various funding streams such as the Job Training Partnership Act, Title XX of the Social Security Act, etc.). After the initial expenditure of funds for start-up and development costs, it is expected that a combination of short-term and long-term funding sources would need to be identified at the State and local levels to continue supported employment projects. The intent of these regulations is to allow maximum flexibility to the applicant, consistent with the legislation, in developing new ways to use existing funds that will be responsive to particular State and local needs.

Comment: One commenter asked whether applications for regional grants utilizing the resources of two States would be accepted.

Response: No change has been made. The regulations do not preclude the possibility of a joint application submitted by more than a single State. However, since the focus is on State service delivery systems and the selection criteria relate to "Statewideness", it is unlikely that such an application would score high enough in the review process to be approved.

Comment: One commenter requested a clarification of when start-up costs terminate and ongoing services begin.

Response: No change has been made. The terms "start-up costs" and "on-going services" are not defined in the regulations because the variability of these from project to project makes formal definition impractical. Funds provided under this program may be used, however, throughout the life of the project for planning, development, evaluation, training and other costs not associated with direct services. In some situations, a grantee may initiate a number of supported employment demonstration sites in a sequential fashion. In such situations, the start-up period would pertain to each demonstration site, not to the project as a whole.

Comment: One commenter asked whether a grantee could subcontract.

Response: No change has been made. Although grantees cannot subgrant funds received under this program, they may enter into contracts to procure services. See 34 CFR Part 74, Subpart P (Procurement Standards).

Section 373.14(d)(2)

Comments: Several commenters requested the inclusion of additional supported employment services such as transportation services, job coaches, personal care attendants and job site modifications.

Response: No change has been made. The regulations specify only the minimum general supported employment service requirements. In the Federal regulations, it would be impossible to provide an exhaustive listing of all supported employment services which will, in large part, depend upon State and local resources and the needs of the persons being served. Final determination of these specific services is left to the discretion of the applicant.

Comments: Several commenters requested changes of wording in § 373.14(d)(2)(i) to make it read as follows: "Job site training to enable the handicapped individual to perform work and maintain the job."

Response: These changes have been made. These changes more clearly state the purpose of the program. The word "site" was added to define the location at which the individual receiving supported employment services should be trained; the word "prepare" was dropped to clarify that the program participants would be receiving supported employment services on the job rather than receiving prework or preparatory training prior to job placement; and the phrase "and maintain the job" was added to define the employment goal more clearly.

Comment: One commenter wanted § 373.14(c)(1) changed by adding wording to encourage the use of existing public and nonprofit facilities to "the maximum extent feasible and appropriate."

Response: No change has been made. Examples of program development activities appropriate for support are identified in § 373.14(c)(1) and in the discussion above. The regulations do not prohibit the use of existing public and nonprofit facilities nor do they discourage or encourage their use. Applicants may make use of whatever resources are appropriate and available in the achievement of their goals.

Section 373.31(a)

Comments: Several commenters expressed concern about the lack of provision for a continuum of services for those individuals who are unsuccessful in supported employment programs and suggested the regulations include this provision.

Response: No change has been made. The purpose of this program is to assist in the development of new service options at the State and local levels through the provision of services that are not currently available. The "continuum of services" addressed by this commenter is expanded, not restricted, by the inclusion of a supported work option. Disabled individuals who attempt but are unsuccessful in supported employment have no fewer options available to them than they had prior to the development of this program.

Section 373.31(f)

Comments: Several commenters were concerned that the expectation for statewide change is premature and stated that funds for this program should be divided between statewide projects and discrete projects administered by private nonprofit facilities or State associations of rehabilitation facilities. Additionally, several commenters expressed doubt about their ability to effect the required statewide change and requested modification in the standard of change from statewide to substantial change of service operations. In their

view, promoting rather than achieving statewide change was more realistic.

Response: No change has been made. In the past, the Department has funded a variety of successful supported employment projects. Statewide applications of alternative models are the key to the success of this particular program. At this time, the Secretary continues to believe that present State and local Resources can be shifted to supported employment programs on a statewide basis. However, these regulations do not preclude the development of discrete demonstration projects within a given State. In fact, an applicant may fund demonstration models if necessary to achieve program goals. It is left to the discretion of the applicants to determine activities and approaches to be used in effecting this statewide change.

Comments: Several commenters expressed concern that this program would result in a replication of the current services delivery system and/or create a dual service system. Additionally, one commenter wanted § 373.31(f)(2) (i) and (ii) deleted because the services provided would replicate existing facility capability.

Response: No change has been made. Section 373.31(f)(2) (i) and (ii) provide assurance that program change will occur and prohibit the supplanting of Federal funds. Additionally, § 373.31(g)(2)(i) specifies that the applicant must clearly define how the services and service delivery system proposed in the application differ from the current system. Funds awarded under this program are not to be used to duplicate existing facility capability. Rather, funds are to be used for initial program development to assist in the redirection of existing State and local resources. The Secretary believes that these assurances and the stated purpose of the program will prevent duplication of existing services and service systems.

Comments: Several commenters objected to the statewide approach since they feel statewideness tends to limit the number of applicants eligible to apply.

Response: No change has been made. All entities eligible under Section 311 of the Rehabilitation Act are eligible to apply. The justification for the statewide approach is stated in prior responses in this Appendix.

Comments: Several commenters objected to inclusion of § 373.31(f)(1) which requires applicants to demonstrate the capacity to achieve lasting statewide change. They believe this is contrary to the purpose of the legislation which is to provide funds for demonstration.

Response: No change has been made. Since a legitimate purpose of "demonstration" is to facilitate change, it is reasonable to require an applicant to demonstrate the capability for such change. The selection criterion in these regulations is consistent with existing regulations (§ 373.30(j)) which seek assurance that a project will be continued following the termination of Federal grant assistance.

Section 373.31(g)(ii)

Comment: One commenter was concerned that all barriers to implementation of this program could not be identified.

Response: No change has been made. The regulations require that relevant barriers to implementing this program be identified by the applicant. This is essential to the success of the program, and although perhaps not all barriers will be obvious, applicants should identify the major State and local barriers prior to the submission of their applications.

Comment: One commenter raised the question as to whether the emphasis of the project should be directed toward one supported employment model or whether agencies would be permitted to fund a variety of models.

Response: No change has been made. There are various types of supported employment models currently in operation throughout the country. Nothing in the regulations precludes the development of alternative supported employment models within a single application to meet the needs of handicapped individuals within the State.

Comments: Several commenters wanted the role of employers and the development of employer incentives defined.

Response: No change has been made. There are various types of supported employment models which can be utilized in implementing statewide supported employment programs. It is not the intent of these regulations to prescribe specific strategies which may be used or roles to be assigned. Since employer involvement is a key element to successful supported employment programs, the development of specific incentives for employers should be left to the discretion of the applicant. To allow as much latitude as possible to the applicant, no attempt has been made to limit the range of possibilities by defining the role of the employer or specific incentives.

Section 373.31(h)

Comments: Several commenters requested clarification of the specific roles of potential employers, vocational rehabilitation service providers, parents of handicapped individuals, consumers, and other nonprofit organizations. One commenter requested that § 373.31(h) of the final regulations require the formal establishment of an advisory committee.

Response: No change has been made. The regulations required the applicant to demonstrate the participation of all individuals and groups identified above. These regulations do not preclude the establishment of an advisory committee at the State and local levels and this remains an option open to all applicants. The Secretary believes that the present requirement in these regulations for assurances of coordination with all affected parties will be sufficient to provide for their participation in the implementation of supported employment programs.

Comment: One commenter requested the addition of "private agencies" and "rehabilitation facilities" under § 373.31(h)(2)(iii).

Response: A change has been made. The Secretary believes that such organizations should be included, because they represent important segments of the community interested in improving rehabilitation services, and applicants may need to collaborate with and/or draw upon the expertise of these parties in the implementation of their supported employment programs.

Section 373.31(i)

Comments: A number of commenters believe that it is not possible prior to project implementation to show the impact of the project on other States and that this selection criterion is inconsistent with the purpose of demonstration projects.

Response: No change has been made. The selection criterion in § 373.31(i) addresses how the supported employment demonstration in one State may influence rehabilitation systems in other States, whether or not those other States have such demonstrations. For example, showing how employers will participate, how State and local advisory groups are to be utilized, and how to effectively marshal the collective resources of multiple agencies are all ways in which a demonstration in one State may impact on other States. This criterion is very similar to the existing criterion in § 373.30(i).

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