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Friday
August 2, 1985

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Federal Trade Commission

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Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Deposit Insurance Corporation

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 371

Organization, Functions, and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Final rule.

SUMMARY: This document revises the statement of organization, functions, and delegations of authority of the Animal and Plant Health Inspection Service (APHIS) by realigning the regional structure of Veterinary Services. The Western Regional Office at Reno, Nevada, has been closed. Its functions have been assumed by the North Central Regional Office in Englewood, Colorado. The expanded office is known as the Western Regional Office.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Classification, Employment, and Executive Resources Programs, Human Resources Division, Animal and Plant Health Inspection Service, 6505 Belcrest Road, Room 221 Federal Building, Hyattsville, MD, 20782; (301–436–6466).

SUPPLEMENTARY INFORMATION: Veterinary Services (VS) has been organized into five regional offices for several years. During this time, disease programs have changed and disease incidence has been reduced in some regions. As a result, workload is not equally divided and there is justification for a realignment of regional field offices. Specifically, the VS regional office in Reno, Nevada, has been closed and its functions assumed by the regional office in Englewood, Colorado. This expanded region is called the Western Region and will be headquartered in Englewood, Colorado. This change is part of the continuing APHIS effort to reduce administrative overhead and improve overall efficiency and economy. Moreover, moving the functions to the metropolitan Denver, Colorado area brings the region into conformance with federally mandated standard regional office locations. This rule relates to internal Agency management and, therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal Agency management, it is exempt from the provisions of Executive Order 12291. Finally, this subject is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of the Act.

List of Subjects in 7 CFR Part 371

Authority delegations (Government agencies), Organization and functions (Government agencies.)

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Accordingly, 7 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Section 371.1 is amended by revising paragraph (c)(2) to read as follows:

§ 371.1 General statement.

* * * * *

(c) * * *

(2) Veterinary Services.

Laboratories

National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

Regions

Western: 317 Inverness Way South, Englewood, CO 80112.

Northern: Building 12, GSA Depot, Scotia, NY 12302.

Southeastern: P.O. Box 560, Tampa, FL 33601.

South Central: 221 Lancaster Avenue, Suite 310, Ft. Worth, TX 76102.

* * * * *

Issued at Washington, D.C., this 23rd day of July, 1985.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85–18312 Filed 8–1–85; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Parts 917, 920, 926, 927, 945, 946, 947, 948, 953, and 958

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 917, 920, 926, 927, 945, 946, 947, 948, 953, and 958 for the 1985–86 fiscal period. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1985–March 31, 1986 (§ 926.225); March 1, 1985, February 28, 1986 (§ 917.243); June 1, 1985–May 31, 1986 (§ 953.222); July 1, 1985–June 30, 1986 (§§ 927.225, 946.238, 947.238, 948.293, and 958.229); August 1, 1985–July 31, 1986 (§§ 920.201 and 945.238).

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–5764.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information.

Accordingly, the Secretary finds that upon good cause shown it is

impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such year. To enable the committees to meet current fiscal obligations, approval of the expenses is necessary without delay. Handlers have been apprised of the provisions and effective dates specified in this final rule. It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Parts 917, 920, 926, 927, 945, 946, 947, 948, 953, and 958

Marketing agreements and orders, Grapes, Kiwifruit, Peaches, Pears, Plums, Potatoes, Onions, California, Colorado, Idaho, North Carolina, Oregon, Virginia, Washington.

1. The authority citation for 7 CFR Parts 917, 920, 926, 927, 945, 946, 947, 948, 953, and 958 continues to read as follows:

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

2. Therefore new §§ 917.243, 920.201, 926.225, 927.225, 945.238, 946.238, 947.238, 948.293, 953.222, and 958.229 are added to read as follows: (The following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations.)

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.243 Expenses and assessment rate.

Expenses of $669,504 by the Pear Commodity Committee are authorized, and an assessment rate of $0.20 per No. 29B special lug box of pears is established for the fiscal year ending February 28, 1986. Unexpended funds may be carried over as a reserve.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

§ 920.201 Expenses and assessment rate.

Expenses of $263,975 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0625 per 7½ pound tray (or the equivalent) is established for the fiscal year ending July 31, 1986. Unexpended funds may be carried over as a reserve.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

§ 926.225 Expenses and assessment rate.

Expenses of $204,045 by the Industry Committee are authorized, and an assessment rate of $0.15 per 23 pound lug of grapes is established for the fiscal year ending March 31, 1986. Unexpended funds may be carried over as a reserve.

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

§ 927.225 Expenses and assessment rate.

Expenses of $1,678,124 by the Control Committee are authorized, and an assessment rate of $0.23 per Western Standard pear box of pears is established for the fiscal year ending June 30, 1986. Unexpended funds may be carried over as a reserve.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

§ 945.238 Expenses and assessment rate.

Expenses of $78,285 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of potatoes is established for the fiscal period ending July 31, 1986. Unexpended funds may be carried over as a reserve.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

§ 946.238 Expenses and assessment rate.

Expenses of $23,450 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.002 per hundredweight of potatoes is established for the fiscal period ending June 30, 1986. Unexpended funds shall be carried over as a reserve.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES IN CALIFORNIA AND ALL COUNTIES IN OREGON EXCEPT MALHEUR COUNTY

§ 947.238 Expenses and assessment rate.

Expenses of $36,510 by the Oregon-Northern California Potato Committee are authorized, and an assessment rate of $0.0025 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1986. Unexpended funds may be carried over as a reserve.

PART 948—IRISH POTATOES GROWN IN COLORADO

§ 948.293 Expenses and assessment rate.

Expenses of $1,508 by the Colorado Area 3 Potato Committee are authorized and an assessment rate of $0.002 per hundredweight of potatoes is established for the fiscal period ending June 30, 1986. Unexpended funds may be carried over as a reserve.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

§ 953.222 Expenses and assessment rate.

Expenses of $10,000 by the Southeastern Potato Committee are authorized and an assessment rate of $0.0075 per hundredweight of potatoes is established for the fiscal period ending May 31, 1986. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

§ 958.229 Expenses and assessment rate.

Expenses of $680,000 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of onions is established for the fiscal period ending June 30, 1986. Unexpended funds may be carried over as a reserve.

Dated: July 26, 1985.

Thomas R. Clark,

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

[FR Doc. 85-18376 Filed 8-1-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-22-AD; Amdt. 39-5113]

Airworthiness Directives; Cessna Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 85-13-03 Amendment 39-5086, applicable to certain Cessna Models 402C and 414A airplanes by providing an initial compliance time interval for airplanes subject to the repetitive 1600 hour

radiographic inspections required by the AD. Subsequent to issuing the AD, the FAA learned that the AD as promulgated may inadvertantly and unintentionally ground some affected airplanes. The revision removes this unnecessary burden.

DATES: *Effective:* August 7, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Multi-engine Service Bulletin MEB85–3, dated March 1, 1985, applicable to this AD may be obtained from the Cessna Aircraft Company Customer Services, P.O. Box 1521, Wichita, Kansas 67201; Telephone (316) 685–9111. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence S. Abbott, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: AD 85–13–03 (Amendment 39–5086), which superseded AD 81–11–05 (Amendment 39–4120), was issued on June 18, 1985, and became effective July 8, 1985. Its intent was to correct an engine beam cracking problem which had persisted in the fleet despite action required by the previous AD. In part, AD 85–13–03 requires radiographic inspection at 1600 hour intervals of those engine beams on which Cessna Service Kit SK414–17 has been incorporated. Due to an oversight, the new AD did not provide an initial compliance time for affected airplanes (any airplane which has operated for at least one inspection interval since incorporation of the Service Kit). As written, this creates an undue and unintentional burden on affected owners/operators since their airplanes are essentially grounded by receipt of the new AD. This revision will correct paragraphs (a)(3) and (b)(1) of AD 85–13–03 by the addition of a 50 flight hour initial compliance time interval. Due to the urgency of this situation, public notice hereon is impracticable and unnecessary. A similar discrepancy exists in paragraphs (a)(4) and (b)(2) of the AD for airplanes which have the improved Cessna Service Kit SK414–19 installed. However, the inspection intervals for these two paragraphs are sufficiently long that none of the airplanes are immediately affected. Therefore no hardship is created by these two paragraphs and no change is being made in this area. Therefore, the FAA is revising AD 85–13–03 by adding an initial compliance time interval for airplanes subject to the 1600 hour repetitive radiographic inspection required by paragraphs (a)(3) and (b)(1) of the AD.

This amendment provides allowable time for compliance with the AD which the FAA has determined is acceptable from a safety standpoint. It imposes no additional burden on any person and will eliminate the possibility of an unwarranted grounding action. Therefore, notice and public procedure hereon are impracticable and unnecessary and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 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 11.89.

2. By revising and reissuing AD 85–13–03 in its entirety as follows:

Cessna: Applies to Model 402C (Serial Numbers (S/N) 402C0001 through 402C0808) and Model 414A (S/N 414A0001 through 414A1206) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished. To insure the structural integrity of the engine mount beams, accomplish the following:

(a) For Model 402C (S/N 402C0001 thru 402C0468) and Model 414A (S/N 414A0001 thru 414A0646) airplanes inspect the engine beams for cracks in accordance with the following schedule:

(1) On all airplanes with 500 to 1000 hours time-in-service that do not have Cessna Service Kit SK414–17 incorporated, within the next 100 flight hours and each 200 hours time-in-service thereafter, fluorescent penetrant inspect the engine beams in accordance with Cessna Multi-engine Service Bulletin (S/B) MEB85–3, dated March 1, 1985, Attachment, SECTION II: INSPECTION PROCEDURES–FLUORESCENT PENETRANT.

(2) On all airplanes with more than 1000 hours time-in-service that do not have Cessna Service Kit SK414–17 incorporated, within the next 50 flight hours and each 200 hours time-in-service thereafter, fluorescent penetrant inspect the engine beams in accordance with Cessna Multi-engine S/B MEB85–3, dated March 1, 1985, Attachment, SECTION II: INSPECTION PROCEDURES—FLUORESCENT PENETRANT.

(3) On all the above airplanes with more than 1550 hours time-in-service and that have Cessna Service Kit SK414–17 incorporated, within the next 50 flight hours and each 1600 hours time-in-service thereafter, radiographic inspect the engine beams in accordance with Cessna Multi-engine S/B MEB85–3, dated March 1, 1985, attachment, SECTION III: INSPECTION PROCEDURES—RADIOGRAPHIC.

(4) On all the above airplanes that have Cessna Service Kit SK414–19 incorporated, radiographic inspect the engine beams at 9600 flight hour intervals from the time of installation.

(b) For Model 402C (S/N 402C0469 thru 402C0808) and Model 414A (S/N 414A0647 thru 414A1206) airplanes inspect the engine beams for cracks in accordance with the following schedule:

(1) On all the above airplanes with more than 7950 hours time-in-service and that do not have Cessna Service Kit SK414–19 incorporated, within the next 50 flight hours and each 8000 flight hours time-in-service thereafter, radiographic inspect the beams in accordance with Cessna Multi-engine S/B MEB85–3, dated March 1, 1985, Attachment, SECTION III: INSPECTION PROCEDURES—RADIOGRAPHIC.

(2) On all the above airplanes having Cessna Service Kit SK414–19 incorporated after first engine overhaul, radiographic inspect the beams at 9600 flight hour intervals in accordance with Cessna Multi-engine S/B MEB85–3, dated March 1, 1985, Attachment, SECTION III: INSPECTION PROCEDURES—RADIOGRAPHIC.

(3) On all the above airplanes having Cessna Service Kit SK414–19 incorporated prior to first engine overhaul, no radiographic inspections are required.

(c) If cracks are found in the inspections of Paragraph (a) or (b) of this AD, prior to further flight perform the following in accordance with Cessna Multi-engine S/B MEB85–3, dated March 1, 1985:

(1) If any cracks are found in the left side (vertical portion) of the left engine beam of either nacelle, contact the Cessna Aircraft Company Customer Services, Post Office Box

1521, Wichita, Kansas 67201; Telephone (316) 685-9111 for special repair disposition.

(2) If cracks found in the top (horizontal portion) of the beam are less than 1.75 inches, stop drill and install Cessna Service Kit SK414-19 in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985.

(3) If cracks found in the top (horizontal portion) of the beam are greater than 1.75 inches, but less than 2.75 inches, contact the manufacturer at the address in paragraph (c)(1) above for disposition.

(4) If cracks found in the top (horizontal portion) of the beam are 2.75 inches or longer, replace the engine beam in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985.

(d) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the provisions of this AD can be accomplished.

(e) Any equivalent method of compliance with this AD must be approved by the Manager, Wichita Aircraft Certification Office, FAA, Room 100, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company Customer Services, Post Office Box 1521, Wichita, Kansas 67201, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 85-13-03, Amendment 39-5086.

This amendment becomes effective on August 7, 1985.

Issued in Kansas City, Missouri, on July 23, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-18332 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-7]

Alteration of Various Control Zones and Transition Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects **Federal Register** Document 85-11542 published in the **Federal Register** on May 14, 1985, which described alterations to various control zones and transition areas within the FAA Great Lakes Region area.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-11542 was published on May 14, 1985, identifying thirteen control zones/transition areas that were being altered due to modifications of associated navigational aids. Subsequent to publication of the Final Rule certain information was provided which caused the conversion of seven (7) navigational aids from the original list of thirteen (13) to be considered inappropriate. This in turn resulted in the conclusion that alteration of seven of the originally listed control zones/transition areas would also be inappropriate. This action rescinds seven of the proposed alterations and affirms the remaining six. To avoid confusion the complete descriptions as corrected are presented in the text of this document.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Correction

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

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.

Federal Register Document 85-11542, as published in the **Federal Register** on May 14, 1985 (50 FR 20093), is corrected as follows:

In all instances where the acronyms VOR and VORTAC appear they are to be removed and the acronym VOR/DME is to be inserted in their place for the control zones and transition areas listed below:

Section 71.171—Control Zones:
- Grand Forks, ND
- Hibbing, MN
- Jamestown, ND
- Rochester, MN

Section 71.181—Transition Areas:
- Bismarck, ND
- Philip, SD

Issued in Des Plaines, Illinois, on July 19, 1985.

Carl B. Schellenberg,

Acting Director, Great Lakes Region.

[FR Doc. 85-18328 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-12]

Alteration of Control Zone, Roosevelt Roads, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Roosevelt Roads, Puerto Rico, control zone to accommodate a change in an instrument approach procedure. The Roosevelt Roads ultra high frequency radio beacon (UHF/RBN), which is located approximately 1.5 miles southeast of the runway, is being relocated to a new site much closer to the runway. The relocation necessitates a change in the instrument approach procedure which, in turn, requires realignment of the control zone arrival extension.

EFFECTIVE DATE: 0901 G.m.t. September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 28, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering the Roosevelt Roads, Puerto Rico, control zone arrival extension to accommodate a revised instrument approach procedure (49 FR 21623). This realignment is necessitated by the relocation of the Roosevelt Roads UHF/RBN. 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. The Notice of Proposed Rulemaking (NPRM) contained an error in that the 042° bearing from the UHF/RBN was specified in the proposed amendment. The correct value is 031° and this is reflected in final description. Except for the correction noted above, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Roosevelt Roads, Puerto Rico, control zone to accommodate Instrument Flight Rule operations at Naval Station Roosevelt Roads.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT 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

Aviation safety, Airspace, Control Zone.

Adoption of the Amendment

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

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

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

2. By amending § 71.171 as follows:

Roosevelt Roads, PR—[Revised]

Within a 5-mile radius of NS Roosevelt Roads (lat. 18°15'05" N., long. 65°38'35" W.); within 3 miles each side of the 031° bearing from Roosevelt Roads UHF/RBN, extending from the 5-mile radius zone to 8.5 miles northeast of the RBN.

Issued in East Point, Georgia, on July 24, 1985.

Thomas H. Protiva,

Acting Director, Southern Region.

[FR Doc. 85-18330 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASW-11]

Designation of Transition Area; Ennis, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Ennis, TX. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Ennis Municipal Airport. This amendment is necessary since there is a new VOR/DME-A SIAP to the Ennis Municipal Airport using the Scurry Vortac (SCY). Coincident with this proposed action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2622.

SUPPLEMENTARY INFORMATION:

History

On April 8, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Ennis, TX, transition area (50 FR 13819).

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area for the protection of aircraft conducting IFR activity while arriving to or departing from the Ennis Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Control Zones, Transition Areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 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.

2. Section 71.181 is amended as follows:

Ennis, TX—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ennis Municipal Airport (latitude 32°19'43" N., longitude 96°39'47" W.), and within 2 miles each side of the 244-degree radial of the Scurry Vortac, extending from the 6.5-mile radius to 13 miles southwest of the vortac.

Issued in Fort Worth, TX, on July 22, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-18331 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24736; Amdt. No. 1300]

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.

DATES: *Effective:* 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 a 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 SIAPs, 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.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Issued in Washington, D.C. on July 26, 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 continues 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 September 26, 1985

Canton, IL—Ingersoll, VOR-A, Amdt 6
Paris, IL—Edgar County, VOR/DME-A, Amdt 4
Pittsfield, IL—Pittsfield Penstone Muni, VOR/DME Rwy 13, Amdt 2
Urbana, IL—Frasca Field, VOR/DME-B, Amdt 5
Lafayette, IN—Halsmer, VOR/DME-B, Amdt 7
Bay City, MI—James Clements Muni, VOR-A, Amdt 10
Grand Haven, MI—Grand Haven Meml Airpark, VOR-A, Amdt 12
Reno, NV—Reno Cannon Intl, VOR-D, Amdt 4
Mansfield, OH—Mansfield Lahm Muni, VOR Rwy 14, Amdt 11
Mansfield, OH—Mansfield Lahm Muni, VOR Rwy 32, Amdt 4
Marion, OH—Marion Muni, VOR Rwy 24, Amdt 3
Madison, SD—Madison Muni, VOR/DME Rwy 33, Amdt 1

Boscobel, WI—Boscobel, VOR/DME-A, Amdt 2
Richland Center, WI—Richland, VOR-A, Amdt 3

. . . Effective September 12, 1985

Panama City, FL—Panama City-Bay County, VOR or TACAN-A, Amdt 13
Panama City, FL—Panama City-Bay County, VOR or TACAN Rwy 14, Amdt 15
Panama City, FL—Panama City-Bay County, VOR or TACAN Rwy 32, Amdt 10

. . . Effective August 29, 1985

Indianapolis, IN—Indianapolis Downtown, COPTER VOR/DME 287, Orig
Lafayette, LA—Lafayette Regional, VOR Rwy 1, Amdt 16
Maryville, MO—Maryville Memorial, VOR/DME Rwy 36, Amdt 3

. . . Effective July 18, 1985

Grand Forks, ND—Grand Forks-Mark Andrews Intl, VOR Rwy 35L, Amdt 4

The FAA published an Amendment in Docket No. 24707, Amdt. No. 1298 to Part 97 of the Federal Aviation Regulations (VOL 50 FR No. 131 Page 27934; dated Tuesday, July 9, 1985) under Section 97.23 effective August 1, 1985, which is hereby amended as follows:

Saginaw, MI—Tri County, VOR Rwy 5, Amdt 14 changed to: Saginaw, MI—Tri City, VOR Rwy 5, Amdt 14
Saginaw, MI—Tri County, VOR Rwy 14, Amdt 13 changed to: Saginaw, MI—Tri City, VOR Rwy 14, Amdt 13
Saginaw, MI—Tri County, VOR Rwy 23, Amdt 14 changed to: Saginaw, MI—Tri City, VOR Rwy 23, Amdt 14
Saginaw, MI—Tri County, VOR Rwy 32, Amdt 9 changed to: Saginaw, MI—Tri City, VOR Rwy 32, Amdt 9

The FAA published an Amendment in Docket No. 24707, Amdt. No. 1298 to Part 97 of the Federal Aviation Regulations (VOL 50 FR No. 131 Page 27934; dated Tuesday, July 9, 1985) under Section 97.23 effective August 29, 1985, which is hereby amended as follows:

Janesville, MI—Rock County, VOR/DME Rwy 22 (TAC), Amdt 2 changed to: Janesville, WI—Rock County, VOR/DME Rwy 22 (TAC), Amdt 2

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

. . . Effective September 26, 1985

South Lake Tahoe, CA—Lake Tahoe, LDA/DME Rwy 18, Amdt 3
Waukegan, IL—Waukegan Memorial, LOC Rwy 23, Amdt 6
Reno, NV—Reno Cannon Intl, LOC-1 Rwy 16R, Amdt 4
Reno, NV—Reno Cannon Intl, LOC-2 Rwy 16R, Amdt 3
Reno, NV—Reno Cannon Intl, LOC/DME BC-B, Amdt 7
Mansfield, OH—Mansfield Lahm Muni, LOC BC Rwy 14, Amdt 5
Tyler, TX—Tyler Pounds Field, LOC BC Rwy 31, Amdt 17

. . . Effective September 12, 1985

Rockland, ME—Knox County Regional, LOC Rwy 3, Amdt 7

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

. . . Effective September 26, 1985

Canton, IL—Ingersoll, NDB Rwy 36, Amdt 2
Paris IL—Edgar County, NDB Rwy 27, Amdt 6
Pittsfield, IL—Pittsfield Penstone Muni, NDB Rwy 31, Amdt 4
Waukegan, IL—Waukegan Memorial, NDB Rwy 23, Amdt 6
Reno, NV—Reno Cannon Intl, NDB Rwy 16R, Amdt 3
Hamilton, OH—Hamilton-Fairfield, NDB-A, Amdt 11
Mansfield, OH—Mansfield Lahn Muni, NDB Rwy 32, Amdt 9
Marion, OH—Marion Muni, NDB Rwy 12, Amdt 1
Madison, SD—Madison Muni, NDB Rwy 15, Amdt 5
La Crosse, WI—La Crosse Muni, NDB Rwy 18, Amdt 11

. . . Effective September 12, 1985

Rockland, ME—Knox County Regional, NDB Rwy 3, Amdt 6
Arlington, TN—Arlington Muni, NDB Rwy 15, Amdt 5
Arlington, TN—Arlington Muni, NDB Rwy 33, Amdt 5

. . . Effective August 29, 1985

Lafayette, LA—Lafayette Regional, NDB Rwy 28, Amdt 5
Portland, OR—Portland-Troutdale, NDB-A, Amdt 7
Kelso, WA—Kelso-Longview, NDB-A, Amdt 3

. . . Effective July 17, 1985

Newport, RI—Newport State, NDB Rwy 4, Amdt 1

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

. . . Effective September 26, 1985

Reno, NV—Reno Cannon Intl, ILS Rwy 16R, Amdt 6
Mansfield, OH—Mansfield Lahm Muni, ILS Rwy 32, Amdt 12
Tyler, TX—Tyler Pounds Field, ILS Rwy 13, Amdt 17

. . . Effective August 29, 1985

Charlotte, NC—Charlotte/Douglas Intl, ILS Rwy 5, Amdt 30

6. By amending § 97.31 RADAR SIAPs identified as follows:

. . . Effective September 26, 1985

Reno, NV—Reno Cannon Intl, RADAR-1, Amdt 1

. . . Effective August 29, 1985

Lake Charles, LA—Lake Charles Muni, RADAR-1, Amdt 3

. . . Effective July 23, 1985

Bristol/Johnson/Kingsport, TN—Tri-City Regional, RADAR-1, Amdt 14

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

. . . Effective September 26, 1985

Grand Haven, MI—Grand Haven Meml Airpark, RNAV Rwy 27, Amdt 3
Hamilton, OH—Hamilton-Fairfield, RNAV Rwy 29, Amdt 6

. . . Effective August 29, 1985

Abilene, KS—Abilene Muni, RNAV Rwy 17, Orig.

[FR Doc. 85-18329 Filed 8-1-85; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-47-000; Order No. 94-F]

Regulations Implementing Section 110 of the Natural Gas Policy Act and Establishing Policy

Issued: July 29, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Scheduling Payment of Undisputed Section 110 Charges Offset Against Btu Refunds.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is providing guidance to natural gas purchasers for payment of undisputed Natural Gas Policy Act (NGPA) section 110 costs, previously offset against Btu refund amounts, in light of the decision of the United States Court of Appeals for the District of Columbia in *Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission (INGAA-II)*, 756 F.2d 166 (D.C. Cir. 1985).

EFFECTIVE DATE: This order is effective September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9115.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

The Federal Energy Regulatory Commission (Commission) is providing guidance to natural gas purchasers for payment of the undisputed Natural Gas Policy Act (NGPA) section 110 costs, previously offset against Btu refund amounts, in light of the decision of the United States Court of Appeals for the District of Columbia in *Interstate*

Natural Gas Association of America v. Federal Energy Regulatory Commission (INGAA–II), 756 F.2d 166 (D.C. Cir. 1985).

The Commission previously required natural gas purchasers to pay certain NGPA section 110 costs through an offset against certain refunds owed by first sellers.[1] In *INGAA–II*, The court directed the Commission to vacate that offset mechanism.[2]

In light of the court's decision, good cause exists not to hold natural gas purchasers that used the previously-allowed off-set procedures to pay these undisputed amounts to be in violation of the regulations requiring payment of these particular section 110 costs by December 31, 1984. (18 CFR 271.1104 (e)(3) (1984)), provided that the undisputed amounts are paid on or before September 30, 1985.

Since these costs were offset under Order No. 399–A and the dollar amounts at issue have already been identified, are not in dispute, and should not require additional verification, the Commission believes that requiring payment by September 30, 1985, affords natural gas purchasers a reasonable and sufficient time to pay these uncontested amounts. Natural gas purchasers failing to make payment of these uncontested amounts by September 30, 1985, will be considered to be in violation of 18 CFR 271.1104 (e)(3) (1984). Special circumstances warranting adjustment from payment may be addressed under the provisions and standards of NGPA section 502(c), 15 U.S.C. 3412(c) (1982), if affected parties determine a request for relief is necessary.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–18437 Filed 8–1–85; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 399–A, 49 FR 46,353 (Nov. 26, 1984). Refunds were owed because of a change in the method of measuring the energy content of natural gas for NGPA maximum lawful pricing purposes. Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984) (INGAA–I) (charges for gas must be determined by measurement of Btu's (British thermal units) under "wet" conditions rather than the "as delivered" basis promulgated by the Commission).

[2] On July 18, 1985, the Commission implemented the court's mandate by issuing Order No. 399–B, Order on Direction of the Court Vacating, In Part, Order No. 399–A, and on Petitions for Rehearing and Reconsideration, 50 FR 30141 (July 24, 1985).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 629

[Training and Employment Guidance Letter No. 6–84]

Job Training Partnership Act; States' Responsibilities in Incident Report Procedures; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of reporting procedures and instructions; correction.

SUMMARY: This document corrects a notice of reporting procedures and instructions that appeared at page 12243 in the **Federal Register** of Thursday, March 28, 1985, (50 FR 12243) (FR Doc. No. 85–7301). The action is necessary to correct a typographical error in citation.

FOR FURTHER INFORMATION CONTACT: Ms. Anna C. Hall, Telephone: (202) 376–6295.

Correction: Accordingly, the CFR Title and Part in the heading to FR Doc. No. 85–7301 appearing on page 12243 in the issue of Thursday, March 28, 1985, are corrected to read "20 CFR Part 629".

Signed at Washington, D.C., this 29th day of July, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 85–18445 Filed 8–1–85; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F–0166]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of butene/ethylene copolymers containing up to 6 percent by weight of ethylene as articles or components of articles intended for use in contact with food. This action responds to a petition filed by the Shell Oil Co.

DATES: Effective August 2, 1985; objections by September 3, 1985.

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

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 12, 1984 (49 FR 28456), FDA announced that a petition (FAP 4B3771) had been filed by Shell Oil Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036, proposing that 21 CFR Part 177 of the food additive regulations be amended to provide for the safe use of butene/ethylene copolymers containing up to 6 percent by weight of ethylene as articles or components of articles intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that 21 CFR 177.1570 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before September 3, 1985, submit to the Dockets Management

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

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

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 Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 177.1570 by revising paragraphs (a) and (b)(2) (i), (ii), and (iii) to read as follows:

§ 177.1570 Poly-1-butene resins and butene/ethylene copolymers.

* * * * *

(a) *Identity.* Poly-1-butene resins are produced by the catalytic polymerization of 1-butene liquid monomer. Butene/ethylene copolymers are produced by the catalytic polymerization of 1-butene liquid monomer in the presence of small amounts of ethylene monomer so as to yield no higher than a 6-weight percent concentration of polymer units derived from ethylene in the copolymer.

* * * * *

(b) * * *

(2) * * *

(i) Poly-1-butene resins may be used as articles or components of articles intended for use in contact with food, provided that the maximum extractables do not exceed 2.5 percent by weight of the polymer when film or molded samples are tested for 2 hours at 50 °C (122 °F) in *n*-heptane.

(ii) Butene/ethylene copolymers containing no more than 6 percent by weight of polymer units derived from ethylene may be used as articles or components or articles intended for contact with food under conditions of use B, C, D, E, F, G, or H described in Table 2 of § 176.170(c) of this chapter, subject to the provisions of this section and provided that the maximum extractables from test films 0.1 to 0.2 millimeter (0.004 to 0.008 inch) in thickness do not exceed 0.80 percent by weight of the polymer when extracted in a soxhlet extractor for 6 hours with refluxing 95 percent ethanol.

(iii) Poly-1-butene resins may be used as articles or components of articles intended for packaging or holding food during cooking, provided that the thickness of such polymers in the form in which they contact food shall not exceed 0.1 millimeter (0.004 inch) and yield maximum extractables of not more than 2.5 percent by weight of the polymer when films are extracted for 2 hours at 50 °C (122 °F) in *n*-heptane.

Dated: July 25, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-18347 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 83F-0036]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,5-dimethyl-2,5-di(*tert*-butylperoxy)hexane in the production of polypropylene. This action responds to a petition filed by Amoco Corp., formerly Standard Oil Co. (Indiana).

DATES: Effective August 2, 1985; objections by September 3, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 177.1520 effective on August 2, 1985.

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

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 4, 1983 (48 FR 9376), FDA announced that a petition (FAP 2B3658) had been filed by Amoco Corp. (formerly Standard Oil Co. (Indiana)), 200 East Randolph Dr., Chicago, IL 60601, proposing that the food additive regulations be amended to provide for the safe use of 2,5-dimethyl-2,5-di(*tert*-butylperoxy)hexane in the production of polypropylene.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that 21 CFR 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's Regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of

this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before September 3, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Incorporation by reference, Polymeric food packaging.

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 Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 177.1520 by alphabetically inserting a new item in the list of substances in paragraph (b) to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substances	Limitations
2,5-Dimethyl-2,5-di(*tert*-butylperoxy)hexane (CAS Reg. No. 78-63-7).	For use as an initiator in the production of polypropylene complying with § 177.1520 (a)(1), provided that the maximum concentration of *tert*-butyl alcohol detected in the polymer does not exceed 25 parts per million, as determined by a method titled "Determination of *tert*-Butyl Alcohol in Polypropylene," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

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Dated: July 25, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-18349 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 83F-0248]

Indirect Food Additives: Polymers; Polyetherimide Resin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyetherimide resin for use in contact with food. This action responds to a petition filed on behalf of General Electric Co.

DATES: Effective August 2, 1985; objections by September 3, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications at § 177.2425 effective on August 2, 1985.

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

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 19, 1983 (48 FR 37712), FDA announced that a petition (FAP 3B3731) had been filed on behalf of General Electric Co., Plastic Operations, Pittsfield, MA 01201, proposing that the food additive regulations be amended to provide for the safe use of polyetherimide resin in the manufacture of articles or components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that 21 CFR Part 177 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before September 3, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and

analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Incorporation by reference, Polymeric food packaging.

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 Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. By adding new § 177.2425 to read as follows:

§ 177.2425 Polyetherimide resin.

The polyetherimide resin identified in this section may be safely used as an article or component of an article intended for use in contact with food, subject to the provisions of this section.

(a) *Identity.* For the purpose of this section, the polyetherimide resin is 1,3-isobenzofurandione, 5,5'[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis-polymer with 1,3-benzenediamine (CAS Reg. No. 61128-46-9), and is derived from the condensation reaction of *m*-phenylenediamine and bisphenol A-dianhydride.

(b) *Optional adjuvants.* The basic polymer identified in paragraph (a) of this section may contain optional adjuvant substances required in the production of basic resins or finished food-contact articles. The optional adjuvant substances required in the production of the basic polymer may include substances permitted for such use by applicable regulations as set forth in Part 174 of this chapter.

(c) *Specifications and extractives limitations*—(1) *Specifications.* Polyetherimide resin identified in paragraph (a) of this section shall have an intrinsic viscosity in chloroform at 25 °C (77 °F) of not less than 0.35 deciliter per gram as determined by a method titled "Intrinsic Viscosity of ULTEM Polyetherimide Using Chloroform as the Solvent," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) *Extractive limitations.* Extractive limitations are applicable to the basic polyetherimide resin in the form of molded discs of thickness 0.16 centimeter (0.063 inch). The resin discs when extracted with distilled water at 121 °C (250 °F) for 2 hours yield total nonvolatile extractives of not more than 12.3 micrograms per square centimeter.

Dated: July 25, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-18350 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Lincomycin Injection

AGENCY: Food and Drug Administration, HHS.

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 by The Upjohn Co., providing for safe and effective intramuscular use of a higher concentration lincomycin hydrochloride injection for the treatment of infectious arthritis and mycoplasma pneumonia in swine.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA 34-025 providing for safe and effective intramusclar use of a 300-milligram-per-milliliter lincomycin hydrochloride injectable (Lincomix), in addition to an existing approval of 25-, 50-, and 100-milligram-per-milliliter injectables for the treatment of swine for arthritis and mycoplasma pneumonia. The supplemental NADA is approved and the regulations are amended to reflect the approval. In addition, 21 CFR 522.1260(a) is editorially revised to delete a cross reference to 21 CFR 453.230 and the container sizes. These deletions will simplify the regulations.

This action provides for use of an additional concentration of drug and does not affect the currently approved conditions of use of the drug as reflected in the regulations in 21 CFR 522.1260(e)(2). Approval of this supplemental NADA did not require reevaluation of the safety and effectiveness data in the parent application. A freedom of information summary, as defined in 21 CFR 514.11(e)(2), is not required for this approval.

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 522

Animal drugs, injectable.

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 522.1260 by revising paragraph (a) to read as follows:

§ 522.1260 Lincomycin injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains lincomycin hydrochloride equivalent to 25, 50, 100, or 300 milligrams of lincomycin.

* * * * *

Dated: July 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-18345 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR PART 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

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 Growmark, Inc., providing for the manufacture of 5-, 10-, and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: August 2, 1985.

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

SUPPLEMENTARY INFORMATION: Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701, is the sponsor of a supplement to NADA 99-098 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes 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 use of the currently approved 10-gram-per-pound premix is revised to include additional uses in chickens. 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 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(27) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(27) To 020275: 8 grams per pound, paragraph (f)(1) (i), (iii), (iv), and (vi) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: July 26, 1985.

Marvin A Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-18346 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

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) submitted by Ralston-Purina Co., providing for additional claims for a 10-gram-per-pound tylosin premix to make finished feeds for beef cattle and chickens.

EFFECTIVE DATE: August 2, 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: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63199, has submitted a supplement to its previously approved NADA 43-387 for tylosin premix. The supplement provides for additional claims for a 10-gram-per-pound tylosin premix for use in making complete feeds for beef cattle and chickens.

The firm currently holds approval for use of the premix in swine feed as provided for in § 558.625(f)(1) (vi). This supplement provides for additional use in beef cattle and chicken feeds as provided in § 558.625(f)(1)(i) through (v). The supplement is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. In § 558.625 by revising paragraph (b)(5) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(5) To 017800: 0.4, 0.8, 1, and 8 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 10 and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: July 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-18348 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Foreign Service Grievance Board

22 CFR Parts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910 and 911

[Departmental Reg. 108.842]

Foreign Service Grievance Board Regulations

AGENCY: Foreign Service Grievance Board, Department of State.

ACTION: Final rule.

SUMMARY: On April 29, 1985 (50 FR 16710), the Department of State published a proposed ruling on revisions to the regulations of the Foreign Service Grievance Board. This is a final ruling. The Foreign Service Grievance Board revises its regulations to conform to the provisions concerning grievances and separation for cause cases in the Foreign Service Act of 1980 (Pub. L. 96-456; 94 Stat. 2071) of October 17, 1980 and to implement agency regulations adopted by the foreign affairs agencies and the exclusive employee representatives pursuant to that Act. The revision provides explicit directions in procedures to follow when filing grievances and separation for cause cases. It also sets down rules and procedures the Board follows in handling these cases. This final rule is entered into force on August 15, 1985.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond L. Perkins, Executive Secretary, Foreign Service Grievance Board (703) 235-9860.

List of Subjects in 22 CFR Parts 901-911

Administrative practice and procedure, Foreign Service.

In consideration of the foregoing, in Chapter IX of Title 22, Code of Federal Regulations, Parts 901-909 are revised and new Parts 910 and 911 are added to read as follows:

PART 901—GENERAL

Subpart A—Purpose and Scope

Sec.

901.1 Purpose and scope.

Subpart B—Meanings of Terms as Used in This Chapter

901.10 Act.
901.11 Agency.
901.12 Board.
901.13 Executive Secretary.
901.14 Service.
901.15 Exclusive Representative.
901.16 Grievant.
901.17 Charged Employee.
901.18 Grievance.
901.19 Labor organization.
901.20 Party.
901.21 Record of Proceedings.
901.22 Representative.

Authority: Secs. 610, 1101, 1102, 1105, and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4131, 4132, 4135, and 4136).

Subpart A—Purpose and Scope

§ 901.1 Purpose and scope.

The regulations contained in this chapter establish the internal organization of the Foreign Service Grievance Board and prescribe its procedures in:

(a) Determining its jurisdiction in cases involving grievances and separation for cause proceedings;

(b) Compiling a record in such cases;

(c) Conducting hearings in such cases, when required or deemed necessary; and

(d) Deciding such cases, or otherwise disposing of them, so as to ensure the fullest measure of due process for the members of the Foreign Service.

Subpart B—Meanings of Terms As Used in This Chapter

§ 901.10 Act.

"Act" means the Foreign Service Act of 1980 (Pub. L. 96-465, October 17, 1980).

§ 901.11 Agency.

"Agency" means the Department of State, the Agency for International Development, the U.S. Information Agency, the Department of Agriculture, or the Department of Commerce, if the Agency employs the individual appearing in a case before the Board and/or has control over the act, omission, or condition forming the subject matter of such case.

§ 901.12 Board.

"Board" means the Foreign Service Grievance Board, including any designated panel or member thereof.

§ 901.13 Executive Secretary.

"Executive Secretary" means the Executive Secretary of the Board or his or her designee.

§ 901.14 Service.

"Service" means the Foreign Service of the United States.

§ 901.15 Exclusive Representative.

"Exclusive Representative" means any labor organization which is certified as the Exclusive Representative of the bargaining unit of which the grievant or Charged Employee is a member.

§ 901.16 Grievant.

"Grievant" means anyone who has filed a grievance and who is a Member of the Service and is a citizen of the United States, or for the purposes of § 901.18(a)(7) a former member of the Service, or in the case of death of the member, the surviving spouse or, if none, another member of the family.

§ 901.17 Charged employee.

"Charged Employee" means a Member of the Senior Foreign Service or a Member of the Service assigned to a salary class who has been proposed for separation for cause under Section 610(a)(2) of the Act.

§ 901.18 Grievance.

(a) "Grievance" means any act, omission, or condition subject to the control of an Agency which is alleged to deprive a Member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or is otherwise a source of concern or dissatisfaction to the Member, including but not limited to:

(1) Complaints against separation of a Member allegedly contrary to law or regulation or predicated upon alleged inaccuracy, omission, error or falsely prejudicial character of information in any part of the official personnel record of the Member;

(2) Other alleged violation, misinterpretation or misapplication of applicable law, regulation, collective bargaining agreement or published post or agency policy affecting the terms and conditions of the employment or career status of the Member;

(3) Allegedly wrongful disciplinary action against the Member;

(4) Dissatisfaction with respect to the working environment of the Member;

(5) Alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the Member which is or could be prejudicial to the Member;

(6) Action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by a Member in a grievance; and

(7) Alleged denial of an allowance, premium pay or other financial benefit to which the Member claims entitlement under applicable laws or regulations.

(b) The scope of grievances described above may be modified by written agreement between an Agency and its Exclusive Representative.

(c) The term "grievance" does not include:

(1) Complaints against an individual assignment of a Member under Chapter

5 of the Act, other than an assignment which is alleged to be contrary to law or regulation;

(2) The judgment of a selection board (established under section 602 of the Act) or a tenure board (established under section 306(b) of the Act) or any other equivalent body established by laws or regulations which similarly evaluates the performance of Members of the Service on a comparative basis, including a merit promotion selecting official, except that alleged procedural violations of law, regulation or collective bargaining agreement or prohibited personnel practice(s) arising under these procedures are grievable;

(3) The expiration of a limited appointment, termination of a limited appointment under section 611 of the Act, or the denial of a limited career extension or denial of a renewal of a limited career extension under section 607(b) of the Act; or

(4) Pursuant to section 1109 of the Act, any complaint or appeal where a specific statutory hearing procedure exists other than procedures for considering prohibiting personnel practice charges before the Merit Systems Protection Board or Special Counsel (5 U.S.C. 1206).

(5) Non-adoption of a member suggestion or disapproval of a quality salary increase, performance award, or any other kind of honorary discretionary award, except where such action is alleged to be contrary to law, regulation or collective bargaining agreement; and

(6) The content of published agency policy which is not contrary to law, regulation or collective bargaining agreement.

(d) For the purposes of these regulations, the written complaint concerning any act, omission, or condition specified above may be referred to as the "grievance".

§ 901.19 Labor organization.

"Labor organization" means any employee organization accorded recognition as the exclusive employee representative under section 1002(11) of the Act. For the Department of State and the Agency for International Development (AID), the exclusive employee representative is the American Foreign Service Association; for the U.S. Information Agency (USIA), the exclusive employee representative is the American Federation of Government Employees, Local 1812 (AFL-CIO).

§ 901.20 Party.

"Party" means—

(a) The Grievant/Charged Employee;

(b) The Agency or Agencies employing the Grievant/Charged Employee and/or having control over the act, omission, or condition leading to appearance before the Board; or

(c) The Exclusive Representative if it has achieved Party status under § 903.5(a).

A Party may act through its duly designated representative.

§ 901.21 Record of proceedings.

"Record of Proceedings" means the case file maintained by the Board on each grievance case, or separation for cause proceeding.

§ 901.22 Representative.

"Representative" means the person(s) identified in writing to the Board as assisting the Party or Parties in the presentation of the case.

PART 902—ORGANIZATION

Sec.

902.1 Chairperson and Deputy Chairperson.
902.2 Board operations.
902.3 Board staff.

Authority: Secs. 1105 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4135 and 4136).

§ 902.1 Chairperson and Deputy Chairperson.

The Chairperson presides over meetings of the Board. The Chairperson shall select one of the Board Members as deputy. In the absence of the Chairperson, the Deputy Chairperson, or in his or her absence, another member designated by the Chairperson, may act for him or her.

§ 902.2 Board operations.

(a) The Board may operate either as a whole, or through panels or individual members designated by the Chairperson.

(b) When operating as a whole, the Board may not act in the absence of a quorum. A majority of the members shall constitute a quorum. The Board will act by a majority vote of those present. Amendments to these regulations and Board policies adopted pursuant to § 910.3 shall be adopted by the Board operating as a whole.

(c) Board panels and presiding members of panels shall be designated by the Chairperson subject only to the provisions of § 906.3.

§ 902.3 Board staff.

The Chairperson shall select the Board's Executive Secretary and other staff provided for in the Act. The Executive Secretary and staff shall be responsible only to the Board through the Chairperson.

PART 903—INITIATION AND DOCUMENTATION OF CASES

Sec.

903.1 Initiation of cases.
903.2 Record of Proceedings.
903.3 Rulings on materials.
903.4 Participation of Exclusive Representative.
903.5 Service of documents.
903.6 Interrogatories.
903.7 Acknowledgment.
903.8 Withdrawal.
903.9 Access to records.
903.10 Access to witnesses.

Authority: Secs. 610, 1104, and 1106-1109 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4010, 4134, and 4136-4139).

§ 903.1 Initiation of cases.

(a) Grievances submitted to the Board shall be in writing, and shall explain the nature of the grievance, and the remedy sought; shall contain all the documentation furnished to the Agency and the Agency's final review; and shall be timely filed in accordance with applicable regulations.

(b) A member whose grievance is not resolved satisfactorily under Agency procedures, the representative of the grievant, or the exclusive representative (on behalf of a grievant who is a member of the bargaining unit), shall be entitled to file a grievance with the Board no later than 60 days after receiving the Agency decision. In the event that an Agency has not provided its decision within 90 days of filing with the Agency, the grievant, the representative of the grievant, or the exclusive representative (on the grievant's behalf) shall be entitled to file a grievance with the Board no later than 150 days after the date of filing with the Agency. The Board may extend or waive for good cause shown the time limits stated in this section, and may permit or request the views of the parties with respect to whether good cause has been shown for such an extension.

(c) Separation for cause proceedings against a Charged Employee shall be initiated before the Board by submission of a statement of the acts or behavior considered by the Agency to warrant separation.

§ 903.2 Record of proceedings.

Upon receipt of initial documents relating to a case, a Record of Proceedings shall be established, and all material received or obtained by the Board in connection with the case shall be placed in it unless the Board excludes such material under § 903.3. The parties and the Exclusive Representative, if any, shall have access to the Record of Proceedings. Classified

portions of the Record of Proceedings may be reviewed by the Parties and the Exclusive Representative, if any, under conditions prescribed by the Board to ensure appropriate security.

§ 903.3 Rulings on materials.

The Board may at any stage of the proceedings exclude materials from the Record of Proceedings at the request of a Party or on its own initiative, on the grounds that such materials are irrelevant, immaterial or unduly repetitive.

§ 903.4 Participation of exclusive representative.

(a) Upon the initiation of a case, the Executive Secretary shall ascertain from the Agency, the Grievant/Charged Employee and any labor organization which has been certified as the Exclusive Representative of employees of the Agency, whether the relevant position occupied by the Grievant/Charged Employee is part of the bargaining unit for which the labor organization is the Exclusive Representative. If a substantial dispute exists as to whether that position is part of the bargaining unit, and if the Board determines that resolution of that dispute is necessary for determining the status of the labor organization in a case, the Board shall notify the Parties and the labor organization, who may request the Foreign Service Labor Relations Board to make a final determination of that dispute. If the Foreign Service Labor Relations Board determines that the Grievant or Charged Employee is a member of a bargaining unit represented by an Exclusive Representative, the Executive Secretary shall promptly send a copy of the papers filed with the Board to the Exclusive Representative.

(b) The Exclusive Representative has the right to intervene as a Party to the case if such Exclusive Representative gives timely notice to the Board in writing of its decision to intervene as a Party. Notice shall be considered to be timely if given prior to or at the prehearing conference, or, in a case to be decided under Part 907 of this chapter, if given within 10 days of receipt of a notice from the Board of the Board's intent to close the Record of Proceedings.

(c) An Exclusive Representative which has not intervened under paragraph (b) of this section may be permitted to intervene as a Party upon written application. In ruling upon the application, the Board shall consider whether granting the application will unduly delay or prejudice the adjudication of the rights of the original parties, and may place conditions on the Exclusive Representative's participation to avoid such delay or prejudice.

§ 903.5 Service of documents.

Any Party submitting documents to the Board in connection with a case shall send a copy to the other Parties and to the Exclusive Representative, if any. The Board shall send copies of its correspondence concerning the case to the Parties and the Exclusive Representative, if any.

§ 903.6 Interrogatories.

Each Party shall be entitled to serve interrogatories upon another Party, and have such interrogatories answered by the other Party unless the Board finds such interrogatories irrelevant, immaterial, or unduly repetitive. Parties shall follow procedures established by the Board concerning the use of interrogatories.

§ 903.7 Acknowledgment.

Each case received shall be acknowledged in writing by the Executive Secretary of the Board. If in the judgment of the Executive Secretary additional documentation or information is needed, he or she may request such materials.

§ 903.8 Withdrawal.

A case may be withdrawn at any time by written notification to the Board from the Party initiating the case. A case may be determined by the Board to have lapsed when the Grievant fails to respond in writing to two successive written Board inquiries within any deadline fixed for such response. The Board may permit the reopening of lapsed cases upon a showing of good cause and may permit or request the views of the parties as to whether good cause has been shown.

§ 903.9 Access to records.

(a) If a Party is denied access to any Agency record prior to or during the consideration of a case by the Agency, the Party may protest such denial before the Board in connection with the case.

(b) In considering a case, the Board shall have access to any Agency record as follows:

(1) the Board shall request access to any Agency record which the Grievant/Charged Employee requests to substantiate his or her grievance or defense to a charge if the Board determines that such record may be relevant and material to the case.

(2) the Board may request access to any other Agency record which the Board determines may be relevant and material to the case.

(3) An Agency shall make available to the Board any Agency record requested under paragraphs (b)(1) and (2) of this section unless the head or deputy head or such Agency personally certifies in writing to the Board that disclosure of the record to the Board and the Parties would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the Agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an Agency record, or a summary or extract of a record, made available to the Board under paragraph (b) of this section is relevant and material to the case, the Agency concerned shall make such record, summary, or extract, as the case may be, available to the Parties.

(d) In considering a case, the Board may take into account the fact that the Parties or the Board were denied access to any Agency record which the Board determines is or may be relevant and material to the case.

(e) The Parties in any case decided by the Board shall have access to the Record of Proceedings and the decision of the Board.

§ 903.10 Access to witnesses.

The grievant or grievant's representative, or charged employee or his representative, shall be given access to witnesses employed by the foreign affairs agencies. In the event that the agency of the grievant determines that the requests for access are excessive, it may so notify the Board, which shall rule on the relevance and materiality of the potential testimony and may order that access be granted to any or all of the potential witnesses. It shall be the responsibility of the grievant to advise the agency of the agency witnesses to be interviewed and to request administrative leave.

PART 904—JURISDICTION AND RELATED MATTERS

Sec.

904.1 General.
904.2 Preliminary determinations.
904.3 Relationship to other remedies.

Authority: Secs. 1101, 1104, 1108, and 1109 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4131, 4134, 4138, and 4139.

§ 904.1 General.

The Board's jurisdiction extends to any grievance, and to any separation for

cause proceeding initiated pursuant to Section 610(a)(2) of the Act.

§ 904.2 Preliminary determinations.

(a) If an Agency, in its final review, has questioned whether a complaint constitutes a grievance, the Board will make a preliminary determination of its jurisdiction unless the Board concludes that resolution of the question of jurisdiction should be deferred until the Board has compiled a Record of Proceedings or held a hearing on the merits of the case.

(b) Prior to compiling a Record of Proceedings or holding a hearing on the merits of the case, the Board also may make a preliminary determination on any question raised by a Party concerning the timeliness of a grievance, the election of other remedies under § 904.3, or any other issue whose resolution might avoid the necessity of further proceedings.

(c) Before making a preliminary determination under this section, the Board shall obtain the views of the other Parties and transmit those views to all Parties.

(d) Where a preliminary determination is made under this section which would result in the termination of a case, a panel of three members of the Board who did not participate in the preliminary decision shall decide the question on review. This panel may permit or request the views of the parties with respect to the jurisdictional question.

§ 904.3 Relationship to other remedies.

(a) A Grievant may not file a grievance with the Board if the Grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief provided under another provision of law, regulation, or Executive Order, and the matter has been carried to final decision under such provision on its merits or is still under consideration. This provision shall not apply to Grievants who have filed a prohibited personnel practice charge before the Special Counsel for the Merit Systems Protection Board.

(b) If a Grievant is not prohibited from filing a grievance under paragraph (a) of this section, the Grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief as a prohibited personnel practice complaint under the provisions of law relating to the Merit Systems Protection Board or Special Counsel, or under a regulation or Executive Order. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

PART 905—BURDEN OF PROOF

Sec.

905.1 Grievances other than disciplinary actions.
905.2 Disciplinary grievances.
905.3 Separations for cause.

Authority: Secs. 610 and 1106 of the Foreign Service Act of 1980 (Pub. L. 95-465; 22 U.S.C. 4010 and 4136)

§ 905.1 Grievances other than disciplinary actions.

(a) In all grievances other than those concerning disciplinary actions, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious.

(b) Where a grievant establishes that an evaluation contained falsely prejudicial material which may have been a substantial factor in an agency action, and the question is presented whether the agency would have taken the same action had the evaluation not contained that material, the burden will shift to the agency to establish, by a preponderance of the evidence, that it would have done so.

(c) Where a grievant establishes that a procedural error occurred which is of such a nature that it may have been a substantial factor in an agency action with respect to the grievant, and the question is presented whether the agency would have taken the same action had the procedural error not occurred, the burden will shift to the agency to establish, by a preponderance of the evidence, that it would have done so.

§905.2 Disciplinary grievances.

In grievances over disciplinary actions, the agency has the burden of establishing by a preponderance of the evidence that the disciplinary action was justified.

§ 905.3 Separation for cause.

In separation for cause cases, the agency has the burden of establishing, by a preponderance of the evidence, that the proposed separation is for such cause as will promote the efficiency of the service.

PART 906—HEARINGS

Sec.

906.1 Decision whether to hold a hearing.
906.2 Mandatory hearing.
906.3 Notification.
906.4 Hearing panels and members.
906.5 Prehearing conferences.
906.6 Powers of presiding member.
906.7 Conduct of hearing.
906.8 Witnesses.
906.9 Failure of party to appear.

Authority: Secs 610 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4010 and 4136).

§ 906.1 Decision whether to hold a hearing.

After deciding either to accept jurisdiction over a grievance or to postpone decision of that question under 904.2(a) of this chapter, the Board will make an initial determination of whether a hearing shall be held in accordance with Part 906 of this chapter, or whether the grievance shall be resolved without a hearing in accordance with Part 907 of this chapter. The Board may reconsider its decision as to holding a hearing upon the written request of any Party or on its own initiative.

§ 906.2 Mandatory hearing.

The Board shall conduct a hearing—(a) At the request of the Grievant in any case which involves disciplinary action or a Grievant's retirement from the Service for expiration of time-in-class or based on relative performance, or (b) In any case which in the judgment of the Board can best be resolved by a hearing or presentation of oral argument. The Board shall also conduct a hearing in separation for cause proceedings unless the Charged Employee waives in writing his or her right to such hearing.

§ 906.3 Notification.

When the Board orders a hearing, the Executive Secretary shall so notify the Parties in writing. The Parties shall be given reasonable notice of the date and place selected by the Board for the hearing.

§ 906.4 Hearing panels and members.

Unless the Board and the Parties agree otherwise, all hearings shall be held before a panel of at least three members.

§ 906.5 Prehearing conferences.

(a) The Board may in its discretion order a prehearing conference of the Parties (which may be presided over by any member) for the purpose of considering:

(1) Simplification or clarification of the issues;

(2) Serving of interrogatories;

(3) Stipulations, admissions, agreements on documents, matters already on record, or similar agreements which will avoid the necessity of proving facts or issues not in dispute;

(4) Identification of witnesses the Parties may wish to call and the intended scope of their testimony; limitation on the number of witnesses;

and arrangement for the appearance of witnesses;

(5) Avoidance of irrelevant, immaterial, or unduly repetitive testimony;

(6) The possibility of disposition of the case through agreement;

(7) The order of presentation at the hearing and the allocation of the burden of proof; and

(8) Such other matters as may aid in the disposition of the case.

(b) The Parties authorized to attend the hearing may attend the prehearing conference.

(c) The results of the conference shall be summarized in writing by the Board and made a part of the Record of Proceedings. Copies of the summary shall be sent to the Parties. The Parties may submit comments or corrections on the summary.

§ 906.6 Powers of presiding member.

In connection with the hearing, the presiding member shall, as appropriate:

(a) Fix the time and place of the hearing;

(b) Order further conferences;

(c) Regulate the course of the hearing;

(d) Administer oaths and affirmations;

(e) Dispose of procedural requests and similar matters;

(f) Rule on admissibility of testimony and exhibits;

(g) Exclude any person from the hearing for behavior that obstructs the hearing;

(h) Authorize and set the time for the filing of briefs or other documents;

(i) Grant continuances and extensions of time;

(j) Reopen the record;

(k) Take any other action in the course of the proceedings consistent with the purpose of this part.

§ 906.7 Conduct of hearing.

(a) *Authorized attendance.* The Parties and, as determined by the Board, a reasonable number of representatives of the Parties are entitled to be present at the hearing. The Board may, after considering the views of the Parties and of any other individuals connected with the grievance, decide that a hearing should be open to others. No person shall be permitted to attend the hearing when classified material is being discussed unless that person possesses the appropriate security clearance.

(b) *Procedure.* Hearings shall be conducted by the presiding member so as to assure a full and fair proceeding. The Board shall not be limited by the legal rules of evidence. However, the presiding member shall exclude irrelevant, immaterial, or unduly repetitive evidence. The Board may require the Parties to designate one of their representatives as principal spokesperson.

(c) *Order of presentation.* In cases involving disciplinary action, including separation for cause cases, the Agency will ordinarily present its case first and will retain that order of precedence throughout the hearing. In other cases the Grievant will ordinarily present his or her case first and will retain that order of precedence throughout the hearing.

(d) *Evidence.* Subject to the presiding member's rulings on the relevancy, materiality, and repetitious nature of evidence, the Parties may offer such evidence, including interrogatories, depositions and Agency records as they desire. The shall produce such additional evidence as the presiding member shall consider relevant and material. Where deemed appropriate by the Board, the Parties may be supplied only with a summary or extract of classified material (also see § 903.9 of this chapter).

(e) *Testimony.* Testimony at a hearing shall be given under oath or affirmation.

(f) *Transcript.* A verbatim transcript shall be made of any hearing and shall be part of the Record of Proceedings.

§ 906.8 Witnesses.

(a) *General.* Each Party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition. A Party wishing to take the deposition of a witness shall give the other Parties reasonable notice of the time and place of the deposition and of the identity of the witness.

(b) *Availability.* Upon request of the Board or upon request of the Grievant/Charged Employee deemed relevant and material by the Board, an Agency shall promptly make available at the hearing or by deposition any witness under its control, supervision or responsibility. If the Board determines that the actual presence of such witness at the hearing is required for just resolution of the case, the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Agency which is a Party to the hearing.

(c) *Notice.* The Parties are responsible for notifying their witnesses and for arranging for their appearance at the time and place set for the hearing. The Board may preclude a witness from testifying because of the failure of the Party responsible for witness' appearance to comply with this section.

§ 906.9 Failure of party to appear.

The hearing may proceed in the absence of any Party who, after due notice and without good cause, fails to be present or obtain an adjournment.

PART 907—PROCEDURE WHEN HEARING IS NOT HELD

Authority: Sec. 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136).

§ 907.1 General.

(a) In a case in which a hearing is not required under § 906.1 of this chapter, the Board may request in writing that specified documents or other evidence be furnished to it and/or may authorize the Executive Secretary to obtain such additional documents or other evidence as may be necessary to understand and decide the case.

(b) Each Party will be offered the opportunity to review and to supplement, by written submissions, the Record of Proceedings, prior to the date fixed by the Board for closing of the Record. The Board shall then consider the case and make a decision based on that Record. This may include the ordering of a hearing in accordance with Part 906.

PART 908—REMEDIES

Sec.

908.1 Board orders.

908.2 Board recommendations.

Authority: Secs. 1106 and 1107 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136 and 4137).

§ 908.1 Board orders.

If the Board finds that a grievance is meritorious, the Board shall have the authority to direct the Agency:

(a) To correct any official personnel record relating to the Grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(b) To reverse a decision denying the Grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(c) To retain in the Service a Member whose separation would be in consequence of the matter by which the Member is aggrieved;

(d) To reinstate the Grievant, and to grant the Grievant back pay, where it is established that the separation or suspension without pay of the employee was unjustified or unwarranted under the Back Pay Act (5 U.S.C. 5596(b)(1));

(e) To pay reasonable attorney fees to the same extent and in the same manner as such fees may be required by the

Merit Systems Protection Board under 5 U.S.C., Section 7701(g); or

(f) To take any corrective action deemed appropriate by the Board provided it is not contrary to law or collective bargaining agreement.

§ 908.2 Board recommendations.

(a) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the Grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence in a grievance proceeding warrants disciplinary action against any employee of an Agency, it shall make an appropriate recommendation to the head of the concerned Agency.

(b) The head of the Agency shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation and shall implement the recommendation of the Board except to the extent that the head of the Agency rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the head of the Agency rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Copies of the decision shall be served on the other Parties. Pending the decision of the head of the Agency, there shall be no ex parte communication concerning the grievance between the head of the Agency and any person involved in the proceedings of the Board. The head of the Agency shall, however, have access to the entire Record of the Proceedings of the Board.

PART 909—DECISION MAKING

Sec.

909.1 Basis.
909.2 Board order.
909.3 Board recommendation.
909.4 Other decision.
909.5 Time limits for compliance.
909.6 Summaries of Board decision.

Authority: Secs. 1106 and 1107 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136 and 4137).

§ 909.1 Basis

Decisions of the Board shall be based upon the Record of Proceedings, shall be in writing, shall include findings of fact, and shall include a statement of the reasons for the decision.

§ 909.2 Board order.

Where the Board's decision imposes action on an Agency the decision shall be in the form of a remedial order addressed to the designated official of the Agency. A copy of the decision shall be supplied to each Party.

§ 909.3 Board recommendation.

Where the Board's decision is a recommendation, it shall be directed to the head of the Agency. A copy of the decision shall be supplied to each Party.

§ 909.4 Other decision.

Where the Board's decision requires no action by an Agency, the decision shall be forwarded to the Grievant. A copy of the decision shall be supplied to each Party.

§ 909.5 Time limits for compliance.

Orders of the Board and recommendations which are not rejected in accordance with § 908.2 of this chapter shall be complied with within any time limits for compliance established by the Board's decision, unless the Board extends the time limit on a showing of good cause.

§ 909.6 Summaries of Board decisions.

The Board may, from time to time, issue such summaries and expurgated versions of its decisions as it may consider necessary to permit the Agencies, the Exclusive Representative organization(s), and the Members of the Service to become aware of the general nature of the cases it has received and their manner of disposition, without invading the privacy of the Grievants.

PART 910—MISCELLANEOUS

Sec.

910.1 Suspension of Agency actions.
910.2 Requests to reopen cases.
910.3 Ex parte communications.
910.4 Board policy statements.
910.5 Confidentiality.
910.6 Judicial review.
910.7 Pending grievances.

Authority: Secs. 1106, 1107, 1110, and 2401 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136, 4137, 4140 and 4172).

§ 910.1 Suspension of Agency actions.

(a) If the Board determines that the Agency is considering the involuntary separation of the Grievant, disciplinary action against the Grievant, or recovery from the Grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the agency shall suspend such action until the Board has ruled on the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(b) The Board shall expedite its decisions on requested suspensions of proposed Agency actions. The Board may permit or require argument with respect to such requests by the Parties and Exclusive Representative, if any.

§ 910.2 Requests to reopen cases.

The Board may reconsider any decision upon the presentation of newly discovered or previously unavailable material evidence.

§ 910.3 Ex parte communications.

(a) "Ex parte communications" are oral or written communications between the Board or its staff and an interested party to a proceeding which are made without providing the other parties a chance to participate.

(b) Ex parte communications concerning the merits of any matter which has or may come before the Board for adjudication or which would otherwise contravene the rules regarding written submissions are prohibited until the Board renders a final decision. Any communication made in contravention of this rule shall be made a part of the record and an opportunty for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(c) This rule does not apply to communications concerning such matters as the status of a case, the methods for transmitting evidence to the Board, and other procedural matters which do not concern the merits of any matter before the Board for adjudication and which do not otherwise contravene the rules regarding written submissions.

§ 910.4 Board policy statements.

The Board may publish statements regarding policies it has established as to its operations and procedures.

§ 910.5 Confidentiality.

(a) To the maximum extent practicable, the Board will make every effort to preserve the confidentiality of the identity of the Grievant or Charged Employee.

(b) The records of the Board shall be maintained by the Board under appropriate safeguards to preserve confidentiality and shall be separate from all records of the Agencies.

§ 910.6 Judicial review.

Any aggrieved Party may obtain judicial review of a final action of an Agency head or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in Chapter 7 of title 5 of the United States Code. 5 U.S.C. 706 shall apply without limitation or exception.

§ 910.7 Pending grievances.

Any grievance pending before the Board prior to February 15, 1981 shall be resolved under the provisions of the Foreign Service Act of 1946 as amended, and the regulations promulgated thereunder.

PART 911—IMPLEMENTATION DISPUTES

Sec.
911.1 Definition.
911.2 Filing complaint.
911.3 Procedure.
911.4 Effect of Board decision.
911.5 Arbitrability of determination.
911.6 Finality of choice.
911.7 Review.

Authority: Sec. 1014 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4114).

§ 911.1 Definition.

An implementation dispute is any dispute between the agency and the exclusive representative, as provided in regulations adopted as a result of collective bargaining between the agencies and the employee representatives. Such a dispute, also referred to as an institutional dispute, is one which directly concerns the rights and obligations of an agency and an exclusive representative toward each other or the rights or obligations between an agency and one or more employees as set forth in a collective bargaining agreement.

§ 911.2 Filing complaint.

If the dispute is not satisfactorily resolved at the agency level, the moving party may file a complaint within 45 calendar days from the date of the response (or in any case must file within 90 days of filing the implementation dispute) with the Board in writing and with specificity as to the nature of the violation.

§ 911.3 Procedure.

Implementation disputes shall be handled by the Board in accordance with the procedures set forth in Parts 901 -910 of this chapter.

§ 911.4 Effect of Board decision.

The action of the Board shall be final and binding and shall be implemented by the parties, unless an exception is filed with the Foreign Service Labor Relations Board within 30 days after receipt of the Grievance Board action.

§ 911.5 Arbitrability of determination.

Questions that cannot be resolved by the parties as to whether a complaint is subject to this procedure may be referred by either party to the Grievance Board for a threshold determination.

§ 911.6 Finality of choice.

An alleged violation of an institutional right as reflected in a collective bargaining agreement may be filed under these procedures or as an unfair labor practice, but not both.

§ 911.7 Review.

Resolution of disputes under this section shall not be subject to judicial review.

Dated: July 24, 1985.

Arthur Stark,

Chairman, Foreign Service Grievance Board.

[FR Doc. 85-18412 Filed 8-1-85; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 107

[Docket No. R-85-1237; FR-2020]

Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule would amend 24 CFR Part 107, "Nondiscrimination and Equal Opportunity Under Executive Order 11063," in order to reflect amendments made to Executive Order 11063 by Executive Order 12259, adding a prohibition against discrimination on the basis of sex and clarifying that the terms "religion" and "creed" are synonymous.

EFFECTIVE DATE: October 3, 1985.

FOR FURTHER INFORMATION CONTACT: Katrina Ross, Director, Fair Housing Enforcement Division, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755-5673. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Executive Order 11063, "Equal Opportunity in Housing" (November 20, 1962, 27 FR 11527) directs Federal departments and agencies to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin in (1) the sale, leasing, rental or other disposition of residential property and related facilities which are owned or operated by the Federal Government or provided with Federal assistance; and (2) the lending practices with respect to residential property and related facilities of lending institutions, insofar as such practices relate to loans insured or guaranteed by the Federal Government. Executive Order 12259, "Leadership and Coordination of Fair Housing in Federal Programs" (January 6, 1981, 46 FR 1253) revised Executive Order 11063 by adding a prohibition against discrimination based on sex, and by clarifying the reach of E.O. 11063 with respect to "creed" by adding the word "religion".

On September 9, 1980, HUD published a final rule (45 FR 59510) which added Part 107 to 24 CFR Chapter I to (1) establish a process to implement Executive Order 11063, (2) state the discriminatory practices prohibited by Executive Order 11063, (3) provide for affirmative action to overcome the effects of past discrimination and to prevent discrimination, and (4) establish procedures and sanctions regarding the Department's enforcement of the Order. This final rule revises 24 CFR Part 107 to implement the changes made by Executive Order 12259 as discussed above. (This final rule also makes a technical correction to 24 CFR 107.30(b) by deleting "other" from the list of categories for noting racial and national origin data. The federally defined racial/ethnic grouping in OMB Circular A-46, dated May 12, 1977, does not include a category for "other.")

The Department has concluded that, because this rulemaking is limited to expanding the coverage of HUD's Executive Order 11063 implementation procedures in accordance with the policies reflected in Executive Order 12259, public comment on the rule is unnecessary. Accordingly, these amendments to Part 107 are being adopted as final rulemaking.

This rule does not constitute a "major rule" as the term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local

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

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

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule makes no substantive change in existing procedures associated with the Executive Order on Nondiscrimination and Equal Opportunity, but merely conforms its coverage to the revisions contained in Executive Order 12259.

This rule was listed as item number 198 in the Department's Semi-annual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17331) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program numbers and titles are: 14.400, Equal Opportunity in Housing; and 14.401, Fair Housing Assistance Program.

List of Subjects in 24 CFR Part 107

Administrative practice and procedure, Fair housing, Loan programs—housing and community development.

Accordingly, 24 CFR Part 107 is amended as follows:

PART 107—NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063

Accordingly, 24 CFR Part 107 is amended as follows:

1. The authority citation for Part 107 is revised to read as follows:

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Executive Order 11063, Equal Opportunity in Housing, issued November 20, 1962 (27 FR 11527); Executive Order 12259, Leadership and Coordination of Fair Housing in Federal Programs, January 6, 1981 (46 FR 1253).

§§ 107.10, 107.11, 107.15, 107.20, 107.21, 107.51 [Amended]

3. Part 107 is amended by removing the words "race, color, creed or national origin" and inserting in their place, the words "race, color, religion (creed), sex or national origin" in the following places:

(a) 24 CFR 107.10
(b) 24 CFR 107.11 (a)
(c) 24 CFR 107.15 (g)(1) and (g)(2)
(d) 24 CFR 107.20 (b) and (c)
(e) 24 CFR 107.21
(f) 24 CFR 107.51 (c)

2. Section 107.30 (b) is revised to read as follows:

§ 107.30 Recordkeeping requirements.

* * * * *

(b) All leaders participating in Departmental mortage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race and national origin of each applicant and joint applicant for assistance with regard to residential property and related facilities. This data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic. If an applicant or joint applicant refuses to voluntarily provide the information or any part of it, that fact shall be noted and the information shall be obtained through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

* * * * *

Dated: July 25, 1985.

W. Scott Davis,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 85-18428 Filed 8-1-85; 8:45 am]
BILLING CODE 4210-28-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 15-85]

Production or Disclosure of Material or Information; Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On February 26, 1985, the Department of Justice, Federal Bureau of Investigation, issued proposed regulations to amend Title 28 of the Code of Federal Regulations, Part 16, to exempt a new records system from certain provisions of the Privacy Act, 5 U.S.C. 552a: the National Center for the Analysis of Violent Crime (NCAVC), JUSTICE/FBI–015. This records system must be exempted from several sections of the Privacy Act to maintain the confidentiality and security of information compiled for law enforcement purposes. Access to individual records could interfere with the enforcement proceedings of a criminal justice agency, reveal the identity of a confidential source, result in an unwarranted invasion of another's privacy, reveal the details of a sensitive investigative technique, or endanger the life and safety of law enforcement personnel, potential violent crime victims and witnesses.

DATE: This rule will be effective August 2, 1985.

ADDRESS: Thomas F. O'Leary, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Thomas F. O'Leary (202–633–4414).

SUPPLEMENTARY INFORMATION: The notice of the proposed rule with invitation to comment was published in the **Federal Register** on February 26, 1985 (50 FR 7800). The public was given 30 days to comment; however, no comments were received.

This Order relates to individual rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, the proposed regulations published in the Federal Register on February 26, 1985 (50 FR 7800) are adopted without change as set forth below.

Dated: June 19, 1985.

W. Lawrence Wallace,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority citation for § 16.96 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. 28 CFR 16.96 is amended by adding paragraphs (j) and (k):

§ 16.96 Exemption of Federal Bureau of Investigation System—Limited access.

* * * * *

(j) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g):

(1) National Center for the Analysis of Violent Crime (NCAVC) (JUSTICE/FBI–015). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(k) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because providing the accounting of disclosures to the subject could prematurely reveal investigative interest by the FBI and other law enforcement agencies, thereby providing the individual an opportunity to impede an active investigation, destroy or alter evidence, and possibly render harm to violent crime victims and/or witnesses.

(2) From subsections (d), (e)(4) (G) and (H), and (f) because disclosure to the subject could interfere with enforcement proceedings of a criminal justice agency, reveal the identity of a confidential source, result in an unwarranted invasion of another's privacy, reveal the details of a sensitive investigative technique, or endanger the life and safety of law enforcement personnel, potential violent crime victims, and witnesses. Disclosure also could prevent the future apprehension of a violent or exceptionally dangerous criminal fugitive should he or she modify his or her method of operation in order to evade law enforcement. Also, specifically from subsection (d)(2), which permits an individual to request amendment of a record, because the nature of the information in the system is such that an individual criminal offender would frequently demand amendment of derogatory information, forcing the FBI to continuously retrograde its criminal investigations in an attempt to resolve questions of accuracy, etc.

(3) From subsection (g) because the system is exempt from the access and amendment provisions of subsection (d).

(4) From subsection (e)(1) because it is not always possible to establish relevance and necessity of the information at the time it is obtained or developed. Information, the relevance and necessity of which may not be readily apparent, frequently can prove to be of investigative value at a later date and time.

[FR Doc. 85–18232 Filed 8–1–85; 8:45 am]
BILLING CODE 4410-02-M

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

Competition and Peer Review Policy

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Final Competition and Peer Review Regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing a final regulation to implement the competition and peer review requirements of section 225(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–509, and Pub. L. 98–473) (hereinafter "Act"). The regulation governs the award of categorical grant funds under *Part B, Subpart II* (Special Emphasis Prevention and Treatment Programs), and *Part C* (National Institute for Juvenile Justice and Delinquency Prevention—NIJJDP) of the Act.

EFFECTIVE DATE: This regulation is effective August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. James C. Howell, Office of the Deputy Administrator, OJJDP, 633 Indiana Avenue, NW., Room 748, Washington, D.C. 20531; telephone 202/724–5911.

SUPPLEMENTARY INFORMATION:

Background Information

This regulation pertains to a new requirement in the Act. The statute previously contained no requirement for use of competition or peer review in the award of funds to programs and projects under either Part B, Subpart II, or Part C of the Act.

Exclusions

The rationale for excluding specific types of funding from the scope of the competition and peer review regulation warrants further explanation.

(1) *Exclusion of projects selected for funding prior to October 12, 1984.* The regulation excludes projects for which initial applications were received prior to or on October 12, 1984, and which receive(d) an initial award after such date (§ 34.2(b)). The primary basis for this exclusion is that Section 225(d)(2) of the Act specifies that "new programs selected after the effective date of the Act shall be reviewed before selection and thereafter as appropriate through a formal peer review process . . .". Further, our review of the legislative history of the 1984 Amendments to the Act indicates that Congress intended that the provision apply only to "new" programs, not those already selected and being processed for funding. The exclusion applies to projects under the "Private Sector Corrections" Program. (See discussion under Comment 1.)

(2) *Exclusion of procurement contracts.* The regulation does not cover procurement contracts (§ 34.2(h)). This is because OJJDP's procurement contracts are already subject to other Federal laws (the Federal Property and Administrative Services Act) and regulations (the Federal Acquisition Regulation), which severely limit sole source contract awards, and because both the statute and its legislative history make specific reference to "assistance" awards and not to the procurement of goods and services for the benefit and use of the government.

(3) *Exclusion of competitively awarded Part C programs and projects from peer review.* These are excluded by statute. The peer review requirement applies only to assistance awards under Part B, Subpart II, of the Act and noncompetitive Part C awards. (See discussion under Comment 6.)

(4) *Exclusion of continuation projects.* Section 34.2(c) provides that the funding of "continuation" awards is excepted from the regulation. This exception applies to awards for the continuation of project activities which were *initially* funded under projects selected for award prior to or on October 12, 1984. When continuation awards are made that extend the projected or anticipated project completion date, OJJDP intends, by use of this limiting language, to fund only those specific follow-on activities which were within the scope of and consistent with the original purposes and objectives of the project.

(5) *Exclusion of other types of projects.* Other specific types of projects are excluded from the regulation. For example, Federal inter-agency fund transfers are excluded because it would serve no purpose to include them.

Reservation of Subpart C, Emergency Expedited Review

Section 225(d)(3) of the Act provides that "the Administrator * * * shall provide for emergency expedited consideration of program proposals when necessary to avoid any delay which would preclude carrying out the program."

Although it is not possible to specify in advance if or when emergency expedited consideration may be necessary, several circumstances have called for expedited application processing by OJJDP in the past. These include the following circumstances:

(1) A local tragedy, disaster, or crisis, such as that which occurred a few years ago in Atlanta (because of the child murders) to which OJJDP responded quickly with funds for prevention programming; and

(2) An opportunity to support an outstanding program which is about to cease operations because of the unanticipated loss of existing financial support.

Under these and other emergency circumstances, OJJDP believes that, by administratively expediting the procedures set forth for competition and peer review under Subpart A and Subpart B of this regulation, no delay will occur which would preclude carrying out the program. Consequently, OJJDP is reserving rulemaking under Subpart C. If experience in implementing the competition and peer review process subsequently indicates the need for special emergency expedited review procedures, a rule would be proposed for public comment as Subpart C of this regulation.

Consultation

OJJDP has initiated consultation with the National Science Foundation (NSF) and the National Institute of Mental Health (NIMH) as required by section 225(d)(2) of the Act. The detailed peer review process to be used in carrying out the broad policy specified in Subpart B is under continuing review by these agencies. OJJDP anticipates that the consultation process will be an ongoing one which will permit the OJJDP *Peer Review Manual* to be a fluid document that can be continuously reviewed and modified based on OJJDP's experience in implementing the peer review process. OJJDP has carefully considered their input, as well as comments received from the public, in the formulation of the peer review portion of the regulation.

Discussion of Comments

A proposed regulation was published in the **Federal Register** on April 29, 1985 for public comment. Seven written comments were received: One from two Members of Congress, three from national organizations, one from a University, one from a local government unit, and one from an individual. All comments have been considered by OJJDP in the issuance of this regulation.

The following is a summary of the substantive comments and the response by OJJDP.

1. *Comment:* The exceptions to applicability specified in § 34.2 (a) and (b) appear to establish the date of initial *application*, rather than the date of *selection* of a particular program or project, as determining whether the section 225(d)(1) competition requirements apply.

Response: Section 225(d) of the Act specifies that the date of selection of new programs (or individual projects) governs whether competition and peer review are required. Section 34.2(a) operates to except projects funded under the Private Sector Corrections program, a competitive program announced in the **Federal Register** on January 6, 1984 (49 FR 952). Although meeting the new competition requirements, and using peer review in the pre-application (concept paper) stage, final selection of projects for funding was based on internal staff review and recommendation. Awards to up to three applicants under this program are anticipated in the near future. No other competitive programs fall under this exception. Section 34.2(b) operates to except a project awarded pursuant to OJJDP's Fiscal Year 1984 program plan to Claremont College to provide State legislative training. The project application was received, reviewed, and approved for award packaging prior to October 12, 1984. It was subsequently awarded on November 24, 1984. No other individual projects fall under this exception.

These "exceptions" are not, in fact, exceptions to the plain meaning of the statutory language of section 225(d) because the Private Sector Corrections program and the Claremont College training program had already been selected for funding by the Administrator prior to October 12, 1984, even though the actual awards were not made until after that date. However, they were and will remain within the regulatory "exceptions" in order to ensure that OJJDP's funding of these applicants after the October 12, 1984 date is not viewed as a circumvention of the new statutory requirements.

2. *Comment:* OJJDP's statement of the statutory exception to competition, as set forth in § 34.2(e), should restate the statutory requirement that the Administrator determine that "other qualified sources are not capable of carrying out the proposed program" in order to make a finding that an applicant for training funds under section 225(d)(1)(B)(ii) is "uniquely qualified" to provide such services.

Response: If an applicant is "uniquely qualified" there can be no other "qualified sources," especially one which is, though qualified, "not capable" of carrying out a proposed project. Consequently, OJJDP views a finding that an applicant is "uniquely qualified" as necessarily incorporating these other statutory requirements.

3. *Comment:* Two commentors raised issues with respect to the fund transfer exceptions specified in § 34.2 (f) and (g). With respect to funds transferred to OJJDP by other Federal agencies, it was suggested that OJJDP should seek programmatic advice from outside experts when appropriate and award such funds competitively. With respect to funds transferred to other Federal agencies by OJJDP, it was suggested that OJJDP be actively involved in program development and administration in order to ensure that experts are consulted and competition is required for grants and other assistance awarded.

Response: The statutory authority under which OJJDP expends funds transferred to it by another Federal agency is that of the transferring agency. Consequently, Section 225(d) would not be applicable. However, in the expenditure or award of such funds, OJJDP will consider the use, as appropriate, of competition and peer review procedures. The ability of OJJDP to transfer Part B, Subpart II, and Part C funds to other Federal agencies is limited. The Economy Act, 31 U.S.C. 1535, authorizes OJJDP to order and pay for goods and services provided by another Federal agency. OJJDP has used this authority, for example, as the basis to transfer funds to the Federal Law Enforcement Training Center to provide statutorily authorized training services to juvenile justice and law enforcement system personnel. In addition, section 241(e)(2) of Part C of the Act authorities NIJJDP to "(2) arrange with and reimburse the heads of Federal agencies for the use of personnel or facilities or equipment of such agencies;". This authority has been used, for example, to transfer funds to the Census Bureau for the Children in Custody Survey. Finally, OJJDP has authority to enter into joint funding arrangements with other Federal agencies under section 205 of the Act. These limited sources of fund transfer authority do not constitute "assistance" awards under section 225(d). However, OJJDP intends, if it is appropriate to do so in a particular fund transfer situation, to maximize the use of both competition procedures and outside experts.

4. *Comment:* In enumerating the criteria to be used in the competitive selection of applications (§ 34.2), the proposed regulation fails to list the statutory requirements for Part B, Subpart II, applications found in section 225 (b) and (c) of the Act.

Response: The minimum administrative and program requirements for Special Emphasis discretionary program applications set forth in section 225(b) and the considerations specified in section 225(c) to be taken into account by the Administrator in selecting applications for award are not germane to the broad competition and peer review policy set forth in the regulation. Individual program announcements, OJJDP policy, and the OJJDP *Peer Review Manual* will, however, incorporate these statutory requirements. OJJDP will ensure that the section 225(b) requirements are met and the Administrator will consider, in making final decisions on applications, the six selection criteria specified in section 225(c).

5. *Comment:* The regulation provision for notification of disposition to applicants (§ 34.4(f)) should provide for feedback of written review comments and summaries to all applicants.

Response: It has been OJJDP's longstanding practice to provide unsuccessful applicants with either a summary of reviewer comments which specifies application deficiencies or copies of reviewer rating and comment sheets (with reviewer identification removed). Where summaries are provided initially, copies of reviewer rating and comment sheets will be provided if an applicant specifically requests these documents. This practice will be continued for all applications subject to the peer review procedure and will be incorporated in the OJJDP *Peer Review Manual.*

6. *Comment:* The exclusion of competitive Part C (NIJJDP) programs, particularly research, development and demonstration programs, from peer review is not warranted, especially when a large number of applications is received in response to a **Federal Register** program announcement.

Response: Section 225(d)(2) of the Act does not require peer review for competitively funded Part C programs. Although section 241(h) of Part C of the Act states that "The authority of the Institute under this part shall be subject to the terms and conditions of section 225(d)", the OJP Office of General Counsel has advised OJJDP that this language does no more than incorporate the language of section 225(d) into Part C to the extent that it applies by its terms. Congress could easily have applied section 225(d)(2) to Part C in the same manner as it did the competition requirements in section 225(d)(1).

Nevertheless, OJJDP concurs with the thrust of the comment and will use peer review for competitive Part C programs when the Administrator determines that peer review conducted under the terms of Subpart B is appropriate. In some circumstances, however, internal staff review using OJJDP and other Department of Justice officers and employees in the review process may be the preferred review method. The method anticipated by OJJDP for each competitive program will, in any event, be specified in each Part C program announcement (See § 34.4(c).)

7. *Comment:* Is investigator-initiated research (unsolicited research proposals) precluded by the use of a peer review process?

Response: No. Unsolicited research proposals can be considered in two ways: (1) They can be funded under the Section 225(d)(1)(B)(i) exception if determined through peer review conducted under Subpart B to be of such outstanding merit that an award without competition is justified; or (2) they can be funded if the proposal, though not determined to be of outstanding merit under (1) above, inspires an announced competitive research program in that particular area of research and the applicant successfully competes for an award. In addition, OJJDP is reviewing the possibility of instituting an unsolicited research proposal program. Under such a program, a small number of areas would be identified as in need of further research effort. While these applications would be "solicited" in the broad sense, researchers could tailor the exact focus of their proposed research and their research methodology to the needs and methodology which they, rather than OJJDP, perceive to be most relevant and appropriate.

8. *Comment:* The peer review procedures alluded to in § 34.102, including standards of conduct, conflict of interest, compensation, and other procedures which implement OJJDP's peer review policy through the formulation of an "OJJDP *Peer Review Manual*" should also be published in the **Federal Register.**

Response: Section 225(d)(2) does not require that OJJDP's peer review *policy*, much less the specific *procedures* adopted to implement that policy, be published in the **Federal Register** for review and comment. However, OJJDP views peer review, where mandated or otherwise appropriate, as an integral part of the overall competitive process. Consequently, the specific principles under which peer review will be conducted (the policy) have been incorporated in Subpart B of this regulation. OJJDP believes the establishment of this policy framework, and the flexible process and procedure to be set forth in the OJJDP *Peer Review Manual* (which will contain the "nuts and bolts" of peer review and how it is related to the overall OJJDP competition policy), will fully implement the Congressional directive of section 225(d). Further, OJJDP intends the *Peer Review Manual* to be a fluid document which will be added to and modified by experience and the continuing input and advice of the National Science Foundation (NSF) and the National Institute of Mental Health (NIMH), the agencies charged in section 225(d)(2) of the Act with advising OJJDP in the implementation of the peer review process. It should also be pointed out that, to OJJDP's knowledge, no agency using peer review publishes its detailed peer review process and procedure in the **Federal Register.** Many do not even publish a peer review policy or have written procedures. OJJDP's process and procedure will be set forth in the OJJDP *Peer Review Manual* and the *Manual* will be available to interested members of the public.

9. *Comment:* Applications recommended by the peer review process should be binding rather than advisory.

Response: The Administrator, OJJDP, is the Federal official charged with the responsibility to administer OJJDP's programs, including the award and denial of assistance applications (see section 201(b) of the Act). Further, sections 225(d) specifies that assistance programs and projects are to be "reviewed before selection" through a formal peer review process, indicating a clear Congressional intent that the decisionmaking authority remain in the Administrator. It must also be noted that the role of a peer reviewer (evaluator of technical and programmatic merit) is a limited one. It necessarily excludes consideration of administrative and procedural requirements, judgments on compliance with minimum program requirements (such as civil rights requirements), statutory funding criteria, and other criteria such as geographic balance, fiscal responsibility determinations, and the like, which necessarily influence the decisionmaking process. Consequently, Congress has centered the decisionmaking authority in one individual whom it has made responsible for taking *all* elements of

the decisionmaking process into account—the Administrator of OJJDP.

10. *Comment:* OJJDP staff should not be able to eliminate from peer review either pre-applications (§ 34.104(a)) or applications (§ 34.104(b)) which lack "sufficient merit" or "fail to meet minimum requirements" to qualify for funding. This is a peer review function.

Response: OJJDP has modified the regulation in response to this comment to clarify the function of staff review of pre-applications and applications undertaken prior to peer review. Pre-applications are reviewed by staff to identify those which either fail to meet or address minimum *program* requirements, *as specified in a program announcement*, or which *clearly* lack sufficient merit to qualify for funding consideration. For formal applications, only those applicants who fail to meet minimum *program* requirements, as specified in program announcements, would be eliminated.

Program requirements include such items as being the type of applicant organization eligible for award, providing an evaluation component or plan, providing a budget on the required form, being within specified funding limits, etc. Because few program requirements are generally required to be specifically addressed in pre-applications, the regulation allows staff review to eliminate those pre-applications from full application development or pre-application peer review, as the case may be, which clearly lack sufficient merit to possibly qualify for funding consideration. This saves the applicant a needless waste of time and expense in developing a full proposal, saves OJJDP funds, and saves OJJDP's peer reviewers a needless waste of their time and energy reviewing proposals which would not qualify for full application development. For full applications, only those proposals which fail to meet applicable program requirements at a minimum satisfactory level would be eliminated from peer review. This should eliminate most proposals that are also without sufficient merit to warrant peer review consideration. Again, this level of staff review will eliminate the needless waste of peer review resources.

11. *Comment:* Section 34.104(c) provides that peer review will result in a "relative aggregate ranking of applications . . . based upon numerical values assigned by individual peer reviewers." OJJDP should assign point values to the application review criteria contained in program announcements so that applicants will have advance notice of the relative importance of each criterion.

Response: Agree. OJJDP has added a new subsection (b) to § 34.3 (moved from § 34.4(c)) with an additional sentence at the end of subsection (b) expressly stating that "The relative weight (point value) for each selection criterion will be specified in the program announcement."

12. *Comment:* Peer review recommendations should be binding with respect to noncompetitive assistance awards (§ 34.104(f)) only when in the negative. In addition, procedures should be established to provide a competitive process when a noncompetitive proposal presents an idea or concept worth funding but is not of the requisite "outstanding merit" to warrant a noncompetitive award.

Response: Agree. Section 34.104(f) has been modified to clarify the first point and to add a sentence indicating that the Administrator may consider, where a noncompetitive application is determined through peer review not to be of "outstanding merit," the issuance of a competitive program announcement to implement the idea or concept initially proposed by the applicant. The applicant would, or course, be free to compete for the award.

13. *Comment:* Although peer review recommendations are generally advisory only, the Administrator should clearly articulate the basis for funding decisions that deviate from the peer reviewers' recommendations.

Response: Agree. The OJJDP Peer Review Manual will provide that in the event the Administrator's final selections differ from the peer reviewers' recommendations, a written "statement of reasons" will be completed by the Administrator and made a part of the program record.

14. *Comment:* Rules should be established to set forth procedures for reconsideration of competitive or noncompetitive proposals that are initially rejected.

Response: The administrative review procedure applicable to Part B, Subpart II, and Part C assistance award denials is based on Sections 802–804 of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, as implemented in 28 CFR Part 18. This regulation has been published in the Federal Register for comment (See 50 FR 11905, March 26, 1985) and is expected to be published in final form in the near future.

15. *Comment:* Several commentors raised general questions about how OJJDP will conduct peer review meetings and "ad hoc" mail reviews.

Response: Section 34.105(b) has been modified to specify that the OJJDP program manager will instruct peer reviewers and oversee the conduct of peer review group meetings. For competitive programs, resulting in a large number of applications, meetings of peer reviewers will be the rule. Mail reviews will, however, be the standard procedure for review of noncompetitive proposals to determine whether they are of such outstanding merit as to justify an award without competition and when a small number of applications is submitted in response to a competitive program announcement. When mail reviews are used, OJJDP will provide a copy of the OJJDP *Peer Review Manual* and appropriate written instructions to each peer reviewer.

16. *Comment:* The use of Department of Justice staff as peer reviewers is neither programmatically justified nor consistent with section 225(d)(2) which requires that the formal peer review process utilize "experts (other than officers and employees of the Department of Justice) in fields related to the subject matter of the proposed program."

Response: OJJDP agrees with the proposition, expressed by one commentor and by both NIMH and NSF officials, that the best peer review process is one which achieves an independent review of the technical and programmatic merit of each proposal. Consequently, the final regulation establishes as OJJDP policy that peer review groups will be made up entirely of experts other than officers and employees of the Department of Justice (See § 34.103 and § 34.106).

The role of Department of Justice officers and employees will, however, continue to be substantial because these individuals' expertise will be tapped through the *internal review* of programs and projects to determine compliance with basic program and statutory requirements, to review the results of peer review, and to provide overall evaluations and program recommendations to the Administrator.

Consequently, § 34.107 has been revised to reflect this separate and distinct role, outside the peer review process, for OJJDP and other DOJ program staff. Other sections of the regulation have received minor technical changes to reflect the distinction between peer review and the other steps in the overall review and funding process that complement peer review.

17. *Comment:* Peer review should utilize regional expertise and include experts in the delivery of direct services to youth and their families.

Response: OJJDP's criteria for selection of reviewers (§ 34.108) will be set forth in the OJJDP *Peer Review*

Manual. Both geographic balance and specialized expertise in areas or fields related to a particular program (See § 34.109(b)) are included as reviewer selection/qualification criteria. However, experience in the delivery of direct services to youth may not be relevant to all competitive programs selected by OJJDP and cannot, consequently, be made a minimum qualification for all peer reviewers.

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This final rule does not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

There are no collection of information requirements contained in this regulation required to be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 34

Grant programs, Juvenile delinquency.

Accordingly, Title 28 Code of Federal Regulations is amended by adding Part 34 to read as follows:

PART 34—OJJDP COMPETITION AND PEER REVIEW PROCEDURES

Subpart A—Competition

Sec.

34.1 Purpose of applicability.
34.2 Exceptions to applicability.
34.3 Selection criteria.
34.4 Additional competitive application requirements and procedures.

Subpart B—Peer Review

34.100 Purpose and applicability.
34.101 Exceptions to applicability.
34.102 Peer review procedures.
34.103 Definition.
34.104 Use of peer review.
34.105 Peer review methods.
34.106 Number of peer reviewers.
34.107 Use of Department of Justice staff.
34.108 Selection of reviewers.
34.109 Qualifications of peer reviewers.
34.110 Management of peer reviews.
34.111 Compensation.

Subpart C—Emergency Expedited Review—[Reserved]

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 *et seq.*).

Subpart A—Competition

§ 34.1 Purpose and applicability.

(a) This subpart of the regulation implements section 225(d)(1) (A) and (B) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This provision requires that projects funded under new programs selected for categorical assistance awards under the Special Emphasis Discretionary Grant Program (section 224) or by the National Institute for Juvenile Justice and Delinquency Prevention under Part C, after October 12, 1984, be selected through a competitive process established by rule by the Administrator, OJJDP. The statute specifies that this process must include announcement of fund availability for assistance programs, the criteria applicable to the selection of applicants for assistance, and a description of the procedures applicable to the submission and review of assistance applications.

(b) This subpart of the regulation applies to all grant, cooperative agreement, and other assistance awards selected by the Administrator, OJJDP, or the Administrator's designee, hereinafter referred to in this part as the Administrator, after October 12, 1984, under Part B, Subpart II, section 224, and under Part C of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601), except as provided in the Exceptions to Applicability set forth below.

§ 34.2 Exceptions to applicability.

The following are assistance and procurement contract award situations that OJJDP considers to be outside the scope of the section 225(d) competition requirement.

(a) Assistance awards to projects under competitive programs announced prior to October 12, 1984.

(b) Assistance awards to projects for which initial applications were received and the applicant selected for award by the Administrator prior to or on October 12, 1984, but which received an initial award after such date.

(c) Assistance awards to continue activities initially funded under projects selected for award prior to or on October 12, 1984.

(d) Assistance awards to projects if the Administrator has made a written determination that the proposed program is not within the scope of any program announcement expected to be issued, is otherwise eligible for an award, and if the proposed project is of such outstanding merit, as determined through peer review under Subpart B, that an assistance award without competition is justified (section 225(d)(1)(B)(i)).

(e) Assistance awards for training services under Pact C, section 244, if the Administrator has made a written determination that the applicant is uniquely qualified to provide such services (section 225(d)(1)(B)(ii)).

(f) Assistance awards of funds transferred to OJJDP by another Federal agency to augment authorized juvenile justice programs, projects, or purposes.

(g) Funds transferred to other Federal agencies by OJJDP for program purposes as authorized by law.

(h) Procurement contract awards which are subject to applicable Federal laws and regulations governing the procurement of goods and services for the benefit and use of the government.

(i) Assistance awards from the 5% "set aside" of Special Emphasis funds under section 224(e).

§ 34.3 Selection criteria.

(a) All programs and individual project applications subject to competition under § 34.1 of this subpart will, at a minimum, be subject to review based on the extent to which they meet the following general selection criteria:

(1) The problem to be addressed by the project is clearly stated;

(2) The objectives of the proposed project are clearly defined;

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives;

(4) The project management structure is adequate to the successful conduct of the project;

(5) Organizational capability is demonstrated at a level sufficient to successfully support the project; and

(6) Budgeted costs are reasonable in comparison to the activities proposed to be undertaken.

(b) The general selection criteria set forth under § 34.3(a), above, may be supplemented for each announced competitive program by program specific selection criteria for the particular Part B, Supart II, or Part C program. Such announcements may also modify the general selection criteria to provide greater specificity or otherwise improve their applicability to a given program. The relative weight (point value) for each selection criteria will be specified in the program announcement.

§ 34.4 Additional competitive application requirements and procedures.

(a) *Applications for grants.* Any applicant eligible for assistance may submit on or before such submission deadline date or dates as the Administrator may establish in program announcements, an application containing such pertinent information and in accordance with the forms and instructions as prescribed therein and any additional forms and instructions as may be specified by the Administrator. Such application shall be executed by the applicant or an official or representative of the applicant duly authorized to make such application and to assume on behalf of the applicant the obligations imposed by law, applicable regulations, and any additional terms and conditions of the assistance award. The Administrator may require any applicant eligible for assistance under this Subpart to submit a preliminary proposal for review and approval prior to the acceptance of an application.

(b) *Cooperative arrangements.* (1) Eligible parties may enter into cooperative arrangements with other eligible parties, including those in another State, to apply for assistance.

(2) A joint application made by two or more applicants for assistance under this Subpart may have separate budgets corresponding to the programs, services and activities performed by each of the joint applicants or may have a combined budget. If joint applications present separate budgets, the Administrator may make separate awards, or may award a single assistance award authorizing separate amounts for each of the joint applicants.

(c) *Evaluation of applications submitted under Part C of the Act.* All applications filed in accordance with § 34.1 of this Subpart for assistance with Part C funds shall be evaluated by the Administrator through officers, employees, and/or such experts or consultants engaged for this purpose as the Administrator determines are specially qualified in the particular Part C program area covered by the announced program. The program announcement shall clearly state the application review procedures (peer review or other) to be used for each competitive Part C program announcement.

(d) *Applicant's performance on prior award.* Where the applicant has previously received an award from OJJDP or another Federal agency, the applicant's compliance or noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports and memoranda on performance, and the completeness of required submissions, may be considered by the Administrator. However, in any case where the Administrator proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, the Administrator shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

(e) *Disposition of Applications.* On the basis of competition and applicable review procedures completed pursuant to this part, the Administrator will either:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions as the Administrator deems necessary or desirable for the completion of the approved project;

(2) Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but that the application must be disapproved for funding because it did not rank sufficiently high in relation to other applications approved for funding to qualify for an award based on the level of funding allocated to the program; or

(3) Reject the application for failure to meet the applicable selection criteria at a sufficiently high level to justify an award of funds or for any other reason which the Administrator determines adversely impacts upon the applicant's capability to successfully carry out the project.

(f) *Notification of disposition.* The Administrator will notify the applicant in writing of the disposition of the application. A signed Grant/Cooperative Agreement form will be issued to notify the applicant of an approved project application.

(g) *Effective date of approved grant.* Federal financial assistance is normally available only with respect to obligations incurred subsequent to the effective date of an approved assistance project. The effective date of the project will be set forth in the Grant/Cooperative Agreement form. Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the assistance award if such costs are authorized by the Administrator in the notification of grant award or subsequently in writing, and otherwise would be allowable as costs of the assistance award under applicable guidelines, regulations, and grant terms and conditions.

Subpart B—Peer Review

§ 34.100 Purpose and applicability.

(a) This subpart of the regulation implements section 225(d)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This provision requires that projects funded under new programs selected for categorical assistance awards under the Special Emphasis discretionary grant program (section 224), after October 12, 1984, shall be reviewed before selection and thereafter as appropriate through a formal peer review process. Such process must utilize experts (other than officials and employees of the Department of Justice) in fields related to the subject matter of the proposed program.

(b) This subpart of the regulation applies to all grant, cooperative agreement, and other assistance awards selected by the Administrator, OJJDP, after October 12, 1984, under Part B, Subpart II, section 224, and awards under Part C that are being considered for noncompetitive award (and hence subject to section 225(d)(1)(b)(i) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601)), except as provided in the Exceptions to Applicability set forth below.

§ 34.101 Exceptions to applicability.

The assistance and procurement contract situations specified in § 34.2 (a), (b), (c), (e), (f), (g), (h), and (i) of Subpart A and all Part C awards competitively funded pursuant to section 225(d)(1)(A) are considered by OJJDP to be outside the scope of the section 225(d) peer review requirement as set forth in this subpart.

§ 34.102 Peer review procedures.

The OJJDP peer review process will be contained in an OJJDP *Peer Review Manual*, which is currently under development in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. In addition to specifying substantive and procedural matters related to the peer review process, the *Manual* will address such issues as standards of conduct, conflict of interest, compensation of peer reviewers, etc. The peer review process for all assistance awards subject to this Subpart will be conducted in a manner consistent with this Subpart as implemented in the Peer Review Manual.

§ 34.103 Definition.

"Peer review" means the technical evaluation by a group of experts (other

than officers and employees of the Department of Justice) qualified by training and experience to give expert advice, based on selection criteria established under Subpart A of this part or in a program announcement, on the technical and programmatic merit of assistance.

§ 34.104 Use of peer review.

(a) Each program announcement will indicate the program specific peer review procedures and selection criteria to be followed in peer review for that program. In the case of programs for which a large number of applications is expected, pre-applications (concept papers) may be required at the Administrator's option. Pre-applications will be reviewed by qualified OJJDP staff to eliminate those pre-applications which fail to meet minimum program requirements, as specified in a program announcement, or clearly lack sufficient merit to qualify as potential candidates for funding consideration. If appropriate, the Administrator may subject both pre-applications and formal applications to the peer review process.

(b) Where formal applications are required in response to a program announcement, an initial review will be conducted by qualified OJJDP staff, in order to eliminate from peer review consideration applications which do not meet minimum program requirements. Such requirements will be specified in the program announcement. Applicants determined to be qualified and eligible for further consideration will then be considered under the peer review process.

(c) The results of peer review under a competitive program will be a relative aggregate ranking of applications in the form of "Summary Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers, and as set forth in the OJJDP *Peer Review Manual.*

(d) Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator's consideration of competing applications and selection of applications for funding.

(e) Comments on applications may also be requested from appropriate specialists and consultants outside of Government.

(f) Peer review recommendations are advisory only and are binding on the Administrator only as provided by section 225(d)(1)(B)(i) for noncompetitive assistance awards to programs determined through peer review not to be of such outstanding merit that an award without competition is justified. In such case, the determination of whether to issue a competitive program announcement will be a matter subject to the exercise of the Administrator's discretion.

§ 34.105 Peer review methods.

(a) Peer review will normally consist of written comments provided in response to the general selection criteria established under Subpart A of this part and any program specific selection criteria identified in the program announcement, together with the assignment of numerical values. Peer review may be conducted at meetings of peer reviewers held under OJJDP oversight, through mail reviews, or a combination of both. Where appropriate, site visits may also be employed. The primary method of peer review anticipated for each announced competitive program, including all evaluation criteria to be used by peer reviewers, will be specified in each program announcement.

(b) For peer review conducted through meetings, peer review panelists will be gathered together for instruction by the OJJDP program manager, including review of the OJJDP *Peer Review Manual,* who will then oversee the conduct of individual and group review sessions, as appropriate. Where time or other factors such as cost preclude the convening of a peer review panel, mail reviews will be used. For competitive programs, mail reviews will be used only where the Administrator makes a written determination of necessity. Mail reviews will be the standard procedure used for review of noncompetitive assistance applications being considered for Part B, Subpart II, or Part C fund support. In such case, the application would have to be determined, through the peer review process, to qualify as "Outstanding".

§ 34.106 Number of peer reviewers.

The number of peer reviewers will vary by program (as affected by the volume of applications anticipated or received). OJJDP will select a minimum of three peer reviewers (qualified individuals who are not officers or employees of the Department of Justice) for each program or project review in order to ensure a diversity of backgrounds and perspectives. In no case will fewer than three reviews be made of each individual application.

§ 34.107 Use of Department of Justice staff.

OJJDP will use qualified OJJDP and other DOJ staff as internal reviewers. Internal reviewers determine applicant compliance with basic program and statutory requirements, review the results of peer review, and provide overall program evaluation and recommendations to the Administrator.

§ 34.108 Selection of reviewers.

The Administrator, OJJDP, will make the final selection of both peer reviewers and internal reviewers. The selection process for peer reviewers will be detailed in the OJJDP *Peer Review Manual.*

§ 34.109 Qualifications of peer reviewers.

The general reviewer qualification criteria to be used by the Adminstrator in the selection of peer reviewers are:

(a) Generalized knowledge of juvenile justice or related fields.

(b) Specialized knowledge in areas or fields addressed by the applications to be reviewed under a particular program.

Additional details will be provided in the OJJDP *Peer Review Manual.*

§ 34.110 Management of peer reviews.

A technical support contractor may assist the OJJDP program manager in managing the peer review process.

§ 34.111 Compensation.

All peer reviewers will be eligible to be paid an appropriate consulting fee. Detailed information will be provided in the OJJDP *Peer Review Manual.*

Subpart C—Emergency Expedited Review—[Reserved]

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85-18384 Filed 8-1-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-85-37]

Temporary Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the Ben Sawyer Bridge across Sullivan's Island Narrows by permitting the number of openings to be further

limited during certain periods. This change is being made to evaluate a proposed permanent change to these regulations requested by the State of South Carolina and several elected officials.

DATES: These temporary regulations become effective on July 27, 1985 and terminate on September 22, 1985. Comments must be received on or before September 30, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 350–4103.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this rule and it is being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would be impracticable. Prompt implementation of these temporary regulations is necessary to evaluate their effect during the summer months and to provide relief to a locally declared traffic emergency.

Persons affected by or concerned with these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic, including observed effects (beneficial and deterimental), and any suggestions for changes. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for support of or opposition to these temporary regulations. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

If a determination is made to permanently change the regulations, a notice of proposed rulemaking will be published to afford the public further opportunity to comment at that time.

Drafting Information

The drafters of this notice are Captain Al Cattalini, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Temporary Regulations

The South Carolina Department of Highways and Public Transportation has determined that weekend vehicular traffic across the Ben Sawyer Bridge has resulted in an emergency situation requiring a revision to the drawbridge operation regulations. The bridge now opens on signal Saturdays, Sundays, and federal holidays except between 2 p.m. and 6 p.m. when the draw need open only on the hour and half-hour. The State has requested that weekend openings be limited to once an hour between 9 a.m. and 7 p.m. At the request of U.S. Senator Ernest F. Hollings, U.S. Congressman Thomas F. Hartnett, State Senator Arthur Ravenel, Jr., and the mayors of Isle of Palms, Mount Pleasant, and Sullivan's Island, South Carolina, the Coast Guard is temporarily changing the regulation as the State requested.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

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

2. Section 117.911(a) is revised to read as follows for the period July 27, 1985 through September 22, 1985. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) The draw of the Ben Sawyer (S703) Bridge across Sullivan's Island Narrows, mile 462.2 (AIWW) between Sullivan's Island and Mount Pleasant, shall open on signal, except that the draw need not be opened from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and federal holidays from 9 a.m. to 7 p.m., the draw need be opened only on the hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

Dated: July 24, 1985.

G.S. Duca,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District

[FR Doc. 85–18248 Filed 8–1–85; 8:45 am]

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37 CFR Parts 201 and 202

[Docket RM 84–3]

Office Organization and Procedures in Providing Information

Correction

In FR Doc. 85–17538 beginning on page 30169 in the issue of Wednesday, July 24, 1985, the agency headings should have read as they do in the heading of this document.

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–10–FRL–2873–4]

Approval and Promulgation of State Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice, EPA announces its approval of two revisions to the Oregon State Implementation Plan (SIP). Revisions include: (1) Rules and statutes restricting the sale of woodstoves to only clean burning models, and (2) administrative changes to the current field burning rules. These revisions were submitted to the State of Oregon Department of Environmental Quality (ODEQ) after adequate opportunity for public input. These changes will reduce emissions from woodstoves and make the federally enforceable field burning rules in Oregon consistent with those recognized by the State.

EFFECTIVE DATE: October 1, 1985.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–84–10), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, 522 SW. Fifth, Yeon Building, Portland, Oregon 97204

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

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT:
E. Ann Williamson, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442–8633, (FTS) 399–8633.

SUPPLEMENTARY INFORMATION:

I. Background

Residential wood heating has been the fastest growing source of particulate matter air pollution in Oregon. Several airshed studies have identified wood heating as a significant source of uncontrolled pollutants and a major cause of air quality standard violations in Portland and Medford. Recent surveys have shown that over 50 percent of Oregon residences use wood for some space heating. This pattern is expected to continue as more individuals try to offset accelerating costs of conventional heating.

In response to this situation, the ODEQ sought solutions to the growing woodstove problem. After consultation with governmental agencies, air quality committees, business groups, and the wood heating industry, a mandatory statewide certification program was determined to be the most effective, supportable approach. A woodstove certification bill was introduced to the Oregon Legislature early in 1983 and ultimately signed into law in July 1983. The law requires adoption of emission standards and testing procedures, a period of voluntary testing and labeling, and limiting advertising and sale of woodstoves and fireplace inserts to only certified models after July 1, 1986.

The Environmental Quality Commission (EQC) adopted rules, in accordance with the woodstove certification law, on June 8, 1984. ODEQ submitted them to EPA on July 26, 1984.

Amendments to Oregon's field burning rules were adopted by the EQC on June 29, 1984, and submitted to EPA on August 7, 1984.

II. Plan Revisions

A. Woodstove Certification (OAR 340–21–100 Through 340–21–190)

Woodstove certification rules restrict the sale of residential wood heating appliances to only clean burning models. Woodstoves sold in the State of Oregon on or after July 1, 1986, must be tested and certified by ODEQ that they meet recently adopted performance specifications. Particulate emissions from such stoves may not exceed 15 grams per hour for non-catalytic units and 6 grams per hour for catalyst equipped models. On July 1, 1988, the emission limits are tightened further to 9 grams per hour for a non-catalytic woodstove and 4 grams per hour for a catalyst equipped stove. Included in this revision are the Oregon Revised Statutes 468.630 to 468.655 which provide for the woodstove certification program.

Reductions in particulate emissions from woodstoves are required for attainment of total suspended particulate (TSP) standards in Medford and Portland. The Medford TSP attainment plan, approved on August 15, 1984 (49 FR 32754), calls for a number of woodstove control measures for attainment of primary standards and relies specifically on the woodstove certification program for some of the emission reductions necessary to attain secondary standards. The plan for attaining TSP secondary standards in Portland (47 FR 15587) also identifies emission reductions from residential home heating appliances.

In addition, emission reductions associated with the woodstove certification rules will provide environmental benefits beyond reducing ambient TSP levels. Due to the nature of woodstove smoke, emission reductions from more complete combustion will also reduce emissions of carbon monoxide and polycyclic organic matter (POM), which may include carcinogenic compounds. Further, virtually all the particulate emissions from woodstoves are in the fine particle range. Thus, the subject controls will also be an integral part of any future Oregon strategies to attain the revised particulate matter standards (PM–10 standards) that EPA proposed on March 20, 1984 (49 FR 10408).

B. Field Burning (OAR 340–26–001)

Changes to field burning rules involve deleting OAR 340–26–030 which provided for tax credits for approved alternative methods and approved alternative facilities. This in turn requires corresponding revision of the "introduction" (OAR 340–26–001) to the field burning rules. These tax credit provisions have been relocated in a new rule, OAR 34–16 "Pollution Control Tax Credits," which has not been submitted for inclusion in the SIP. However, deletion of the tax credit provisions from the SIP is justified since the approved control strategies demonstrate attainment and maintenance of ambient standards and PSD increments without the use of alternative methods or facilities.

III. Response to Comments

In the January 29, 1985 proposal a 30-day public comment period was provided, however, no comments were received.

IV. Summary of Rulemaking Action

EPA is approving today, rules of the Oregon woodstove certification program (OAR 340–21–100 through 340–21–190), and the Oregon Revised Statutes 468.630 to 468.655 as part of the SIP. Further, these rules are to be incorporated into the Medford (49 FR 32754) and Portland (47 FR 15587) plans for attaining TSP secondary standards. Both of these plans contain commitments for the future adoption of woodstove measures necessary to attain TSP secondary standards; the woodstove certification rules fulfill, in part, those commitments.

EPA is also approving the deletion of OAR 340–26–030 from the Oregon field burning program and the amending of OAR 340–26–001 (introduction) accordingly.

V. Administrative Review

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register in July 1, 1982.

Dated: July 26, 1985.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

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

Subpart MM—Oregon

1. The authority citation for Part 52 is revised to read as set forth below and the authority citations following all the sections in Part 52 are removed:

Authority: 42 U.S.C. 7401–7642.

§ 52.1970 [Amended]

2. Section 52.1970 is amended by adding paragraph (c)(70) as follows:

* * * * *

(c) * * *

(70) Revisions to the Oregon State Implementation Plan were submitted by the Director on July 26, 1984 and August 7, 1984. Revisions are woodstove certification program rules (OAR 340-21-100 to 340-21-190), Oregon Revised Statutes 468.630 to 468.655 and amendment to field burning introduction (OAR 340-26-001) and repeal the field burning rules relating to tax credits (OAR 340-26-030).

(i) Incorporation by Reference:

(A) Woodstove certification program rules (OAR 340-21-100 to 340-21-190) as published in the Oregon Administrative Rules, November 1984.

(B) The Oregon Revised Statutes 468.630 to 468.655 as signed by the Governor on July 5, 1984.

(C) Amendment to the field burning rule introduction (OAR 340-60-001) as adopted by the Oregon Environmental Commission on June 29, 1984.

[FR Doc. 85-18271 Filed 8-1-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-43 and 101-45

[FPMR Amdt. H-155]

Instructions for Preparing Standard Forms 120 and 126

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Final rule.

SUMMARY: This regulation updates the listing of regional office addresses and areas and amends the instructions for preparing Standard Forms 120 Report of Excess Personal Property, and 126, Report of Personal Property for Sale. It requires the use of a valid FEDSTRIP or DOD activity address code and a Julian date in the document report number field. It also requires use of a unique item number of individual line items on Standard Forms 120 and 126 for use in combination with the activity address code and Julian date as a single control number throughout the utilization and disposal process for items reported as excess or for sale by GSA.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley M. Duda, Director, Utilization Division (703-557-0807).

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 101-43 and 101-45

Government property management, Reporting requirement, Surplus Government property.

Title 41, Parts 101-43 and 101-45, of the Code of Federal Regulations are amended as follows:

1. The authority citation for Parts 101-43 and 101-45 continues to read as follows:

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

PART 101-43—UTILIZATION OF PERSONAL PROPERTY

Subpart 101-43.48—Exhibits

2. Section 101-43.4802 is revised to read as follows:

§ 101-43.4802 Regional office addresses and assigned areas.

Region and office address	Regional areas
National Capital Region—General Services Administration, 7th and D Streets, SW., Washington, DC 20407	District of Columbia; the counties of Montgomery and Prince Georges in Maryland; the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.
1—General Services Administration, John W. McCormack Post Office and Courthouse, Boston, MA 02109.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
2—General Services Administration, 26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Commonwealth of Puerto Rico, Virgin Islands.
3—General Services Administration, Ninth and Market Streets, Philadelphia, PA 19107.	Delaware, Maryland, Pennsylvania, Virginia, West Virginia, with the exception of the National Capital Area.
4—General Services Administration, 75 Spring Street, SW., Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
5—General Services Administration, 230 South Dearborn Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
6—General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.	Iowa, Kansas, Missouri, Nebraska.
7—General Services Administration, 819 Taylor Street, Forth Worth, TX 76102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
8—General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
9—General Services Administration, 525 Market Street, San Francisco, CA 94105.	Arizona, California, Hawaii, Nevada, Pacific Ocean Areas.
10—General Services Administration, GSA Center, Auburn, WA 98002.	Alaska, Idaho, Oregon, Washington.

Subpart 101-43-49.—Illustrations of Forms

3. Section 101-43.4901-120-1 is amended by revising paragraphs (a), (c), and (e), Instructions for preparing Standard Form 120; the text of these paragraphs is filed with the original document and will not appear in the Code of Federal Regulations.

PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 101-45.49—Illustrations of Forms

4. Section 101-45.4901-126 is amended by revising paragraph (b), instructions for preparing Standard Form 126; the text of this paragraph is filed with the original document and will not appear in the Code of Federal Regulations.

Dated July 9, 1985.

Paul Trause,

Acting Administrator of General Services.

[FR Doc. 85-18210 Filed 8-1-85; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 62

[CC Docket No. 84-1330; FCC 85-365]

Applications to Hold Interlocking Directorates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 31, 1984, the Commission released a Notice of Proposed Rulemaking to clarify and simplify Part 62 of the Commission's Rules, 47 CFR 62.1 *et seq.* FCC 84-627; 50 FR 976 [January 8, 1985]. Part 62 implements Section 212 of the Communications Act of 1934, as amended, 47 U.S.C. 212, dealing with interlocking directorates. In the First Report and Order, the Commission adopts the proposed rules, which: (1) Eliminate the requirement that applicants seeking to hold interlocking directorates with non-dominant carriers

as defined in the *Competitive Carrier Rulemaking*, or with cellular licensees in different geographic markets file Part 62 applications; (2) reduce the amount of detail in information required for interlocks involving carriers still subject to the applications process; (3) require that interlocking arrangements be reported for tracking purposes and facilitate the complaint process; and (4) clarify the application of Part 62 to positions upon parent or holding companies of carriers and connecting carriers.

The justification for the action taken is that the record in this proceeding supports the revision of Part 62 to eliminate the need for case-by-case scrutiny of all interlocking arrangements.

The intended effect of the action taken will reduce the number of Section 212 applications needing to be processed by over 90 percent, since nearly all applications resolved in the past several years were for authority to hold interlocking positions on non-dominant carriers or on cellular licensees in different geographic markets, which will no longer be required to be filed.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Deborah Lerner or Bert Weintraub, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 62

Antitrust, Communications common carriers, Reporting and recordkeeping requirements.

First Report and Order

In the matter of amendment of Part 62 of the Commission's rules (CC Docket No. 84-1330).

Adopted July 11, 1985.
Released July 19, 1985.

By the Commission.

Introduction

1. On December 31, 1984, the Commission released a Notice of Proposed Rulemaking (NPRM)[1] proposing to clarify and simplify Part 62 of the Commission's Rules, 47 CFR 62.1, *et seq.* Part 62 implements section 212 of the Communications Act of 1934, as amended, 47 U.S.C. 212, which prohibits any person from holding the position of officer or director of more than one carrier subject to the Act without obtaining prior Commission authorization. As stated in the NPRM, "[o]ur purpose in initiating this proposed rulemaking is to assure that the burden imposed by these Rules is commensurate with our statutory oversight obligations in the context of the current industry environment." NPRM at paragraph 1.

2. Congress designed section 212 to guard against anticompetitive behavior arising from the interlocking of companies through sharing of officers or directors. The Commission has in the past implemented section 212 by requiring the filing of applications containing detailed information demonstrating that neither private nor public interests will be harmed by granting authorization to hold interlocking directorates. Such requests have been reviewed on a case-by-case basis. However, in recent years these applications have been virtually unopposed, although we have routinely placed them on public notice. Our own analysis has revealed that, almost without exception, the interlocks sought do not offend public or private interests. At the same time, this processing approach has been time-consuming, costly, and burdensome, both to the Commission and to the applicants. In addition, in light of growing competition and advances in telecommunications, we have become increasingly aware that these changes have greatly affected the need for stringent regulatory oversight and intervention in the free market activities of carriers. In short, it is time to adjust our regulatory scheme for implementing section 212 to match today's competitive environment to achieve the most effective, efficient, and meaningful regulation. We are eliminating the requirement of our rules that applicants seeking to hold interlocking directorates with non-dominant carriers as defined in our *Competitive Carrier Rulemaking*,[2] or with cellular licensees in different geographic markets, file Part 62 applications. We are eliminating unnecessary detail in information required by applicants for interlocks involving carriers still subject to the applications process (*i.e.*, dominant carriers). We are also clarifying the application of such filings as they pertain to positions upon parent or holding companies of carriers, and connecting carriers.

3. As to our proposal concerning non-dominant carriers, such carriers do not possess sufficient market power, either alone or in concert with other non-dominant carriers, to engage in predatory pricing or other anticompetitive or unjust practices. The ability of such carriers to engage in anticompetitive behavior via interlocking directorates has been substantially curbed by the telecommunications marketplace and the individual lack of market power of these carriers. Thus, if these entities attempt, through interlocking arrangements, to set prices or restrain competition, other service providers will step in to maintain prices at a competitive level or to furnish the desired service.

4. We also proposed in our NPRM to relieve cellular licensees operating in different geographic markets from the Part 62 applications process. It has been our belief that, since their service area is defined and limited by this Commission, our regulation of interlocks among these cellular licensees may be less stringent (even though they have not been at least at this time found to be non-dominant) because the structure of cellular radio service does not foster competition between licensees in different geographic markets.

5. Due to the unlikelihood that interlocking arrangements between or among non-dominant carriers or cellular licensees in different markets would cause harm to public or private interests, we thus proposed to authorize interlocks between such entities as a class rather than on an individual basis. In addition, we proposed an alternative and less burdensome regulatory mechanism to assure compliance with the goals of section 212 for such entities. Such oversight would be accomplished, consistent with section 212, by reviewing interlocking directorates disclosed pursuant to our proposed interlocking directorate reporting requirement, coupled with the complaint process. *See* 47 U.S.C. 208 and 47 CFR 1.711, *et seq.* Because the proposed revised rules permit carriers to place desired management officials more

[1] FCC 84-627; 50 FR 976 (January 6, 1985).

[2] Policies and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services (CC Docket 79-252), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979), First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981), Second Report and Order, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983), Second Further Notice of Proposed Rulemaking, FCC No. 82-187, released April 21, 1982, Third Further Notice of Proposed Rulemaking, 48 FR 28292 (June 21, 1983), Third Report and Order, 48 FR 46791 (October 15, 1983), Fourth Report and Order, 95 FCC 2d 554 (1983), Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984), Fifth Report and Order, 98 FCC 2d 1191 (1984), Sixth Report and Order, FCC 84-566, released January 4, 1985, 50 FR 1215 (January 10, 1985), Sixth Report *vacated and remanded*, MCI Telecommunications Corp. v. FCC, No. 85-1030 (D.C. Cir. July 9, 1985).

swiftly and with less cost, we perceived that a number of positive effects would flow from these proposals.

6. Twenty parties filed comments[3] in response to our NPRM and five parties filed reply comments (see Appendix A). The commentators, with the few exceptions or modifications discussed below, were supportive of the NPRM and in almost all instances object only that our proposals do not go far enough. The comments focused upon several major issues, including: (1) Our authority to eliminate the applications process; (2) requests that we eliminate applications for positions upon carriers whose status as dominant or non-dominant has not yet been determined in the *Competitive Carrier Rulemaking, supra*; (3) our proposal to exempt wireline cellular licensees in different markets from filing applications; (4) our proposed treatment of parent or holding companies and connecting carriers; and (5) our reporting requirement. Because the commenting parties unanimously concur that changed marketplace conditions require some revision of our past methods set forth in Part 62 for enforcing section 212, our proposed reduced informational requirement (*i.e.*, reductions in the extent of detail) received substantial support. Accordingly, we are now addressing only those portions of the proposed rules which were the subject of controversy, and we will adopt the proposed rules as modified consistent with this discussion.

7. We first discuss the classification scheme adopted herein, as amplified by the comments we have receive. In the NPRM, we set forth our belief that harm was unlikely to flow from authorizing interlocks, as a class, between non-dominant carriers or between cellular licensees in different geographic markets. However, we also explained that, because of the presence of market power or control of essential facilities, interlocks involving dominant carriers (or carriers whose status as dominant or non-dominant has yet to be determined) might result in anticompetitive conduct. Thus, we proposed to eliminate the necessity for case-by-case review only in the first instance.

8. The comments reveal that the proposed revisions to Part 62 will yield a number of benefits which were not fully discussed or mentioned in the NPRM: (1) Officials will no longer be deterred from accepting interlocking positions due to the burden of filing public applications and submitting to the government approval process; (2) the agency will continue to know who holds interlocking positions with which carriers and can call for more information as warranted; (3) the reduction in paperwork; (4) elimination of unnecessary regulatory burdens and legal costs permits resources to be directed instead toward the prompt implementation of service; (5) the waiting period for processing applications may result in lost opportunities to a company; (6) the revisions will permit interlocking officials to assume their duties promptly; (7) regulatory delay stemming from the Commission's past procedures impedes carriers from investing in, and lending their expertise to, new communications ventures, which fosters economic inefficiencies and hampers the development of new services; and (8) the past process has had an especially negative impact upon small start-up carriers and service vendors which do not possess market power. In light of these comments supporting our own analysis, we believe that the proposed revision is an important step to accomplish the purposes of section 212 in a more reasonable and expeditious manner than our past procedures.

9. However, we are mindful of the position of Ameritech, which cautions against a rigid adherence to the categories established in the *Competitive Carrier Rulemaking* proceeding in accomplishing the goals of section 212. It states its belief that this scheme may have inconsistent results. It observes, in this regard, that interlocks between certain non-dominant carriers which compete may generate more concern as to possible anticompetitive conduct than would interlocks between certain dominant carriers which do not compete. We expect that such issues will be developed in a future NPRM. *See* n.9 *infra*.

10. While the scheme we have proposed might not achieve perfection in all circumstances, on balance and in light of the record herein, it will to a great extent accomplish a significant reduction in unnecessary regulation without undue risk to the public. As with other movements toward reduced regulation, these rules might not address, as Ameritech notes generally, the universe of potential harms from interlocking directorates and might be overly protective in some respects. We are prepared to revisit this issue as circumstances and our experience warrant. However, the potential for anticompetive conduct from interlocks between non-dominant carriers is now so remote that individual Part 62 applications need not be used to prevent abuse. On the other hand, where dominant carriers are involved, the potential for abuse is much clearer. In the future, if abuses arise among non-dominant carriers, we can reimpose filing requirements, just as we may remove those imposed on dominant carriers.

Authority to Eliminate Part 62 Applications for Positions Upon Certain Categories of Carriers

11. With the exception of US West, which maintains that some form of applications process is mandated by section 212, all of the commenting parties support the proposed rules. US West believes that abandonment of the pre-filing requirement in favor of blanket approval for certain classes of carriers is not consistent with the language of section 212 and with the Commission's interpretations of section 212. In this regard it relies principally upon Commission statements about the mandatory nature of section 212 and Commission decisions allegedly refusing to grant exemptions from filing Part 62 applications. It submits that the Commission's authority to remove individual Part 62 filing requirements for certain classes of carriers is of dubious legality and that the Commission should seek relief from Congress, as it did when it desired to liberalize the statute's application to commonly owned carriers in 1956.[4] However, US West does concur with the Commission's basic premise that numerous situations exist where interlocking directorates are not contrary to the focus and purpose of the Act, and suggests that expedited processing of streamlined applications

[3] One party, US West, Inc., filed a Motion to Accept Late Filed Comments, stating that due to last-minute reproduction problems, it could not file its comments until four minutes past the 5:30 p.m. filing deadline. No party opposed the motion, and in the interest of having a complete record in this entire proceeding, we grant the motion to accept its comments.

[4] U S West relies upon statements made by the Commission to Congress proposing a modification to section 212 in 1956 as allegedly indicating recognition that the Commission could not deviate from an applications format. However, the Commission did not then address or interpret section 212 as requiring that applications be filed in situations where interlocks between certain categories of carriers had been found, upon a proper record, not to harm public or private interests. Indeed, such a discussion or proposal would have been inappropriate since, as U S West concedes, the communications market in 1956 was substantially different from today's market. The Commission statements at the time of the 1956 amendment can be properly construed as seeking discretion to exempt commonly owned carriers from the application of section 212's proposed interlock. In contrast, in this proceeding we are not seeking to exempt applicants from the coverage of the statute or from application of its standard; rather, we propose to alter only the method by which section 212's purpose can best be achieved given the change circumstances in the current marketplace.

would be consistent with the requirements of the section.

12. Three other parties who discussed this issue [5] stated that the action proposed is consistent with the Commission's statutory authority for the following reasons: (1) Grant of a blanket authorization between certain classes of carriers is an acceptable means of satisfying the Act's section 212 mandate; (2) the Commission has great latitude in discharging its duties to proceed either by way of case-by-case determinations or by general rulemaking; (3) the FCC is merely shifting its procedures for enforcing section 212 from an applications process to a complaints format, and there is no sound basis to read a prohibition against such a shift into the statute and thereby continue to impose unnecessary burdens upon both the applicants and the Commission; (4) the individual advance filing requirement is imposed not by section 212, but by Part 62 of the Commission's Rules and (5) U S West's reliance on the Congressional amendment of section 212 thirty years ago is unpersuasive as to the Commission's power to shift its procedural requirements.

13. We reject U S West's argument regarding our legal authority. While the NPRM speaks in terms of forbearance from requiring Part 62 applications in certain circumstances, we are not forbearing from our regulatory responsibilities under section 212. This section specifically provides that the "form and manner" of the showing required in order to obtain authorization to interlock is left to the Commission's discretion. In this regard, we stress that the application-filing requirement stems not from the statutory language but from Part 62. The NPRM proposed modification to the Rules only to substitute a more flexible and less burdensome regulatory mechanism, reflecting current marketplace considerations, for the applications process, where justified.[6] We did not propose to avoid executing the statutory requirement in section 212.

14. We therefore hereby issue a blanket authorization allowing interlocks between carriers found by this Commission to be non-dominant and between cellular licensees operating in different geographic markets, since we find that these interlocks will not adversely affect the public or private interest. We will rely upon the interlocking directorate reporting requirement and our complaints process of independent investigation as the regulatory mechanisms to further ensure prompt action in effectuating section 212's purpose for interlocking positions covered by this authorization.

Suggested Elimination of Additional Categories of Carriers From the Part 62 Applications Process

15. Nine parties [7] filed comments suggesting that the proposed elimination of Part 62 applications be extended to additional categories of carriers.[8] We note that a further reduction in the categories of carriers subject to the applications process may indeed pose no harm under Section 212. However, because the suggestions raised go considerably beyond the scope and analysis in the NPRM, we are not prepared to further expand the scope of our proceeding at this time. The record in this proceeding is inadequate to establish the legitimacy of claims that additional carriers, not yet found to be dominant or non-dominant, should be treated as such for purposes of Part 62. Nevertheless, it may well be that certain additional classes of carriers (see note 8, *supra*) should be relieved from individual compliance with Part 62 irrespective of their status in the *Competitive Carrier Rulemaking* based upon considerations such as competition in a relevant geographic area or submarket.[9] Of course, as additional categories of carriers are considered and are found to be non-dominant, *i.e.*, without market power, they will come within the framework of our current Part 62 revisions. The Commission has already commenced proceedings proposing to treat international carriers and mobile service providers as non-dominant. *See International Competitive Carrier Policies*, CC Docket No. 85–107, FCC 85–107, released April 19, 1985, and *Preemption of State Entry Regulation in the Public Land Mobile Service*, CC Docket No. 85–89, FCC 85–147, released May 17, 1985.

Exemption of Wireline Cellular Carriers From the Applications Process

16. In the NPRM, the Commission proposed to relieve cellular licensees operating in different geographic markets from the requirement of filing Part 62 applications, on the basis that the structure of cellular radio precludes competition between these licensees. Because cellular services are licensed by the Commission for expressly defined markets,[10] interlocking directorates between cellular licensees in these different markets should not diminish or affect competition.

17. The comments were generally supportive of this proposal. However, Metromedia, although favoring our proposed rule for non-wireline carriers, asserts that the Commission should retain the Part 62 filing requirement for the regional Bell holding companies' cellular carriers. It argues that applications should be required for interlocking directorates in these circumstances because: (1) The cellular subsidiaries have a "headstart" in the provision of service; (2) they will not operate in each market separately, but under common control with other cellular operations of the parent; and (3) the wireline parent controls essential facilities.

18. Four parties [11] filed comments relating to Metromedia's suggested treatment of interlocking directorates involving wireline cellular carriers. United Telecom and New Vector, a cellular service subsidiary of U S West, argue that Metromedia's "headstart"

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[5] Centel Metrol Mobile, and Telocator/Cellular.

[6] The agency is afforded great latitude to devise regulations to meet changing circumstances and to select the best manner of regulation so long as the regulation effectuates the statutory goals. *See* FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 137–138 (1940); Permian Basin Area Rate case, 390 U.S. 747 748 (1968); FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978); Western Union Telegraph Co. v FCC, 674 F.2d 180 (2d Cir. 1982); Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co., 103 S. Ct. 2856, 2866 (1983); Greater Boston Television Corp v. FCC, 444 F.2d 841, 851–52 (D.C. Cir. 1970); American Telephone and Telegraph Co. v. FCC, 572 F.2d 17, 26 (2d Cir. 1978), *cert denied*, 439 U.S. 875 (1978); Philadelphia Television Broadcasting Co. v. FCC, 359 F.2d 282, 284 (D.C. Cir. 1966); NAACP v. FCC 682 F.2d 993, 999 (D.C. Cir. 1982); Computer and Communications Industry Association v. FCC, 697 F.2d 198, 212–14 (1982), *cert denied*, 103 S. Ct. 2109 (1983).

[7] Federal Express, Metromedia, Centel, SNET, Ameritech, M/A–COM, Kadison, Telocator/RCC, and Telocator/Cellular.

[8] These additional categories include: (1) International carriers not yet found to be non-dominant, especially start-up international carriers which do not possess market power; (2) international satellite carriers that offer international service solely by means of Intelsat's International Business Service or International Television Service; (3) common carriers in the Public Land Mobile Service; (4) Multipoint Distribution Service carriers with non-overlapping service areas; (5) interlocking directorates between cellular licensees and carriers engaged in non-cellular public mobile radio services and which are not in direct competition; and (6) interlocks between a dominant exchange company and its affiliates. No objections were raised to these proposals.

[9] For example, paging is a highly competitive industry in which entry at the federal level is virtually open. Thus, paging carriers are obvious candidates for blanket approval. We therefore will, in the near future, undertake a further notice of proposed rulemaking to consider modifying our Part 62 regulation of carriers not now included within the non-dominance rationale. The purpose of this further notice will be to explore the feasibility of exempting categories of carriers from Part 62 filing requirements regardless of their status under the Competitive Carrier Rulemaking, *supra*.

[10] *See* 47 CFR 22.903.

[11] Centel, McCaw, United Telecom, and New Vector.

argument has no relevance in the context of section 212. In this regard, New Vector asserts that: (1) The Commission made a conscious choice to speed cellular service to the public and that wireline operators should not now be encumbered by regulation that has no relevance to the competitive purposes underlying the "headstart" policy; (2) the Commission has resolved concerns about anticompetitive effects traceable to a wireline cellular company's affiliation with an operating telephone company (through common ownership by regional holding companies) in other proceedings; and (3) the Commission has already established significant protections in the cellular service against anticompetitive conduct, including equal interconnection, disclosure of interconnection standards, and structural separation requirements. Further, New Vector states that commonly owned carriers are already permitted to interlock, except that common officers are expressly prohibited between the Bell operating companies ("BOCs") and their cellular subsidiaries, citing 47 CFR 22.901.

19. We have carefully considered the above arguments but are not persuaded that wireline cellular companies in different geographic areas which propose to have interlocking directorates should continue to be required to file Part 62 applications. The fact that a wireline cellular entity may have a "headstart" in constructing and operating in its market does not appear relevant to the imposition of Part 62 filing requirements. The Commission has already carefully considered the allegations of possible harm flowing from separate allocation of wireline and non-wireline frequencies and determined to permit early starts by wireline companies. *See Cellular Communications Systems*, 86 FCC 2d 469, 487–492 (1981), 89 FCC 2d 58, 69–75 (1982). We further provided for consideration of requests for a moratorium on wireline carrier cellular service upon demonstration of harm to the public interest resulting from a wireline carrier's "heardstart." *Id.* at 86 FCC 2d 491, n.57 and 89 FCC 2d 72 and 74–75. Thus Metromedia's "headstart" argument does not compel retention of Part 62 filing requirements.

20. In addition, we do not believe that the possible anticompetitive conduct which could flow from interlocking directorates between a wireline cellular company and an affiliated exchange company, or from a regional holding company's cellular coverage in different markets, requires that wireline cellular companies in different markets must continue to file applications before they can have interlocking directorates, as we proposed.[12]

21. We have already provided a number of safeguards against harm stemming from this affiliation. All wireline carriers are required to provide reasonable interconnection to cellular systems, and every non-wire cellular licensee has the right to interconnect with the landline network in the identical manner as a wireline cellular system. *See Cellular Communications Systems*, 89 FCC 2d 58, 81 (1982). In this regard, a wireline carrier is required to set forth, in its application for cellular service in an area where it provides landline service, exactly the manner in which its system will interconnect with the landline network with sufficient specification to enable a competitor to design its system in the same fashion. *Id.*, and 47 CFR 22.913(a)(9). Further, the BOCs may only provide cellular service subject to structural separation conditions, including separate officers. *See* 47 CFR 22.901. Structural separation, imposed by specific Commission order and the Rules, would not be altered by any more general relaxation of Part 62 filing requirements. In determining not to impose these structural separation requirements on other exchange carriers offering cellular service, the Commission found that formal complaint procedures, in addition to requirements for fair and reasonable interconnection, were sufficient to protect against predatory pricing and other abuses by their wireline cellular carriers. *See Cellular Communications Systems*, 89 FCC 2d 58, 78 (1982). Finally, the BOCs are not prohibited from having common directors with their cellular subsidiaries. Under Section 212, interlocking directorates may be permitted where common ownership is demonstrated, without regard to a finding of adverse affect upon public or private interests.[13]

22. In summary, all of these factors, coupled with the reporting requirement adopted herein, and the availability of the complaints process and independent Commission investigation to prevent any anticompetitive practices, weigh against the imposition of Part 62 filing requirements for interlocks between wireline cellular carriers in different geographic markets. If circumstances require, filing requirements can be re-imposed for this, or any other, category of carrier.

Application of Part 62 to Positions With Parent or Holding Companies of Common Carriers

23. In the NPRM we sought to clarify those situations in which the parent or holding company of a carrier must comply with the requirements of Part 62. We did so by proposing to add subsection (d) to § 62.2 of our Rules, which would define the term "carrier" to include the parent or holding company of a carrier subject to the Act.

24. Six parties commented on this issue.[14] None of them questioned the legitimacy of our concern that section 212 could be circumvented through a carrier's adoption of a parent or holding company structure. However, these parties generally questioned our authority to bring parent or holding companies of carriers subject to the Act within the ambit of section 212 by including such companies in the definition of "carrier". Commenters suggested that we might achieve our goal by other means. For example, U S West stated that we should employ our "inherent power to pierce corporate form" upon an appropriate record. Ameritech notes that the Commission already possesses authority under sections 215, 218, and 219 of the Act to obtain required information from persons controlling carriers.

25. We disagree with those parties who suggest that a corporation's holding company status automatically exempts it from classification as a common carrier under the Communications Act. However, a re-examination of our goal in this proceeding has convinced us that it is unnecessary to define parent and holding companies as carriers for purposes of this proceeding. Therefore, we intend to modify our earlier proposal in a manner which makes it unnecessary to either confront or decide the jurisdictional issue raised by the parties.[15]

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[12] We note that Metromedia's concern appears to be directed not toward our proposal but toward the interlock between the parent exchange carrier or holding company and its cellular subsidiary. We have not proposed in the NPRM to relieve dominant carriers, including exchange carriers, from filing under Part 62. Metromedia has put forward no reason not already considered by us in permitting provision of cellular service by wireline carriers to justify prohibiting these interlocks in the context of this NPRM.

[13] Commonly-owned companies barred from sharing officers have been permitted to have interlocking directors. *See, e.g.*, Application of John A. Johnson, 48 FCC 2d 529 (1974); CML Satellite Corporation, 51 FCC 2d 14 (1975); GTE-Telenet Merger, 72 FCC 2d 91 (1979); 47 CFR 64.702.

[14] United Telecom, Ameritech, BellSouth, U S West, Telocator/Cellular, and ITT.

[15] We considered this claim most recently in connection with our review of the capitalization

Continued

26. The primary goal of this proceeding is to remove unnecessary regulatory burdens. NPRM at 2. On the other hand, it is clear that interlocks through holding companies could generate substantial anticompetitive effects.[16] Parent and holding companies could be expected to exert significant control over their carrier subsidiaries. Against this background, we believe it is necessary to impute the status of their subsidiary carriers and, thus, apply the requirements of Part 62 to parent and holding companies in order to discharge our responsibilities under the Act. To do otherwise would allow the statutory purposes of section 212 to be circumvented through the use of separate corporate entities. Under such circumstances, we have ample authority to "look through corporate form and treat the separate entities as one and the same for purposes of regulation." *General Telephone of the Southwest v. United States*, 449 F.2d 846, 855 (1971) and cases cited therein.

27. Fulfilling our responsibilities under section 212 does not require us to compel Part 62 applications from parent or holding companies of carriers in every instance where such companies are involved in an interlock. Accordingly, we are imputing carrier status simply to prevent a particular corporate form from being used as a vehicle to circumvent the Act. As this can only occur where a parent or holding company has the ability to control the actions of its carrier subsidiary, we will impute carrier status only where such control is present.[17]

28. Once carrier status has been imputed to a parent or holding company, we will limit the degree to which our Part 62 rules are applied to them according to the likelihood that the proposed interlock holds the potential to generate competitive harm. As interlocks involving carriers with market power hold the most potential for such harm, we will require applicants seeking positions upon parent or holding companies to submit Part 62 applications only when authorization is being sought under subsection 62.11 and where an interlock involves a dominant carrier. If no dominant carrier is involved in an interlock, a parent or holding company with imputed carrier status will be subject only to the reporting requirements of Part 62.[18]

Connecting Carriers

29. In the NPRM, the Commission interpreted section 212 as applicable to connecting carriers. Section 212 makes it unlawful for a person to occupy the position of officer or director of more than one *carrier subject to this Act* without authorization. We noted that this language is not limited to carriers subject to full Title II regulation ("fully subject carriers").[19] Moreover, the statute applies to the applicant and the interlocking position, but not directly to the carrier itself.

30. Four parties filed comments relating to connecting carriers.[20] All four oppose the Commission's conclusion that section 212 authorization requirements are applicable to connecting carriers. Centel, USTA, and United Telecom argue that the plain language of section 2(b)(2) makes it clear that connecting carriers are exempt from all sections of Title II of the Communications Act except for sections 201–205 and 224.[21] They maintain that a "carrier subject to this Act", as used in section 212, means "fully subject carriers", *i.e.*, carriers not exempt under section 2(b)(2). They point out that, while section 212 is not limited by its language to exclude connecting carriers, neither are the other sections of Title II.[22] Centel, USTA, and United Telecom also dispute the Commission's conclusion that applying section 212 to connecting carriers does not enlarge the scope of the Commission's regulation of connecting carriers. Centel and USTA argue that, while the person seeking an interlocking position is the one who must file, it is the nature of the carrier that requires the filing, and it is the carrier which feels the impact of the authorization process.

31. Even if the term "carrier subject to this Act" in section 212 does not include connecting carriers, our section 218 powers are clearly broad enough to enable us to require officers or directors of fully subject carriers to report positions such persons acquire with connecting carriers.[23] We have decided that reports of such interlocking relationships should be required because such information is likely to be at least as useful as reports of interlocking relationships among non-dominant carriers. The submission of a required report with respect to interlocking relationships with connecting carriers will be deemed to satisfy any authorization requirement

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plans for certain subsidiaries of the seven regional Bell operating companies (RBOCs). Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services, FCC 85–28, released February 4, 1985, at 9–10. We found it unnecessary to decide the question because, as in the instant proceeding, other grounds exist for the exercise of our jurisdiction.

[16] For example, we would be concerned if a director of a holding company with a controlling interest in a dominant exchange carrier sought to become a director of an unaffiliated interexchange carrier. It is clear than in such a situation carrier activities could be manipulated in an anticompetitive manner, including preferential treatment by the exchange carrier of its interlocked carrier. To a lesser degree, anticompetitive effects could arise out of a situation where a person sought positions on the boards of two companies, each of which held a controlling interest in a dominant carrier. Here, of course, a possible danger includes the ability of the entities to jointly wield increased market power. In both examples, the real and potential anticompetitive practices that we seek to deter pursuant to section 212 would be placed beyond our review due to the presence of a holding company structure.

[17] For this purpose, we adopt the 50% ownership factor set forth in section 212 of the Act for the requisite control.

[18] We reject suggestions that we should rely exclusively upon our authority under sections 215, 218, and 219 of the Act to acquire this information. In most instances, information gathering of this nature is an after-the-fact measure. More importantly, to rely exclusively upon this kind of disclosure is not an adequate substitute for our prior approval under section 212 which allows us to deal swiftly and effectively with arrangements raising potential anticompetitive consequences.

[19] Under section 2(b)(2), 47 U.S.C. 152(b)(2), connecting carriers, *i.e.*, carriers engaged in interstate or foreign communication solely through physical connection with another unaffiliated carrier, are not subject to full regulation under Title II of the Communications Act. *See, e.g.*, Declaratory Ruling on the Application of section 2(b)(2) of the Communications Act of 1934 to Bell Operating Companies, CC Docket No. 85–197, FCC 85–320, released June 20, 1985.

[20] Centel, McCaw, USTA, and United Telecom.

[21] *But see* Com Services Inc. v. Murraysville Telephone Co., FCC 85–25, released February 4, 1985, *recon. pending*, in which the Commission concluded that connecting carriers are liable for damages under sections 206 and 207 of the Act.

[22] The one exception is section 203 which, according to Centel, is necessary since the specific language of section 2(b)(2) makes section 203 applicable to 2(b)(2) carriers.

[23] Some powers and requirements that are expressed in sections 206–223 are or may be applicable to connecting carriers in order to ensure the achievement of our responsibilities under sections 1 and 201–205 of the Act. We have interpreted the Act as implicitly permitting us to apply at least some of the provisions of sections 206–223 to connecting carriers that relate to our authority under sections 201–205. *See, e.g.*, Com Services v. Murraysville Telephone Co., *supra*. Against this background, we interpret section 1 of the Act and our section 4(i) powers as implicitly permitting us to apply at least some of the provisions of the 1934 Act where related to our authority under sections 201–205. Courts have recognized the legitimacy of this position. *See, e.g.*, GTE Service Corporation v. FCC, 474 F.2d 724 (2d Cir. 1973) (rejecting argument that the Computer I maximum separation requirements could not be imposed on connecting carriers); Lincoln Telephone and Telegraph Co. v. FCC, 659 F.2d 1092 (D.C. Cir. 1982) (holding that a connecting carrier could be required to file tariffs pursuant to section 4(i) authority). The section 212 prohibition of unauthorized interlocks does not, however, appear to be so essential to the achievement of section 1 goals or the enforcement of sections 201–205 that we would be obliged to impose such a requirement pursuant to section 4(i), 47 U.S.C. 154(i), if section 212 did not exist.

that might be applicable. In view of the ambiguity in the statutory language, persons who hold interlocking positions in two or more connecting carriers are also encouraged to submit reports, but we do not expect to initiate any enforcement proceedings against persons who do not choose to submit such reports at the present time.

Reporting Requirement

32. In order to facilitate the complaints process, we proposed that the title of the position held for each carrier represented be reported to the Commission within one month of assumption of office, and annually thereafter.[24] Seven parties commented on this proposal, suggesting that it be modified or eliminated.[25] While agreeing that the imposition of some simple reporting requirement with regard to interlocking directorates may be desirable in order to track interlocks among entities for whom separate Part 62 applications will no longer be required, BAMS, Bell Atlantic, and ITT suggested that those persons holding interlocking positions pursuant to 47 CFR 62.25 (upon a finding of common ownership) should not have to file separate reports because the information is already a matter of public record. Bell Atlantic also noted that there is no need for additional annual reports for interlocks involving dominant carriers, which remain subject to the Part 62 applications process and for which a change in status must be reported. BAMS recommends that annual reporting will be sufficient for entities for whom separate reporting would still be required. Centel also supports annual reporting, alternatively suggesting that reporting should be on a semi-annual basis. Metromedia, Centel, United Telecom, and Telocator/Cellular suggest that, since carriers currently file an annual FCC report Form 430 ("Common Carrier and Satellite Radio Licensee Qualification Report"), which lists the carrier's officers and directors, an interlocking directorate report is unnecessary.

33. We believe that, except as to interlocking directorates between entities which remain subject to the applications process, the reporting requirement should be retained as proposed. We note that the Form 430 is insufficient to track interlocking directorates; it is filed annually and requires a listing only of the filer's own officers and directors and does not disclose interlocking arrangements. For purposes of ensuring that the goals of section 212 are met, and of protecting against any harm which might flow from interlocking directorates, we believe that these arrangements should be revealed promptly. This will allow both the Commission and the public to become aware of specific interlocking arrangements soon after they arise, and thus facilitate complaints and independent Commission action to prevent abuses. While our experience may reveal that the requirement that interlocking directorates be reported within 30 days is unnecessary and is disclosing no situations warranting correction, it is better to err on the side of caution at the outset. As our experience with the new rules grows, we may consider lengthening the reporting interval or even eliminating this requirement.

34. However, we see merit in the suggestions of the commenting parties that separate reporting is unnecessary and duplicative from individuals which remain subject to Part 62's applications process. We will therefore modify § 62.26 to except from its coverage those who file for positions pursuant to proposed 47 CFR 62.1(a), 62.1(b), and 62.25.

Miscellaneous Suggestions

35. The parties have suggested several areas in which the proposed rules should be clarified, as well as areas where regulatory burdens may be further reduced. For example, Federal Express recommends that the Commission make Part 62 more free-standing by eliminating cross-reference to Part 61. We will adopt this suggestion in part, by eliminating reference to specific subsections of Part 61, thereby obviating the need for revision of Part 62 whenever the relevant subportions of Part 61 are revised. We also believe that the language of § 62.1 (a) and (b) should be clarified to eliminate confusion regarding when Part 62 applications must be filed. Telocator/Cellular, among others, has commented that the language originally proposed leaves doubts as to our treatment of carriers we have not yet found to be dominant or non-dominant. We will clarify the language accordingly. (See § 62.1 (a) and (b) of the new Rules in Appendix B.) In addition, to the extent the NPRM may have generated confusion, we olarify that authority to hold interlocking directorates of commonly owned carriers, as defined in 47 CFR 62.2(c), need only be obtained where a carrier found to have market power and therefore defined as a dominant carrier under 47 CFR 61.12(c), or a carrier not yet found to be dominant or non-dominant, is involved. Because we have found that interlocks between non-dominant carriers are unlikely to cause harm to public or private interests, it is unnecessary to make a determination of common ownership to permit interlocks among such entities.

36. Finally, Centel recommends that determinations of common ownership for cellular radio systems be made by the Commission when it issues a construction permit to a cellular carrier which is commonly owned by another carrier, thus obviating the need for a separate application seeking such a finding. It advises that applications for authority to construct cellular radio systems contain all information regarding ownership currently required by Part 62. We believe the course of action Centel recommends would reduce a number of unnecessary applications, and we therefore will adopt this suggestion. In the future, applicants can request a finding of common ownership under Part 62 as part of their radio licensing authority, so long as all necessary Part 62 information is supplied.[26]

Regulatory Flexibility Act—Final Analysis

37. *Need for and Purpose of Rules.* The Commission proposed the subject rules because of the need to eliminate unnecessary rules and regulations and to improve application procedures with respect to Part 62 of the Commission's Rules.

38. *Comments.* No comments were received that directly addressed the initial regulatory flexibility analysis.

39. *Alternatives Considered.* As noted in our initial flexibility analysis, the Commission's alternative would be to retain unnecessary rules and to refrain from improving its application procedures. We concluded that such alternatives are inconsistent with the public interest.

40. *Paperwork Reduction.* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or

[24] Because use of "one month" as the reporting interval could result in possible uncertainty, we have modified the rules to provide for a more precise interval of 30 days. In addition, because any change in the status of information provided pursuant to Part 62 (including termination of the reported interlock) must be reported pursuant to 47 CFR 62.24, we believe it is both unnecessary and cumulative to require an annual reporting pursuant to 47 CFR 62.26. We have therefore deleted this requirement from the final rules.

[25] Bell Atlantic, Metromedia, Centel, BAMS, United Telecom, Telocator/Cellular, and ITT.

[26] In the event the radio licensing application is contested for this reason, we retain authority to act separately upon the section 212 authorization.

burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

41. *Legal Basis.* The authority for this rulemaking is contained in sections 1, 4(i), 4(j), 201–209, 212, 218, 301, 303, 309, and 403 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

42. Accordingly, it is ordered, that Part 62 of the Commission's Rules and Regulations is amended as specified in Appendix B to this Order, effective September 3, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Comments

Centel Corporation ("Centel")
CBS Inc. ("CBS")
Kadison, Pfaelzer, Woodard, Quinn & Rossi ("Kadison")
Pepper, Hamilton & Scheetz ("Pepper")
M/A-COM, Inc. ("M/A-COM")
Federal Express Corporation ("Federal Express")
United States Telephone Association ("USTA")
U S West, Inc. ("U S West")
The Bell Atlantic Telephone Companies comprising The Bell Telephone Company of Pennsylvania, The four Chesapeake and Potomac Telephone Companies, The Diamond State Telephone Company, and New Jersey Bell Telephone Company ("Bell Atlantic")
BellSouth Corporation on behalf of itself, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company ("BellSouth")
The Southern New England Telephone Company ("SNET")
Bell Atlantic Mobile Systems, Inc. ("BAMS")
The Radio Common Carrier Division of Telocator Network of America ("Telocator/RCC")
McCaw Cellular Communications, Inc. ("McCaw")
Northeast Pennsylvania Cellular Telephone Company, Harrisburg Cellular Telephone Company, and Allentown Cellular Telephone Company ("Northeast Cellular")
United Telecommunications, Inc. ("United Telecom")
Metro Mobile CTS, Inc. ("Metro Mobile")
The American Information Technologies Corporation ("Ameritech")
The Cellular Telecommunications Division of Telocator Network of America, Inc. ("Telocator/Cellular")
Metromedia, Inc. ("Metromedia")

Parties Filing Replies

ITT Communications Services, Inc. ("ITT")
New Vector Communications, Inc. ("New Vector")
United Telecom
Ameritech
Telocator/Cellular

Appendix B

Part 62 of Chapter I of Title 47 of the Code of Federal Regulations is revised in its entirety as follows:

PART 62—APPLICATIONS TO HOLD INTERLOCKING DIRECTORATES

General

Sec.
62.1 Scope and method of securing authorization.
62.2 Definitions.

Contents of Applications

62.11 Information required.
62.12 Information required for findings of common ownership.

Administrative Regulations

62.21 Signature.
62.22 Form of application; number of copies; size of paper; fees; etc.
62.23 Additional or different positions with same companies.
62.24 Change in status; Commission to be informed.
62.25 Authorization to hold interlocking directorates in commonly owned carriers.
62.26 Reporting requirements.

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 212, 48 Stat. 1974, as amended; 47 U.S.C. 212.

General

§ 62.1 Scope and method of securing authorization.

No person may hold the position of officer or director in more than one carrier subject to the Communications Act of 1934, as amended, unless duly authorized to do so pursuant to the regulations set forth in this part:

(a) Application must be made to hold interlocking positions upon more than one carrier subject to the Act where any carrier sought to be interlocked has been found by the Commission to have market power and is therefore defined as a dominant carrier under 47 CFR Part 61, or where any carrier has not yet been found to be non-dominant, except for cellular licensees in different geographic markets. For purposes of this subsection and § 62.11, application must be made for positions upon the parent or holding company of a carrier subject to the Act where the interlock involves a dominant carrier.

(b) Persons seeking positions as officers or directors of cellular radio licensees in different geographic markets or of carriers which have been found to be non-dominant are authorized to serve in those capacities without making application to this Commission, except that applications shall be filed for positions upon non-dominant and/or cellular carriers, if interlocks are sought between such carrier(s) and any carrier found to be dominant under 47 CFR Part 61, or any carrier not yet found to be non-dominant.

§ 62.2 Definitions.

As used in this part, the term:

(a) "Officer or director" shall include the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, or other officer of a carrier, such as general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, general commercial manager, chief engineer, general superintendent, general land and tax agent, or chief purchasing agent;

(b) "Interlocking director" shall mean a person who performs the duties of "officer of director" in more than one carrier subject to the Communications Act of 1934, as amended; and

(c) "Commonly owned carriers" shall mean two or more carriers, one of which directly or indirectly owns more than 50 percent of the stock of the other carrier or carriers, or 50 percent or more of whose stock is owned directly or indirectly by the same person.

Contents of Applications

§ 62.11 Information required.

Each application shall include the following information:

(a) The full name, occupation, and business address of the applicant.

(b) With respect to each carrier of which the applicant is an officer or director or seeks to be an officer of director, indicate the applicant's position, the nature of the applicant's duties, the date applicant assumed or will assume such duties, and specify every common carrier in which applicant has a financial interest, together with a description thereof.

(c) Provide a full explanation of the reasons why grant of the authority sought will not adversely affect either public or private interests. In this regard, address whether grant of the permission

requested could result in anticompetitive conduct by carriers covered by the request or by carriers upon which applicant already acts as officer or director, diminution in the independence of each carrier, or potential conflicts of interests on the part of common directors or officers in violation of their fiduciary duties. Set forth any steps which will be taken by the applicant to safeguard against such occurrences.

(d) State whether the applicant has, as director or officer of any carrier subject to the Act, received for his own benefit, directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carriers, or has shared in any of the proceeds thereof, or has participated in the making or paying of any dividends of such carrier from any funds properly included in capital accounts.

§ 62.12 Information required for findings of common ownership.

Each application shall state the following:

(a) The name and address of the carrier which seeks a finding that it owns more than 50 percent of the stock of another or other carriers; or the name and address of the person who seeks a finding that he owns 50 percent or more of the stock of two or more carriers; and

(b) The name and address of each carrier with respect to which the finding is sought by the applicant; for each such carrier, the total number of outstanding shares of stock of each category (common, preferred, etc.); the voting rights of each category; for each category, the number of shares directly or indirectly owned by the applicant and the percentage of the total number of outstanding shares in each category so owned. Where ownership is indirect, the applicant shall submit information regarding each intermediate entity involved to show that the applicant is the owner of the stock described.

Administrative Regulations

§ 62.21 Signature.

(a) The original application filed pursuant to § 62.11, and any amendment or change in status, shall be signed by the individual applicant.

(b) The original application filed pursuant to § 62.12 should be signed by the applicant, if an individual, or by a duly authorized officer, if a company or corporation.

§ 62.22 Form of application; number of copies; size of paper; fees, etc.

The original application and two copies thereof shall be filed with the Commission. Each copy shall bear the dates and signatures that appear on the original and shall be complete in itself, but the signatures on the copies may be stamped or typed. The application shall be submitted in typewritten or printed form, on paper not more than 8½ inches wide and not more than 11 inches long, with a left-hand margin of approximately 1½ inches, and if typewritten, the impression must be on only one side of the paper and must be double spaced. Each such application shall be accompanied by the fee prescribed in Subpart G of Part 1 of this chapter.

§ 62.23 Additional or different positions with same companies.

If an applicant has been authorized by the Commission upon application filed pursuant to § 62.11 to hold certain positions as officer or director of certain carriers and is subsequently elected or appointed, or anticipates election or appointment, to additional or different positions with one or more of the same carriers, he may report the change in the manner and form provided in § 62.24 relating to "change in status". Authorization for the holding of such additional or different positions shall be deemed granted as of the 15th day following the filing of such report, unless within that time the Commission shall call upon the applicant for additional information or for the filing of a formal application.

§ 62.24 Change in status; Commission to be informed.

Should any change occur in the status as reported under this part, the applicant shall report such change to the Commission within 30 days after such change occurs.

§ 62.25 Authorization to hold interlocking directorates in commonly owned carriers.

After the Commission has found upon application filed pursuant to § 62.12 that two or more carriers are commonly owned carriers, any duly designated person is authorized hereby to be an interlocking director of two or more such carriers. However, the authorization herein granted to any interlocking director shall be automatically canceled with respect to any position held in any such carrier which at any time ceases to be a commonly owned carrier, without notice thereof by the Commission, either to the interlocking director, to the carrier, or to the person upon whose application a finding of common ownership was made. In event of such cancellation, the interlocking director shall immediately cease and desist from acting in that capacity with respect to the carrier which has ceased to be a commonly owned carrier until such time as appropriate authorization is obtained pursuant to this Part.

§ 62.26 Reporting requirements.

All persons holding interlocking positions on more than one carrier subject to the Act, including positions upon a parent or holding company of a carrier, shall report to the Commission within 30 days of assumption of the interlocking positions, including the title of the position(s) held for each carrier (or holding or parent company of a carrier) represented. This subsection shall also apply to positions upon connecting carriers as defined in 47 U.S.C. 153(u), so long as the interlock with the connecting carriers) also involves positions upon a fully subject carrier. This subsection shall not apply to persons who must file applications pursuant to §§ 62.1(a), 62.1(b), and 62.25 hereof.

[FR Doc. 85-18406 Filed 8-1-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[Docket No. 20735; RM-1301; RM-1974; RM-2655]

Noncommercial, Educational FM Broadcast Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: These corrections to the *Memorandum Opinion and Order* relating to noncommercial, educational FM broadcast stations are necessary because the original printing contained erroneous information.

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

FOR FURTHER INFORMATION CONTACT:
Kathryn S. Hosford, Mass Media Bureau, (202) 632-9660
Michael Lewis, Mass Media Bureau, (202) 632-9660

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of changes in the rules relating to Noncommercial, Educational FM Broadcast Stations; Docket No. 20735; RM-1301, RM-1974, RM-2655.

Released: July 24, 1985.

On July 11, 1985, the Commission released an *Erratum* (Mimeo 5713) correcting two items of the *Memorandum Opinion and Order* (MO&O) in the above entitled proceeding (FCC 85-328, Mimeo 35929), adopted June 20, 1985, released June 27,

1985 (50 FR 27954, July 9, 1985). Those changes have been repeated here along with various other corrections. Thus, the subject MO&O is corrected as follows:

1. In paragraph 61 of the text, the Commission's action is changed from "effective up adoption" to "effective upon adoption".

2. In Appendix C, 47 CFR 73.525, Table B in paragraph (d)(1), the effective radiated powers (kW) for NCE-FM Channel 203 should change from "2.9" to "3.1" and Channel 214 should change from "46.7" to "46.8".

3. In Appendix C, 47 CFR 73.511, paragraph (b) is corrected to read as follows:

§ 73.511 Power and antenna height requirements.

* * * * *

(b) No new noncommercial educational FM station will be authorized with facilities greater than Class B in Zones I and I-A or Class C in Zone II, as defined in § 73.211.

* * * * *

4. In Appendix C, 47 CFR 73.525, paragraphs (b)(1) introductory text, (i), (ii), and (e)(2)(i) are corrected to read as follows:

§ 73.525 TV Channel 6 protection.

* * * * *

(b) *Existing NCE-FM stations.*

(1) An NCE-FM station operating on Channels 201-220 with facilities authorized as of December 31, 1984, is not subject to this section unless it proposes either:

(i) To make changes in operating facilities or location which will increase predicted interference as calculated under paragraph (e) of this section to TV Channel 6 reception in any direction; or,

(ii) To increase its ratio of vertically polarized to horizontally polarized transmissions.

* * * * *

(e) * * *

(2) * * *

(i) The population of all incorporated places or Census designated places will be subtracted from the County Subdivision population;

* * * * *

5. In Appendix C, 47 CFR 73.525, paragraph (e)(4)(ii), the phrase "A is 40 dB if" is changed to read "A is 40 if".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-18405 Filed 8-1-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 149
Friday, August 2, 1985

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

Recordkeeping Requirements for Deposits Placed by Deposit Brokers

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend certain recordkeeping requirements affecting the manner in which insurance coverage on brokered deposits is determined. The amendments would require disclosure in the account records of the bank of the identity of each person having a beneficial ownership interest in such accounts in order for those persons to obtain insurance coverage. The primary purpose of the amendments is to enable the FDIC to determine quickly and efficiently the extent of insurance coverage on brokered deposits for supervisory and regulatory reasons and to make informed decisions regarding the costs of alternatives considered in handling insured banks which are failing.

DATE: Comments must be received by September 3, 1985.

ADDRESS: Comments should be sent to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to Room 6108 on weekdays between 8:30 a.m. and 5:00 p.m. and should reference the date and page number of this issue of the **Federal Register**. All written comments will be made available for public inspection during normal business hours at the Office of the Executive Secretary.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Senior Attorney, or Patti C. Fox, Attorney, Legal Division, (202) 389-4171, or William G. Hrindac, Examination Specialist, Division of Bank Supervision, (202) 389-4761, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

As announced in the **Federal Register** on April 11, 1985, the FDIC intends to review and revise its current regulations on deposit insurance coverage found at 12 CFR Part 330. *See* 50 FR 14247, 14248 (1985). The proposed recordkeeping regulations constitute the first of several changes contemplated for Part 330. Additional changes to Part 330 will be made pending further study.

The banking system has changed considerably in the recent past. Deregulation of interest rates on deposits has substantially increased the funding costs of banks and created pressures to invest in riskier loans and other investments in order to obtain higher yields necessary to cover the increased costs with a margin of profitability. Vigorous competition for quality loans and investments has added to this tendency to assume greater risk in order to obtain higher yields. Many state legislatures have liberalized the investment powers of state-chartered depository institutions by authorizing them to invest in a variety of new, higher-risk undertakings such as real estate development. Banks are also taking advantage of sophisticated new investment and fee-generating mechanisms such as futures contracts and interest rate swaps. As a result, the banking system today is considerably more diverse and complicated, thereby posing potentially greater risks to the banks and to the FDIC insurance fund.

With regard to bank funding in particular, deregulation of interest rates on deposits now permits banks to compete for deposits on the basis of price, *i.e.*, by offering higher interest rates. Technical improvements in data processing and telecommunications have expanded deposit markets geographically while the existence of the $100,000 FDIC insurance coverage has effectively created a risk-free investment unit for potential depositors everywhere. As a result, depositors may now pursue the highest risk-free yields available from insured banks throughout the United States. Insured banks in turn are now able to attract virtually unlimited funding simply by offering marginally higher rates of interest. Moreover, this insured funding can be obtained very rapidly regardless of a bank's financial condition. In many instances, the banks most willing to pay marginally higher rates are those preparing to embark on high-risk investment strategies. Others in this category are already in a weakened or failing condition and seeking to prolong their life, while hoping to recoup their losses through high-risk lending and investment practices. A significant number of companies whose business it is to identify insured banks paying high rates of interest on deposits and to place customers' deposits with those banks have provided funding to banks based solely on the interest rates offered. The activities of these deposit brokers have resulted in increased losses to the FDIC when the depository banks eventually failed.

Bank failures have increased dramatically in recent years. For the three year period of 1979 through 1981, 30 banks failed. From January 1982 through December 1984, there were 169 bank failures. As of the end of June, 52 banks had failed in 1985. There are approximately 1000 banks on the problem bank list. Given the pace of failures to date, the number of banks which will fail this year will likely exceed the post-Depression record of 79 failures in 1984.

Data collected by the FDIC has established a clear correlation between brokered deposits and problem banks. Between 1982 and 1984, 69 of the FDIC-insured banks that failed held over $1 billion in fully insured brokered deposits; and, in two cases, brokered funds represented more than 75 percent of the closed banks' deposits. A recently completed survey of FDIC-insured banks and thrifts holding fully insured brokered deposits in excess of five percent of their deposits revealed $2.3 billion of such funds in more than 70 institutions. These figures illustrate that an insured bank can obtain a substantial amount of brokered deposits, thereby acquiring the ability to alter radically the character of the bank's investments and the risk the bank poses to the FDIC insurance fund.

Unfortunately, the precise amount of the risk to the insurance fund is not always apparent because of the varying nature of the brokerage arrangements. In many instances, brokers obtain large denomination certificates of deposit in bearer form or as agents or nominees for their client investors. In these cases, it is

impossible to determine the extent of deposit insurance coverage, and hence the risk to the insurance fund, from the records of the bank because the beneficial ownership of these deposits is revealed only in the records of the broker. Based on a recent survey, it is estimated that up to two-thirds of all fully insured brokered deposits may be held in this manner, *i.e.*, as certificates of deposit in bearer form or by brokers as agents or nominees for investors.

In view of the increased rate of bank failures and the frequent use of brokered deposits by failing banks, the FDIC has an increasing need to know the extent of insurance coverage of deposits in problem and failing banks. This information is important to the FDIC in meeting its statutory obligation under the assistance provisions of the Garn-St Germain Depository Institutions Act of 1982. *See* 12 U.S.C. 1823(c). Generally, section 1823(c) authorizes the FDIC to provide assistance, directly or through a merger, to a failing insured bank to prevent its closing or to facilitate the assumption of its liabilities after the bank closes. In making a determination under section 1823(c), the FDIC generally is bound by a "cost test": the amount of assistance is limited to that "reasonably necessary to save the cost of liquidating, including paying the insured accounts." 12 U.S.C. 1823(c)(4)(A). A proper evaluation of the risk of exposure to the FDIC insurance fund under the cost test requires a reasonably accurate assessment of the amount and number of potentially insured accounts. The proposed regulations will provide the information necessary to facilitate an assessment of the amount of insurance to be afforded to potentially insured brokered deposits promptly at the time of a bank's closing.

The FDIC's current rules on recordkeeping provide that the deposit account records of an insured bank are conclusive as to the existence of any relationship pursuant to which funds in the account are deposited and on which a claim for insurance coverage is founded. 12 CFR 330.1(b)(1). If the account records reveal a relationship between the depositor and other persons which may provide a basis for additional insurance, the details of the relationship, including the interests of other persons, must be disclosed either in the bank's records or the depositor's records maintained in good faith and in the regular course of business. 12 CFR 330.1(b)(2). When an agent holds an account for a principal, for example, the insurance coverage "flows through" the agent to the principal so long as the bank's records indicate that the account is held in an agency capacity and either the bank's or the agent's records show the ownership interest of the principal in the account. 12 CFR 330.2. In addition, section 330.11 provides that an owner of a negotiable deposit instrument will be recognized for insurance purposes as if his or her name and interest were disclosed on the bank's records, provided the instrument was negotiated to that owner prior to the bank's closing. 12 CFR 330.11.

Given the frequency and volume of brokered deposits held by failing banks and the complex account ownership devices commonly used, the current recordkeeping rules do not provide the FDIC with sufficient information to assess its insurance exposure. In addition, the current rules do not sufficiently enable the FDIC to determine accurately the potential costs of viable alternatives in assisting, merging, or liquidating a failing bank as required under section 1823(c). The inability to obtain ownership information on brokered funds from a bank's records may impede the decisional process and expose the insurance fund to additional costs. In view of the volume of brokered deposits being placed in problem banks, the FDIC must have a means of identifying the beneficial ownership interests in these funds.

In January 1985 the FDIC issued a regulation imposing monthly reporting requirements on all FDIC-insured banks maintaining a certain level of brokered deposits. 12 CFR 304.4. The rule is designed to enable the FDIC to monitor the receipt of insured brokered funds and take appropriate supervisory action to curb improper activities. The proposed recordkeeping requirements thus parallel the supervisory efforts of the FDIC as regulator by also addressing concerns raised in the FDIC's capacity as receiver and insurer. In that regard, the proposed recordkeeping regulations do not cover the issues raised in the FDIC's rule on brokered deposits now in litigation. *See* 49 FR 13,003 (1984). There is no limitation on insurance coverage for brokered deposits under the proposed rules nor do they operate in any manner as a replacement for the prior rule.

The proposed regulations would create an exception from existing recordkeeping requirements for deposits placed by deposit brokers. In situations where deposit brokers place customers' funds with insured banks, the banks' records would have to indicate the existence of the agency relationship and the names of the owners of the deposits. If not, the recordkeeping requirements for "flow through" insurance coverage to the agent's principals would not be met, and the deposits would be deemed held by the deposit broker in his or her individual ownership capacity for insurance purposes. The proposal defines a "deposit broker" as any person engaged in the business of placing or facilitating the placement of funds of third parties with insured banks. It also encompasses businesses that place funds with insured banks for the purpose of selling interests in the deposits to third parties. The use of the phrase "engaged in the business of" deposit brokering is intended to exclude implicitly from the definition of deposit broker persons and entities such as insured banks which solicit funds for themselves, trust departments of depository institutions, trustees of employee benefit plans, trustees of trusts established for a purpose other than that of placing funds with insured banks, agents or nominees whose primary purpose is not the placement of funds with banks, and deposit-listing services. In addition, the current regulation covering negotiable instruments, 12 CFR 330.11, has been amended to prevent easy circumvention of the proposed rule.

The amendments would provide the FDIC with information to: (1) more accurately assess its insurance exposure in insured banks utilizing brokered deposits, (2) prevent fraud and abuse designed to increase insurance coverage, (3) shorten the delay in determining the validity of insurance claims on such accounts and thus speed the entire insurance settlement process as required by law, and (4) assess more accurately and quickly the viable alternatives in a failing bank situation under the section 1823(c)(4) cost test. The FDIC is required by law to settle insured accounts as expeditiously as possible. 12 U.S.C. 1821(f).

The possibility of fraud and abuse is of particular concern to the FDIC in view of the potential losses to the insurance fund. Limiting potential fraud and evasion of insurance limits is one purpose of the recordkeeping rules. As the Federal Home Loan Bank Board recently observed in the proposed revision of its insurance regulations, the $100,000 insurance coverage has encouraged the development of complex ownershp devices. 50 FR 19 1985 (1985). Such devices increase the possibility of the invention of fraudulent relationships designed to increase insurance coverage. FDIC investigations in several recent bank failures have uncovered facts indicating possible fraud and misuse in connection with brokered

funds. In some instances, a linked financing arrangement between the deposit broker and the bank results in questionable, abusive loan practices, such as ill-advised loans to out-of-territory customers of illegal loans to insiders. The FDIC believes the proposed recordkeeping regulations will help to deter the possibility of fraud and abuse in connection with brokered deposits.

The proposed amendments to the current recordkeeping rules would be authorized by section 12(c) of the Federal Deposit Insurance Act (12 U.S.C. 1822(c)) (the "Act"), which gives the FDIC discretionary authority in the non-recognition of certain claims:

(c) Except as otherwise prescribed by the Board of Directors, neither the Corporation nor such new bank or other insured bank shall be required to recognize as the owner of any portion of a deposit appearing on the records of the closed bank under a name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of such closed bank as part owner of said deposit, if such recognition would increase the aggregate amount of the insured deposits in such closed bank.

The FDIC's authority to implement appropriate regulations to determine insurance coverage is well within the express statutory language of section 1822(c). Further, section 1819 "Tenth" of the Act authorizes the FDIC to prescribe the rules and regulations necessary to carry out the provisions of the Act. 12 U.S.C. 1819 Tenth. The FDIC can thus exclude from deposit insurance coverage those categories of persons not listed on bank records as owners of deposits, if recognition would increase the aggregate amount of insured deposits in a closed bank.

The FDIC believes that brokered deposits represent a unique situation very different from other custodial accounts, thereby warranting disclosure of the beneficial owners on the bank's records. The other major category of custodial accounts is employee benefit plans, in which a high percentage of all such deposits are insured. *See* 12 CFR 330.1(c) and 330.10. As a matter of public policy, employee benefit plans have been accorded special treatment under the law to support and encourage their retirement and pension functions. *See* 29 U.S.C. 1001. The extensive regulation to which employee benefit plans are subject provides safeguards against fraud and abuse. Although employee benefit plans are investment vehicles, the custodian of such a plan is subject to legal and fiduciary duties not present in the typical money brokerage relationship. In contrast, the use of brokered deposits has contributed to the number and complexity of bank failures and has caused sizeable losses to the FDIC insurance fund.

Other types of custodial accounts do not present the same prospect for dramatic growth as do brokered deposits; thus, there is no need to except them from current recordkeeping rules. Nor do other custodial accounts appear with as much frequency in failed banks compared to brokered deposits. The FDIC, however, may determine the necessity for stricter recordkeeping rules for other custodial accounts in the future. Comments are invited on the prospect of expanding the scope of this proposed amendment to other custodial accounts, as well as on all aspects of the proposed regulation.

Procedural Requirements

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board of Directors hereby certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule would require that the records of an insured bank pertaining to deposit accounts placed by deposit brokers disclose the identity of each person having a beneficial ownership interest in such accounts and the amount of that interest. The banks that are most likely to be affected by the rule are those issuing large ($1 million and over) certificates of deposit in bearer form or in the names of nominees for subsequent participation by individual depositors up to $100,000 each. Such banks tend to be the larger institutions. The recordkeeping requirements contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Although the FDIC usually provides a sixty-day comment period for proposed regulations, the Board of Directors has determined that a thirty-day comment period is necessary in this situation because of the increasing number of bank facilities and the serious risk posed to the insurance fund by brokered deposits. The Board believes that the proposed amendments will aid the FDIC in carrying out its duties as regulator and insurer, and believes these rules will provide an additional tool for monitoring brokered deposits and their impact on banks.

List of Subjects in 12 CFR Part 330

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Federal Deposit Insurance Corporation, Foreign banks, Banking, Reporting and recordkeeping requirements.

For the reasons set out above, it is proposed that Part 330 of Title 12 of the Code of Federal Regulations be amended as set forth below.

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1817, 1821, 1822, 1823.

2. It is proposed that § 330.1 be amended by revising paragraph (b)(2) to read as follows:

§ 330.1 General principles applicable in determining insurance of deposit accounts.

* * * * *

(b) * * *

(2) If the deposit account records of an insured bank disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the records of the bank or the records of the depositor maintained in good faith and in the regular course of business. Notwithstanding this general rule, no claim for insurance coverage based on an ownership interest in deposit accounts maintained by a "deposit broker" will be recognized unless the identities of the owners of such interests and the amount of those interests are disclosed on the records of the bank. For purposes of this section, "deposit broker" means any person engaged in business of: (i) placing or facilitating the placement of funds of third parties with insured banks, or (ii) placing funds with insured banks for the purpose of selling interests in the deposits to third parties. All funds placed or renewed by a deposit broker on or after [the effective date of this amendment] will be subject to this provision.

3. It is proposed that § 330.11 be amended by adding a new sentence at the conclusion thereof as follows:

§ 330.11 Deposits evidenced by negotiable instruments.

* * * Notwithstanding the provisions of this section, an owner with an interest in a deposit placed by a "deposit broker," as defined in section 330.1(b)(2), and which is evidenced by a negotiable instrument shall be subject to the recordkeeping requirements of § 330.1(b)(2) for all purposes of claim for insured deposits.

By order of the Board of Directors this 29th day of July, 1985.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85-18402 Filed 8-1-85; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-25]

Proposed Alteration and Establishment of VOR Federal Airways; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

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

DATES: Comments must be received on or before September 18, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-25, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-25." 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 in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several VOR Federal Airways located in the vicinity of Oakland, CA, by deleting all alternate route designations. In addition, some airway segments will be revoked and other segments will be renumbered. Section 71.123 of Part 71 of the Fedeal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT 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

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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.

2. Section 71.123 is amended as follows:

V-6—[Amended]

By removing the words "Sacramento, including a south alternate via INT Oakland 077° and Sacramento 194° radials; Lake Tahoe, CA; Reno, NV, including a N alternate from Sacramento to Reno via Sacramento 038° and Reno 257° radials;" and substituting the words "Sacramento; Lake Tahoe, CA; Reno, NV;"

V-392—[New]

From Oakland, CA, via INT Oakland 077°T(060°M) and Sacramento, CA, 194°T(177°M) radials; Sacramento; INT Sacramento 038°T(021°M) and Reno, NV, 257°T(239°M) radials; to Reno.

V-8—[Amended]

By removing the words "Morman Mesa; including a N alternate from the INT of Seal Beach 073° and Pomona, CA, 202° radials, to Morman Mesa via Pomona, Daggett, CA, and Las Vega, NV;" and substituting the words "Morman Mesa;"

V-394—[New]

From Seal Beach, CA, via INT Seal Beach 073°T(058°M) and Pomona, CA, 202°T(187°M) radials; Pomona; Daggett, CA; Las Vegas, NV; to Morman Mesa, NV.

V-12—[Amended]

By removing the words "Palmdale, CA, including a south alternate via Fillmore, CA;" and substituting the words "Palmdale, CA;"

V-386—[Amended]

By removing the words "From Palmdale, CA, via" and substituting the words "From Santa Barbara, CA, via Fillmore, CA; Palmdale, CA;"

V-21—[Amended]

By removing the words "Boulder City, NV, including a W alternate from INT Hector 226° and Daggett, CA, 187° radials to INT Daggett 062° and Hector 047° radials via Daggett;" and substituting the words "Boulder City, NV;"

V-283—[Revised]

From Seal Beach, CA, via March, CA; INT March 007°T(353°M) and Hector, CA, 226°T(211°M) radials; INT Hector 226°T(211°M) and Daggett, CA, 187°T(172°M) radials; Daggett; INT Daggett 062°T(047°M) and Boulder City, NV; to Boulder City.

V-23—[Amended]

By removing the words "Sacramento, CA, including a W alternate from Fresno to Sacramento via Panoche, CA, and Stockton, CA;" and substituting the words "Sacramento, CA;"

V-585—[New]

From Fresno, CA, via Panoche, CA; Stockton, CA; to Sacramento, CA.

Issued in Washington, D.C., on July 26, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-18333 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-26]

Proposed Alteration and Establishment of VOR Federal Airways; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments must be received on or before September 18, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-26, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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 29591; telephone: (202) 426-8626.

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 factural basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-26." 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 in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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The Proposal

The FAA is considering an amendment to § 71.123 and § 71.127 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several VOR Federal Airways located in the vicinity of San Francisco, CA, by deleting all alternate route designations. In addition, some airway segments will be revoked and other segments will be renumbered. Sections 71.123 and 71.127 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT 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

Aviation safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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.

2. Section 71.123 is amended as follows:

V-25—[Amended]

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

V-248—[Amended]

By removing the words "From Paso Robles, CA," and substituting the words "From Salinas, CA, via INT Salinas 131°T(114°M) and Paso Robles, CA, 342°T(326°M) radials; Paso Robles;"

V-27—[Amended]

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

V-491—[Amended]

By removing the words "From Mendocino, CA," and substituting the words "From Crescent City, CA, via INT Crescent City 195°T(176°M) and Fortuna, CA, 345°T(326°M) radials; Fortuna; INT Fortuna 170°T(151°M) and Mendocino, CA 321°T(303°M) radials; Mendocino;"

V-107—[Amended]

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

V-301—[Amended]

By removing the words "From Point Reyes, CA," and substituting the words "From Panoche, CA; via INT Panoche 317 °T(301 °M) and Oakland, CA, 110 °T(093 °M) radials; Oakland; Point Reyes, CA;"

V-230—[Amended]

By removing the words "Panoche, CA, including alternate via INT Salinas 100° and Panoche 245° radials; and substituting the words "Panoche, CA;"

V-87—[Amended]

By removing the words "From San Francisco, CA, and substituting the words "From Panoche, CA; INT Panoche 245°T(220°M) and Aslinas, CA, 100°T(084°M) radials; Salinas; INT Salinas 310°T(293°M) and Woodside, CA, 158°T(141°M) radials; Woodside; San Francisco, CA;"

V-244—[Amended]

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

V-195—[Amended]

By removing the words "From Oakland, CA," and substituting the words "From Stockton, CA; INT Stockton 246°T(229°M) and Oakland, CA, 110°T(093°M) radials; Oakland;"

3. Section 71.127 is amended as follows:

V-5—[Revised]

From Kona, HI, to INT Kona 338°T(327°M) and Maui, HI, 179°T(168°M) radials.

V-27—[New]

From Kona, HI, to INT Kona 323°T(312°M) and Maui, HI, 179°T(168°M) radials.

Issued in Washington, D.C., on July 26, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-18334 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 3

Organization, Procedures, and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Proposed rules.

SUMMARY: The Federal Trade Commission is proposing to revise Sections 3.1 and 3.21 of its Rules of Practice and Procedure, governing adjudicative proceedings. The changes are intended to expedite and streamline adjudicative matters under Part 3 of the Rules.

DATE: Written comments must be received on or before September 3, 1985.

ADDRESS: Comments may be mailed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, (202) 523-3865.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend two rules in order to streamline procedures and reduce delay in adjudicative proceedings. These changes are designed to emphasize the role of the administrative law judge ("ALJ") in managing and controlling the progress of litigation, and to encourage counsel to prepare for trial expeditiously.

The first major change would be to Rule 3.1. In place of the general prayer for expedition it now contains, an affirmative mandate would appear. The operative words would be that Commission "proceedings *shall* be conducted expeditiously." To assure adherence to this command, the ALJ would be directed to "require counsel for all parties to complete each stage of the proceedings without delay. . . ." In addition, the rule would make it the affirmative duty of counsel to do so.

The other major changes would be to Rule 3.21, governing prehearing procedures. The proposed changes would add new requirements governing prehearing case management and would establish several deadlines, including a deadline that would require the evidentiary hearing to begin within six months of the entry of the initial prehearing order. The latter requirement would apply except where the complexity of the case or circumstances beyond the control of the parties require modification.

Administrative law judges already have broad powers to manage cases. Discovery in Part 3 matters, for example, can only proceed if authorized by the ALJ, see Rule 3.31(b)(1), and the rules already provide for a prehearing conference with the ALJ, see Rule 3.21(a). The Commission believes, however, that a more structured prehearing procedure will further streamline litigation of administrative complaints.

Recent amendments to the Federal Rules of Civil Procedure emphasize the importance of effective case management. In 1983, for example, Rule 16 of the Federal Rules was amended to require that judges or magistrates consult with the parties and enter a scheduling order in all civil cases, except categories of cases specifically exempted by local rules. See Fed. R. Civ. P. 16(b). According to the advisory committee's notes, this change and other changes to Rule 16, were intended to "[make] scheduling and case management an express goal of pre-trial procedure." Even before Rule 16 was amended, moreover, many courts had adopted local rules requiring pretrial case management. See Peckham, "The Federal Judge as Case Manager: The New Role in Guiding a Case from Filing to Disposition," 69 *Calif. L. Rev.* 770 (1981).

Several changes are proposed to Rule 3.21 to make scheduling and case management an express goal of the Commission's prehearing procedure.

First, counsel for the parties would be required to meet before the initial prehearing conference, "in person if practicable," to prepare themselves for the prehearing process. Rule 3.21(a) would require a good faith effort to avoid surprise, expedite discovery, and

agree on a proposed schedule of proceedings.

Second, the rule would require an initial prehearing conference with the ALJ to guide the conduct of further pretrial proceedings. It would require that counsel for the parties be prepared to address the issues, pleadings, stipulations and admissions, a schedule of proceedings including deadlines for discovery and for the start of the evidentiary hearing on the merits, official notice, and other matters. The ALJ's initial prehearing order would "control the subsequent course of the proceedings," as provided in Rule 3.21(c).

A crucial element of the amended rule would require that the initial prehearing order schedule the start of the evidentiary hearing not later than six months after the entry of the initial order, except when the complexity of the case or circumstances beyond the control of the parties requires a later date. The Commission believes that deadlines, particularly when enforced vigorously and intelligently by the ALJ's, can help in focusing the attention of counsel for the parties on the strengths and weaknesses of their case, and on the need to move it along toward disposition by decision, settlement or dismissal. "[O]ne of the most important factors in effective case management is judicial enforcement of realistically designed timetables." Peckham, *supra*, at 772.

The last phase of prehearing procedure called for by the proposed rule concerns preparation for the trial itself. After a final prehearing conference the ALJ would issue, under Rule 3.21(f), a final prehearing order that would establish a schedule for the evidentiary hearing, a target date for the completion of the reception of the evidence, and a target date for the filing of an initial decision in accordance with the provisions of § 3.51.

The ALJ would be authorized to modify the prehearing orders required by this rule only "for good cause or to prevent manifest injustice." This standard is intended to focus counsel on the gravity of the prehearing conferences, while taking account of the inevitable contingencies that may arise to throw a litigation schedule off track. Deponents are sometimes not available, litigation over discovery or the enforcement of process can sometimes delay the proceedings, counsel or crucial trial witnesses can become unexpectedly ill, and a hundred other unforeseeable events can occur. ALJ's need discretion to deal with these contingencies. However, the entire prehearing process in all of its phases would be governed by Rule 3.1's mandate for expedition.

Finally, proposed Rule 3.21(i) would provide for the availability of sanctions. These would include, but not be limited to, sanctions already enumerated in § 3.38, and the sanctions would be administered by ALJ's for the purpose of avoiding delay.

List of Subjects in 16 CFR Part 3

Administrative practice and procedures, Claims, Equal access to justice.

For these reasons, Part 3, of Chapter I of Title 16, Code of Federal Regulations, is proposed to be amended as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority for 16 CFR Part 3 continues to read as follows:

Authority: 15 U.S.C. 46(g).

2. Section 3.1 is proposed to be revised to read as follows:

§ 3.1 Scope of the rules in this part.

The rules in this part govern procedure in adjudicative proceedings. It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously. In the conduct of such proceedings the Administrative Law Judge shall require counsel for all parties to complete each stage of the proceedings without delay, and it shall be the duty of counsel to do so.

3. Section 3.21 is proposed to be amended by removing paragraphs (a), (b) and (e), redesignating paragraph (c) as paragraph (g), redesignating paragraph (d) as paragraph (h), and adding new paragraphs (a), (b), (c), (d), (e), (f), and (i) to read as follows:

§ 3.21 Prehearing procedures.

(a) *Meeting of Counsel.* Not less than five days prior to the initial prehearing conference, complaint counsel and counsel for respondents shall confer, in person if practicable, for the following purposes: (1) To exchange written, nonbinding statements of claims and defenses; (2) To exchange lists of witnesses (including experts) each party tentatively intends to call at the evidentiary hearing in support of its case-in-chief, together with brief summaries of the witnesses' expected testimony; (3) To exchange, or make available for inspection and copying, all documents or other materials reasonably available to each party that the party tentatively intends to offer at the evidentiary hearing in support of its case-in-chief; (4) To arrive at stipulations of fact, law or admissibility of evidence, or other agreements that will narrow and focus the issues for discovery and trial; and (5) To discuss, and if possible agree upon, a proposed schedule of proceedings, including a discovery plan, that is consistent with the target date under this rule for the commencement of the evidentiary hearing. The parties are under a continuing obligation to advise opposing parties of additional witnesses or additional documents or other materials as they become known.

(b) *Initial Prehearing Conference.* In every case, the Administrative Law Judge shall hold an initial prehearing conference within 20 days after the filing of an answer by the last answering respondent, or within 60 days after the issuance of the complaint, whichever occurs first. Counsel for the parties shall appear at the initial prehearing conference and be prepared to address: (1) The parties' factual and legal theories; (2) Simplifications and clarification of the relevant factual and legal issues; (3) Necessity or desirability of amendments to pleadings, subject, however, to the provisions of § 3.15; (4) Stipulations of fact, law or admissibility of evidence, or other agreements that will narrow and focus the issues for discovery and trial; (5) A schedule of proceedings, including a plan of discovery and target dates for the submission or hearing of dispositive or other motions, and for the start of the evidentiary hearing on the merits; (6) Such limitations on discovery as may be required to promote expedition and meet the proposed target dates; (7) Matters of which official notice will be taken and matters which may be resolved by reliance upon trade regulation and other rules pursuant to § 1.8 and § 1.22(c) of this chapter; and (8) Such other matters as may aid in the orderly, efficient and expeditious disposition of the proceeding, including but not limited to restriction of the number of expert economic, technical, or other witnesses.

(c) *Initial Prehearing Order.* Not later than 14 days after the initial prehearing conference, the Administrative Law Judge shall enter an order which shall set forth the results of the initial prehearing conference and shall control the subsequent course of the proceedings. Requests for modifications to the prehearing order shall be filed within five business days after service of the order, and responses to such requests must be filed within five business days thereafter. The Administrative Law Judge shall make any modifications to the prehearing

order in response to such objections within 10 business days after the objections are filed. Unless the Administrative Law Judge determines that the complexity of the case or circumstances beyond the control of the parties require a later date, the prehearing order shall provide for commencement of the evidentiary hearing within six months after entry of the order, and shall establish a schedule of proceedings, including a plan of discovery and target dates for submission and hearing of dispositive and other motions, that is consistent with that goal. The prehearing order, including the schedule of proceedings and the plan of discovery, shall be governed by the requirements of § 3.1 and shall not be modified by the Administrative Law Judge except for good cause or to prevent manifest injustice.

(d) *Interim Prehearing Conferences and Orders.* The Administrative Law Judge may hold interim prehearing conferences or enter orders for the purpose of aiding the orderly, efficient and expeditious disposition of the proceeding.

(e) *Final Prehearing Conference.* The Administrative Law Judge shall hold a final prehearing conference in every case not less than 21 days prior to the commencement of the evidentiary hearing, for the following purposes: (1) To formulate the factual and legal issues to be tried; (2) To arrive at stipulations of fact, law, or admissibility of evidence, or other agreements that will expedite the evidentiary hearing; (3) To exchange final lists of witnesses (including experts) who will be called and lists of exhibits (including excerpts from depositions, interrogatory answers and responses to requests for admissions) that will be offered at the evidentiary hearing in support of each party's case-in-chief, except that witnesses and exhibits not listed at the final prehearing conferences may not be offered at the evidentiary hearing in support of a party's case-in-chief absent a showing of good cause; and (4) To consider such other matters as may aid in the orderly, efficient and expeditious disposition of the proceeding.

(f) *Final Prehearing Order.* Not later than 7 days after the final prehearing conference, the Administrative Law Judge shall enter an order which shall set forth the results of the final prehearing conference and establish a schedule for the evidentiary hearing, including a target date for the completion of the reception of evidence and for the filing of an initial decision in accordance with the provisions of § 3.51. The order shall control the subsequent course of the proceding, unless modified for good cause or to prevent manifest injustice.

* * * * *

(i) *Sanctions.* If any party fails to comply in good faith with the provisions of this section or any order issued hereunder, including any schedule of proceedings or plan of discovery, the Administrative Law Judge shall take all necessary action to avoid delay in the disposition of the proceeding, including but not limited to the imposition of sanctions such as those provided in § 3.38(b).

By direction of the Commission, dated July 25, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 18374 Filed 8-1-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 851 0031]

Michigan Optometric Association; 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 the Michigan Optometric Association, among other things, to cease prohibiting, restricting or restraining any optometrist from: (1) entering into or affiliating with a corporate practice; (2) practicing in any location; or (3) disseminating truthful, non-deceptive information. Additionally, the Association would be required to repeal those Bylaws and Standards of Conduct that conflict with the order. Further, the Association would be required to send notice of the order to: (1) all optometrists who resigned or were terminated because they engaged in a corporate practice or practiced in a retail location; (2) all members of the Association; (3) all other optometrists currently licensed in the State of Michigan; and (4) everyone to whom the Association sends an application for membership for the next five years.

DATE: Comments must be received on or before October 1, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Robert P. Weaver, Cleveland Regional Office, Federal Trade Commission, Suite 500—Mall Building, 118 St. Clair Avenue, Cleveland, OH 44144 (216) 942-4207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 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

Optometrists, Trade practices.

[File No. 851 0031]

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts or practices of the Michigan Optometric Association ("Respondent"), a corporation, and it now appearing that Respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts or practices being investigated,

It is hereby agreed by and between Respondent, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its mailing address at 530 West Ionia Street, Suite A, Lansing, Michigan 48933.

2. Respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Respondent waives:

(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 to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft 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 Respondent, 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 Respondent that the law has been violated as alleged in the draft 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 Section 2.34 of the Commission's Rules, the Commission may, without further notice to Respondent: (1) issue its Complaint corresponding in form and substance with the draft Complaint here attached and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order 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 Respondent's address as stated in this Agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. 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. Respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

ORDER

I

For purposes of this Order, the following definitions shall apply:

(A) "Respondent" means the Michigan Optometric Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, and assigns.

(B) "Optometrist" means any individual duly licensed to engage in the practice of optometry in the State of Michigan.

(C) "Corporate practice" means practice by an optometrist as an owner of, an employee of, or an affiliate of a business corporation that is not a hospital clinic, health maintenance organization, or professional corporation.

(D) "Retail location" means the location of a practice in a department, division, or section of a retail, department, or discount store.

II

It is ordered that Respondent, directly, indirectly, or through any corporate or other device, in connection with Respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(A) Prohibiting, restricting, or restraining any optometrist from entering into or affiliating with a corporate practice, through any means, including, but not limited to:

(1) Declaring it to be an unethical or otherwise objectionable practice in violation of the Respondent's constitution, bylaws, standards of conduct, code of ethics, or policies, for any optometrist to enter into or affiliate with a corporate practice;

(2) Expelling or suspending, or threatening to expel or suspend, any optometrist from membership, or refusing to grant membership to any optometrist, or taking any other disciplinary action against any optometrist, for entering into or affiliating with a corporate practice; and

(3) Adopting or maintaining any constitution, bylaw, standard of conduct, code of ethics, or policy that prohibits any optometrist from entering into or affiliating with a corporate practice;

(B) Prohibiting, restricting, or restraining any optometrist from practicing in any location, through any means, including, but not limited to:

(1) Declaring it to be an unethical or otherwise objectionable practice in violation of the Respondent's constitution, bylaws, standards of conduct, code of ethics, or policies, for any optometrist to practice in a retail location;

(2) Expelling or suspending, or threatening to expel or suspend, any optometrist from membership, or refusing to grant membership to any optometrist, or taking any other disciplinary action against any optometrist, for practicing in a retail location; and

(3) Adopting or maintaining any constitution, bylaw, standard of conduct, code of ethics, or policy that prohibits any optometrist from practicing in a retail location; and

(C) Restricting, regulating, prohibiting, impending, declaring unethical, interfering with, or advising against the advertising, publication, or dissemination of information about optometric services or optical goods and devices that are offered for sale or made available by an optometrist or by any organization with which an optometrist is affiliated, through any means, including, but not limited to, adopting, maintaining, or enforcing any constitution, bylaw, standard of conduct, code of ethics, or policy that prohibits any optometrist from:

(1) Displaying an optometrist's name in the lobby or public hall of a building in any manner that stands out from a listing of other occupants of the building;

(2) Using professional cards, billboards, letterhead, or stationery containing any information other than certain limited items;

(3) Using large signs, or depictions in advertising that contain representatives of eyes, eyeglasses, or the human head; and

(4) Using lettering that is larger than a specified size on windows or doors, or displaying ophthalmic materials and certificates visible from other than just within the ophthalmic office.

Provided, that nothing contained in this part shall prohibit Respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III

It is further ordered that Respondent shall:

(A) No later than ninety (90) days after the date this Order becomes final,

remove from its constitution, bylaws, standards of conduct, codes of ethics, and any other policy statements of Respondent, any provision, rule, standard, interpretation, or policy statement that is inconsistent with Part II of this Order, by amendment, revision, or in such other manner as to eliminate the inconsistency, including, but not limited to, removal of Respondent's Bylaws, Article I, Sections 1(A) (b) and (c), and Respondent's Standards of Conduct, Article III, Sections (B)(c), (e), (f), and (g); and

(B) Within one hundred twenty (120) days after the date this Order becomes final, publish in the *Michigan Optometrist* or, if that publication is no longer in existence one hundred twenty (120) days after the date this Order becomes final, in any successor publication, notice of the removal or amendment of any such provision, rule, standard, interpretation, or policy statement as described above.

IV

It is further ordered that Respondent shall:

(A) Within sixty (60) days after the date this Order becomes final, send by first-class mail the letter attached hereto as Attachment A, an application for membership, and a copy of this Order and the attached Complaint to each optometrist whose membership was terminated or who resigned, and for which the basis of such termination or resignation was his or her corporate practice status or practice in a retail location [e.g., a violation of Respondent's Bylaws, Article I, Section 1(A) (b) or (c)]; offer to reinstate any such optometrist's membership in Respondent; and if any optometrist so desires, reinstate such membership within thirty (30) days after the application is returned, provided the optometrist meets Respondent's current requirements for membership as they are generally applied to all existing members and provided these requirements are fair and reasonable;

(B) Within sixty (60) days after the date this Order becomes final, send by first-class mail the letter attached hereto as Attachment B, an application for membership, and a copy of this Order and the attached Complaint to every optometrist who is licensed to practice in the State of Michigan, but who has not been notified pursuant to Part IV(A) of this Order and is not a member of Respondent;

(C) Within sixty (60) days after the date this Order becomes final, and ten (10) days prior to the publication of this Order and the attached Complaint pursuant to Part IV(D) of this Order:

(1) send by third-class mail the letter attached hereto as Attachment C to every optometrist who is a member of Respondent, or

(2) at the Respondent's option, include the letter attached hereto as Attachment C as a separate two (2) page insert in the front of any third-class mailing sent in the Respondent's normal course of business to every optometrist who is a member of Respondent, provided however, the total mailing to each optometrist does not exceed ten (10) pages;

(D) Within sixty (60) days after the date this Order becomes final, publish a copy of this Order and the attached Complaint in the *Michigan Optometrist* or, if that publication is not longer in existence sixty (60) days after the date this Order becomes final, in any successor publication; and

(E) For a period of five (5) years after the date this Order becomes final, include the notice attached hereto as Attachment D in or with every application for membership sent, disseminated, or distributed by Respondent to any person. The notice shall be printed as a separate paragraph in type at least as large as the type face of the major portion of the text of the application, and in such manner that it is clear and prominent.

V

It Is Further ordered that Respondent shall:

(A) Within one hundred twenty (120) days after the date this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which Respondent has complied and is complying with this Order, including, but not limited to, a copy of each constitution, bylaw, standard of conduct, code of ethics, or policy statement that was revised or amended to assure compliance with this Order;

(B) Annually, for a period of two (2) years after the date this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with any activity covered by Parts II, III, and IV of this Order, including, but not limited to, the rendering of any advice or interpretation with respect of any corporate practice, retail location, or advertising involving any optometrist; and

(C) For a period of five (5) years after the date this Order becomes final, maintain, and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Parts II, III, and IV of this Order, including, but not limited to: the rendering of any advice or interpretation with respect to any corporate practice, retail location, or advertising involving any optometrist; rulemaking and enforcement proceedings; and written communications, and any summaries of oral communications, to or from the Respondent.

VI

It is further ordered that Respondent shall notify the Commission at least thirty (3) days prior to any proposed change, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, association, or other entity, or any other change in the Respondent that may affect compliance obligations arising out of this Order.

Attachments A

Dear Dr. _____:

This letter is to inform you of a Consent Order (copy enclosed) that we have signed with the Federal Trade Commission. Our agreement to this Order is for settlement purposes only, and does not constitute an admission of a law violation by the Michigan Optometric Association. Under the terms of this Order, the Association has agreed that we will not prevent any optometrist from entering into or affiliating with a corporate practice, practicing in a retail location, or using any form of truthful, non-deceptive advertising.

Specifically, we have revised our Bylaws and Standards of Conduct to reflect the requirements of the Consent Order, including:

1. Removal of Article I, Sections 1(A) (b) and (c) of the Bylaws, which stated that Association membership is only open to a licensed optometrist who:

"(b) Practices optometry primarily as a proprietor, as a shareholder or shareholder-employee of a professional corporation; or a partner in a partnership, professional corporation or partnership; or as an employee of a health maintenance organization or hospital clinic, and

"(c) Practices optometry primarily in an office which is not held out to the public as a department, division or section of a retail store;" and

2. Removal of Article III, Section (B) (c), (e), (f), and (g) of the Standards of Conduct, which prohibited methods of providing information about optometric services.

Therefore, even though you are affiliated with a corporate practice or practice in a retail location, you now qualify for membership in the Michigan Optometric Association, and you have a right to reinstatement of your membership provided that you still meet current membership requirements of the Association. If you wish to reinstate your membership, please do the following:

1. Fill out the enclosed application form. Please note, however, that you do not have to

obtain the signatures of two current members of the Association for reinstatement.

2. If you have unpaid dues from your former period of membership, a statment is enclosed with this letter. If you have questions regarding the amount due, please contact us. Payment for any outstanding dues should be enclosed with the application.

3. You must also enclose payment for current applicable dues.

4. Return the application and payment to the Association.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)

Michigan Optometric Association.

Attachment B

Dear Dr. _____

This letter is to inform you of a Consent Order (copy enclosed) that we have signed with the Federal Trade Commission. Our agreement to this Order is for settlement purposes only, and does not constitute an admission of a law violation by the Michigan Optometric Association. Under the terms of this Order, the Association has agreed that we will not prevent any optometrist from entering into or affiliating with a corporate practice, practicing in a retail location, or using any form of truthful, non-deceptive advertising.

Specifically, we have revised our Bylaws and Standards of Conduct to reflect the requirements of the Consent Order, including:

1. Removal of Article I, Sections 1(A) (b) and (c) of the Bylaws, which stated that Association membership is only open to a licensed optometrist who:

"(b) Practices optometry primarily as a proprietor, as a shareholder or shareholder-employee of a professional corporation; or as a partner in a partnership; or as an employee of a proprietorship, professional corporation or partnership; or as an employee of a health maintenance organization or hospital clinic, and

"(c) Practices optometry primarily in an office which is not held out to the public as a department, division or section of a retail store;" and

2. Removal of Article III, Sections (B) (c), (e), (f), and (g) of the Standards of Conduct, which prohibited certain methods of providing information about optometric services.

Consequently, membership in the Michigan Optometric Association is now open to any optometrist licensed to practice in Michigan, regardless of the structure or location of his or her practice, and you are welcome to apply. We have enclosed a membership application for your convenience.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)

Michigan Optometric Association.

Attachment C

Dear Dr. _____:

This letter is to inform you of a Consent Order that we signed with the Federal Trade Commission. Our agreement to this Order is for settlement purposes only, and does not constitute an admission of a law violation by the Michigan Optometric Association. Under the terms of this Order, the Association has agreed that we will not prevent any optometrist from entering into or affiliating with a corporate practice, practicing in a retail location, or using any form of truthful, nondeceptive advertising.

Specifically, we have revised our Bylaws and Standards of Conduct to reflect the requirements of the Consent Order, including:

1. Removal of Article I, Sections 1(A) (b) and (c) of the Bylaws, which stated that Association membership is only open to a licensed optometrist who:

"(b) Practices optometry primarily as a proprietor, as a shareholder or shareholder-employee of a professional corporation; or as a partner in a partnership; or as an employee of a proprietorship, professional corporation or partnership; or as an employee of a health maintenance organization or hospital clinic, and

"(c) Practices optometry primarily in an office which is not held out to the public as a department, division or section of a retail store;" and

2. Removal of Article III, Sections (B) (c), (e), (f), and (g) of the Standards of Conduct, which prohibited certain methods of providing information about optometric services.

Consequently, membership in the Michigan Optometric Association is now open to any optometrist licensed in the State of Michigan, regardless of the structure or location of his or her practice. For your information, a complete copy of the Federal Trade Commission's Complaint and the Consent Order will appear in the [*Month, 19*] issue of the *Michigan Optometrist.*

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)

Michigan Optometric Association.

Attachment D

The Michigan Optometric Association welcomes all optometrists to apply for membership regardless of the type or location of their practice. The Association treats all optometrists equally, in accordance with an agreement it entered into with the Federal Trade Commission on [insert date of issuance of the Consent Order]. If you have any questions about this policy, feel free to call the Association at (517) 482-0616 or the Federal Trade Commission at (216) 522-4207.

Michigan Optometric Association

[File No. 8510031]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Michigan Optometric Association ("the Association").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by 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.

Description of the Complaint:

A complaint prepared for issuance by the Commission along with the proposed order alleges that:

- The Association is subject to the Commission's jurisdiction pursuant to Section 5 of the Federal Trade Commission Act.
- The Association has acted as a combination or conspiracy of its members to unreasonably restrain competition in the delivery of optometric services and the sale of optical goods and devices in Michigan by:

—preventing optometrists from becoming owners, employees, or affiliates of a business corporation ("corporate practice") that is not a hospital clinic, health maintenance organization, or professional corporation;

—preventing optometrists from setting up a practice in a department, division, or section of a retail department, or discount store ("in a retail location"); and

—restricting dissemination of certain truthful, non-deceptive information.

- In furtherance of the combination or conspiracy, the Association has including a provision in its Bylaws restricting membership to optometrists who are not engaged in a corporate practice or working in a retail location. The Association has also requested the resignation, or has terminated the membership, of optometrists who were engaged in a corporate practice or working in a retail location. In addition, the Association has adopted Standards of Conduct that restrict the manner in which optometrists can provide information or the content of information on professional cards, billboards, and stationery, and on signs and displays in buildings, offices, or office windows.
- As a result of the Association's restraints on the manner or location in which optometrists may practice and on the dissemination of truthful, non-deceptive advertising, consumers have been deprived of the benefits of vigorous competition and of truthful advertising in the delivery of optometric services and the sale of optical goods and devices in Michigan.

Description of the Proposed Consent Order:

The proposed order requires the Association to cease and desist from prohibiting, restricting, or restraining any optometrist from entering into or affiliating with a corporate practice, from practicing in any loction, or from disseminating truthful, non-deceptive information. The proposed order also requires the Association to repeal those Bylaws and Standards of Conduct that conflict with the order.

The order provides, however, that the Association may adopt and enforce reasonable ethical guidelines with respect to representations that the Association reasonably believes would be false of deceptive.

The proposed order requires the Association to send notice of the order to: (1) all optometrists who resigned or were terminated because they engaged in a corporate practice or practiced in a retail loction; (2) all members of the Association; (3) all other optometrists currently licensed in the State of Michigan; and (4) everyone to whom the Association sends an appliction for membership for the next five (5) years.

To ensure that the proposed order is obeyed, the Association is required to file a written report describing its compliance within one hundred twenty (120) days after the date the order becomes final, and to file two additional annual reports. The Association is also required to make its records available to the Commission staff upon reasonable notice for five (5) years, and to notify the Commission of any proposed change in the Association that would affect its compliance obligations.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR doc. 85-18463 Filed 8-1-85; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

All Terrain Vehicles; Advance Notice of Proposed Rulemaking; Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period.

SUMMARY: The Commission extends the period for submitting comments on the all terrain vehicles (ATVs) advance notice of proposed rulemaking (ANPR) for 60 days, in response to requests from interested members of the public.[1]

DATE: Comments and submissions in response to the ANPR are due no later than September 30, 1985.

ADDRESS: Comments and submissions should be sent, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Nick Marchica, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 31, 1985 (50 FR 23139), the Commission issued an ANPR inviting any person to submit (1) an existing standard that addresses the risk of injury associated with ATVs as a proposed consumer product safety standard or (2) a statement of intention to develop a voluntary standard addressing the risk of injury associated with ATVs, along with a plan to do so.[2] (The notice generally described ATVs, as 3 and 4 wheel motorized machines intended to be ridden by one person and designed for off-road use, for recreational and other purposes.) The notice of May 31 also described the available injury data on ATVs, listed steps to be taken by the Commission staff with respect to ATVs, described the options available to the Commission regarding ATVs, and solicited public comment on the issues raised in the ANPR.

On July 15, 1985, the Commission's Office of the Secretary received a letter from Kawasaki Motors Corp., U.S.A., requesting a 30 day extension in which to submit comments to the ANPR. On July 23, 1985, the Commission's Office of the Secretary received a request from the Specialty Vehicle Institute of America (SVIA) on behalf of its member companies requesting a 60 day extension of the ANPR comment period. SVIA has represented that Kawasaki has no objection to and endorses the SVIA request for a 60 day extension. SVIA states that additional time is required for a number of reasons. Primary among these are the fact that SVIA and the member companies have been working on the voluntary standard effort, the Commission's public hearings on ATVs and responding to the Commission's information requests at the same time they are preparing their comments on the ANPR.

The Commission has considered requests submitted by Kawasaki and SVIA and concludes that a 60 day extension will not significantly delay its activities with respect to the ATV project. Therefore, in the interest of obtaining input from all interested parties, the Commission extends the comment period for 60 additional days. All comments and submissions should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, no later than September 30, 1985.

Dated: July 30, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-18403 Filed 8-1-85; 8:45 am]

BILLING CODE 6355-01-M

[1] Commissioner Statler abstained from the Commission decision to extend the comment period on the ATV ANPR.

[2] Commissioner Dawson dissented from the Commission decision to issue an ANPR and issued a statement that is available in the Office of the Secretary.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-216 (Texas—39)]

High-Cost Gas Produced From Tight Formations, Texas; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Amended 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 (Supp V. 1981), 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 a request by the applicant to amend the recommendation of the Railroad Commission of Texas that the Barnett

Shale Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on August 14, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on August 14, 1985.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Walter W. Lawson, (202) 357-8556.

High-Cost Gas Produced from Tight Formations, Docket No. RM79-76-216 (Texas—39).

I. Background

On September 20, 1983, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Barnett Shale Formation in Wise, Montague, Clay, Jack, Denton, Palo Pinto, Parker and Tarrant Counties, Texas, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, a Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation (OPPR) was issued on November 14, 1983 (48 FR 52483, November 18, 1983) in Docket No. RM79-76-216 (Texas—39) to determine whether Texas' recommendation that the Barnett Shale Formation be designated a tight formation should be adopted. On May 23, 1985, the Commission received a request from the applicant (Mitchell Energy Corporation) to reduce the areal extent of the Barnett Shale Formation recommendation. This Notice of Proposed Rulemaking is hereby issued to give notice of the applicant's request. Texas' original recommendation, the May 23, 1985 request, and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

As originally submitted to the Commission, the recommended area included all of Wise, Montague, Clay, Jack and Denton Counties, Railroad Commission District 9, Palo Pinto and Parker Counties, Railroad Commission District 7B, and Tarrant County, Railroad Commission District 5. The eight county area covered 7,524 square miles.

The applicant's request would reduce the areal extent of the recommendation to approximately 1,592 square miles and include all of Wise County and the western one-half of Denton County, Railroad Commission District 9; and the northwestern one-quarter of Tarrant County, Railroad Commission District 5.

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), notice is hereby given of the proposal submitted by Texas that the Barnett Shale Formation as described and delineated in Texas' recommendation, as amended, as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

III. 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, DC 20426, on or before August 14, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-216 (Texas—39), as amended, and should give reasons including supporting data for my recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications 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 Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC, during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than August 14, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

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, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(212) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(212) *Barnett Shale Formation in Texas.* RM79-76 (Texas—39)

(i) *Delineation of formation.* The Barnett Shale Formation is found in Texas in all of Wise County and the western one-half of Denton county, Railroad Commission District 9; and the northwestern one-quarter of Tarrant County, Railroad Commission District 5. The designated area covers 1,592 square miles.

(ii) *Depth.* The Barnett Shale Formation in the designated area lies uncomfortably over the Ordovician (Ellenburger) and lies below the Barnett Lime or Pennsylvania Morrow. The depth to the top of the Barnett Shale Formation varies from an estimated subsea depth of 4,800 feet in Wise County to 7,900 feet in Tarrant County, with an approximate thickness ranging from 236 feet in Wise County to 300 feet in Tarrant County. A typical Barnett Shale sections occurs between the electric log depths of 7,194 feet and 7,444 feet on the well log of the Mitchell Energy Corporation C.W. Slay No. 1 well.

[FR Doc. 85-18438 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Country of Origin Rules Regarding Imported Textiles and Textile Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of practice, solicitation of comments.

SUMMARY: Customs recently published final regulations establishing criteria to be used by Customs officers in making country of origin determinations for certain imported textile merchandise. The criteria are based on previous court decisions and Customs rulings on a variety of country or origin issues. These criteria will be applied in making

country of origin determinations for all Customs purposes, including determinations for purposes of assessing duty on imported textiles. Customs is aware that uniform and established practices exist which recognize certain commercial processes and assembly operations performed on textiles as being determinative of origin and that these practices are inconsistent with the published origin criteria..

Accordingly, Customs proposes to change the established and uniform practices that are in conflict with the new criteria. Because these changes of practice, if adopted, may result in higher rates of duty being assessed, this notice invites public comments on them before any change is made.

DATE: Comments must be received on or before October 1, 1985..

ADDRESS: Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

Under past Customs practice, the complete assembly of a garment in one country from pieces cut or otherwise manufactured in another country generally resulted in the country of assembly being considered the country of origin of that garment. Similarly, fabrics that are woven, knit, or otherwise constructed in one country have been considered, for all purposes, products of a second country if they were subjected to dyeing, printing (or dyeing and printing), bleaching, showerproofing (a process rendering the fabric water-repellent), or other finishing processes in the second country. In addition, Customs past practice has been to consider lengths of fabric manufactured in one country and sent to another country for a simple cutting and hemming (or overlocking) operation to be a product of the second country. In this latter circumstance, the material is readily identifiable as being intended primarily for a particular purpose and the cutting is done only to establish the length or the width of the completed article.

By T.D. 84–171, published in the **Federal Register** on August 3, 1984 (49 FR 31248), and effective September 7, 1984, Customs made an interim amendment to Part 12, Customs Regulations (19 CFR Part 12), by adding a new § 12.130 which provides regulatory authority mandating that specific "country of origin" rules be applied in determining whether textiles or textile products are subject to any of the multilateral or bilateral textile agreements entered into by the U.S. pursuant to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854). After careful consideration of the comments received in response to the interim amendment, by T.D. 85–38, published in the **Federal Register** on March 5, 1985 (50 FR 8710), Customs issued a final rule which revised the interim amendment to Part 12.

For purposes of § 12.130, paragraph (b) of the final rule (19 CFR 12.130(b)) defines country of origin. Under that paragraph, textiles or textile products subject to section 204, Agricultural Act of 1956, imported into the customs territory of the U.S., are a product of a particular foreign territory or country or insular possession of the U.S. if the article is wholly the growth, product, or manufacture of that foreign territory or country of insular possession, or, in the case of an article which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession, the article shall be a product of that foreign territory or country or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

Paragraph (d) of § 12.130 (19 CFR 12.130(d)) lists the criteria that will be considered in determining whether there has been a substantial manufacturing or processing operation and whether a new and different article of commerce has resulted. However, paragraph (e)(2) of § 12.130 (19 CFR 12.130(e)(2)) specifically gives five examples of certain types of processes that usually will not result in an article or material being considered to have been substantially transformed in a particular foreign territory, or country, or insular possession of the U.S. Of the five examples, the only ones pertinent to established and uniform practices regarding textile determinations are (1) the cutting to length or width and hemming or overlocking fabrics readily identifiable as being intended for a particular commercial use; (2) trimming and/or joining together of otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes normally incident to the assembly process; (3) one or more finishing processes on yarns, fabrics, or other textile articles, such as shower-proofing, superwashing, bleaching, decating, mercerizing, fulling, shrinking, or similar operations; and (4) dyeing and/or printing of yarns or fabrics.

To determine whether there has been a substantial manufacturing or processing operation under § 12.130(d)(2), a comparison will be made between the article or material *before* the manufacturing or processing operation and the article in its condition *after* the manufacturing or processing operation(s) in each country.

Section 12.130 is applicable, on its face, only to textiles and textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), which is the authority for the promulgation of § 12.130 and in which Congress expressly granted the President the power to issue regulations to effectuate bilateral and multilateral international textile agreements which operate to restrict the flow of cotton, wool, and man-made fiber textiles and textile products into the U.S. Therefore, § 12.130 is only concerned with country of origin determinations for textile restraint purposes. However, the principles of origin contained in § 12.130 were derived from previous court decisions and Customs rulings involving substantial transformation determinations. Accordingly, it is the view of Customs that those principles are effective for *all* country of origin determinations. Customs believes the origin rules actually represent the state of the law, and in keeping with Customs desire to maintain one uniform rule of origin, believes the principles of origin in § 12.130 should be applied to all textiles and textile products, not only for restraint purposes, but also for duty purposes.

In this respect, Customs has determined that the four pertinent examples of types of processing operations in § 12.130(e)(2), currently subject to established and uniform practices, should no longer constitute substantial transformations. Under the existing practices, those operations may result in a different country of origin than would be the case if the origin principles in § 12.130 are applied.

The proposed change in the established and uniform practices and the resultant imposition of higher duties are the direct result of Customs applying its interpretation of the principles of court decisions, particularly *Uniroyal* v. *United States*, 3 CIT 220 (1982), as required by § 152.16(b), Customs Regulations (19 CFR 152.16(b)). However, in view of the broad impact of the proposed changes, Customs will review this matter fully and consider any comments received in response to this notice before making a final determination.

Authority

Because the changes of practice, if implemented, may result in the imposition of higher duties, Customs is giving interested parties notice and an opportunity to comment in accordance with § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)) and § 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)).

Comments

Before making a final determination in this matter, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service Headquarters, 1301 Constitution Avenue, Room 2426, Washington, D.C. 20229.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, imports, Labeling, packaging and containers.

William von Raab,

Commissioner of Customs.

Approved: July 3, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-18244 Filed 8-1-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. R-85-1251; FR-2130]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Rule-related notice.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognition of State and local fair housing laws that provide rights and remedies, for alleged discriminatory housing practices, that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) ("the Act"). This notice advises that a determination has been made that the fair housing law of each named State or locality, on its face, is substantially equivalent to the Act. The notice seeks public comment on this determination and on present or past performance of the agency administering and enforcing the State or local law. The Department will consider all comments submitted in making its determination as to whether the State or local law provides rights and remedies which are substantially equivalent to the Act.

DATES: Comments due: September 3, 1985.

ADDRESS: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Room 5214, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; telephone (202) 426-3500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 9, 1984 (49 FR 32042), the Department published a final rule that revised 24 CFR Part 115 to enable the Department to add or remove recognition of substantially equivalent laws through publication of a rule-related notice in the Federal Register. The purpose of this notice is to advice the public, in accordance with 24 CFR 115.6(b), that the laws of the following jurisdictions have, on their face, been determined to be substantially equivalent. The jurisdictions are: (1) State of Tennessee; (2) Boston, Massachusetts; (3) Pinellas County, Florida (4) Escambia County, Florida; (5) Danville, Illinois; (6) Marion, Indiana; and (7) St. Joseph, Missouri.

The evaluation of the laws of these jurisdictions to date has been conducted in accordance with 24 CFR 115.3(c). Under § 115.3(c), analysis of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law as distinguished from the effectiveness of its administration. Accordingly, the analysis is not limited to the literal text of the law, but must take into account necessary relevant matters of State and local law, or interpretations of the fair housing law by competent authorities.

Section 115.2 provides for two separate inquiries: (a) Whether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

Today's notice invites interested persons and organizations, during the next 30 days, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of the fair housing law of each of these jurisdictions demonstrate that, in operation, the law in fact provides rights and remedies substantially equivalent to those provided in the Act. This notice also invites comments on the Department's determination as to the adequacy of the law on its face.

In accordance with 24 CFR 50.20(k), this notice is not subject to the environmental assessment requirements of the National Environmental Policy of 1969, 42 U.S.C. 4332.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice would not have

a significant economic impact on a substantial number of small entities. The rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C. 3610(c).

Accordingly, public comment is solicited in accordance with 24 CFR 115.6(b) with respect to the following jurisdictions:

States

Tennessee

Localities

Escambia County, Florida
Pinellas County, Florida
Danville, Illinois
Marion, Indiana
Boston, Massachusetts
St. Joseph, Missouri

Dated: July 23, 1985.

Antonio Monroig,
Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 85-18427 Filed 8-1-85; 8:45 am]
BILLING CODE 4210-28-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 42

[CC Docket No. 84-283; FCC 85-351]

Preservation of Records of Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise Part 42 of its Rules and Regulations to reduce recordkeeping requirements imposed on communication common carriers. This would be accomplished by eliminating a listing of specific record retention requirements for some 700 categories and subcategories of records. In lieu thereof carriers would be required to maintain at their general offices a master index of records showing specific records, related retention periods and storage locations. As an alternative, the Commission would continue to prescribe a shortened list with shorter retention periods for most records. In addition, regardless of which alternative would be chosen, the Commission is proposing to modify requirements relating to storage media, eliminate overly specific provisions relating to how records should be destroyed and a reporting requirement dealing with the premature destruction of records.

DATES: Comments are due by August 23, 1985 and replies by September 9, 1985.

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

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Stephen Steckler, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION:

Lists of Subjects in 47 CFR Part 42

Communications common carriers, reporting and recordkeeping requirements.

The collection of information requirement contained in this proposed rule has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Notice of Proposed Rulemaking

In the matter of revision of Part 42, Preservation of Records of Communication Common Carriers; CC Docket No 84-283.
Adopted: July 9, 1985.
Released: July 17, 1985.
By the Commission.

I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), the Commission proposes to reduce the record retention and reporting burdens imposed under Part 42, "Preservation of Records of Communications Common Carriers." This would be accomplished by eliminating a listing of specific record retention requirements for some 700 categories and subcategories of records. In lieu thereof carriers would be required to maintain at their general offices a master index of records showing specific records, related retention periods and storage location. As an alternative, the Commission would continue to prescribe a shortened list with shorter retention periods for most records. In addition, regardless of which alternative would be chosen, the Commission is proposing to modify requirements relating to storage media and to eliminate a provision relating to how records should be destroyed and a reporting requirement dealing with the premature destruction of records.

II. Background

2. Part 42 of the Commission's Rules contains record retention requirements for communications common carriers. It is intended to ensure the availability of specific records for the Commission's regulatory purposes. Among other things, it requires the designation of supervisory officials, an index of records, standards for record storage on media other than paperstock, specific procedures for the destruction of records, and a detailed listing of specific records carriers are required to maintain and the retention periods for each. The last major revision of this part took place in 1960, and it does not reflect recent changes in recordkeeping technology, business practices, or the communications marketplace.

3. On April 17, 1984, the Commission issued a Notice of Inquiry (NOI), 49 FR 18138 (April 27, 1984), soliciting information on ways to reduce the burdens associated with the record retention requirements of Part 42. The NOI solicited comments on alternative approaches to the Commission's present methods of prescribing and satisfying its record retention requriements; and whether or not and to what extent Part 42 should be revised. In connection with the revision of Part 42, carriers were specifically asked to address the prescribed retention periods, the content of the list of records, and any general instructions imposing burdens to retain records beyond the carriers' needs. The NOI invited comments by May 17, 1984, and reply comments by June 1, 1984. At the request of Bell Communications Research, the Commission granted an extension of time for filing comments and reply comments to July 2, 1984 and August 1, 1984 respectively.

4. In a petition for rulemaking dated January 28, 1985, the Department of Justice requested the Commission to revise Part 42 by extending the retention period for individual telephone toll call records from six months to 18 months. Because of this petition's direct relationship to issues raised in the NOI, the Commission has decided to incorporate it in this proceeding.

III. Comments

A. Overview

5. Eleven parties filed comments [1] and five reply comments were filed.[2] All of the parties except ISCC, who wanted only to be a party of record, are in favor of some form of revision of Part 42. Ameritech and the OTCs favored elimination of Part 42, or in the alternative, modification of the requirements. CBT recommended modifications and was the only respondent recommending expansion of Part 42 to include additional items. Other respondents favored a streamlining approach of selectively reducing the number of records to be maintained, shortening the retention period, or some combination of both. In reply comments, MCI also recommended extending the applicability of Part 42 to nonregulated affiliates of carriers and raised questions on the relationship of Part 42 and section 415 of the Communications Act of 1934.

B. Recommended Elimination of Part 42

6. Ameritech stated that elimination of Part 42 would relieve carriers of burdensome, unnecessary, and expensive compliance requirements. Ameritech mentioned other record retention requirements for tax, securities, labor, employment and occupational safety laws and said that multiple layers of regulation covering the same records merely increase the cost of doing business without any corresponding benefit to the public. Ameritech claimed that records necessary for the efficient operation of company business, would by definition include the records necessary for proceedings before the Commission. Accordingly, Ameritech recommended elimination of Part 42 or, in the alternative, revision of Part 42 to eliminate records not necessary for Commission proceedings.

7. The OTCs described current requirements as often inconsistent, duplicative, overlapping, anachronistic and conflicting with the requirements of other governmental agencies. The OTCs indentified no records that are kept solely because of the Part 42 requirements. They claimed that, since all records are kept in the ordinary course of business or because of other requirements, the Commission would still have access to records if requires for regulatory purposes. They stated that, because these records are maintained for other reasons, the Commission cannot assume that no burden is imposed, and carriers should be allowed flexibility to determine their own record preservation policies. Like Ameritech, they recommended elimination of Part 42 or in the alternative, revisions to reduce burdens on common carriers. In reply comments, the OTCs reaffirmed their position that elimination of Part 42 would be the most efficient way to eliminate burdens on the carriers and would be in consonance with Congressional mandates under the Paperwork Reduction Act.[3]

8. In reply comments, MCI stated that suggestions by Ameritech and the OTCs for the elimination of Part 42 are ill-advised because requirements of other agencies and prevailing business practices change from time to time and are outside the Commission's control.

C. Recommended Modifications

9. CBT suggested that § 42.9 "List of Records" be restructured into an alphabetical order, and some record retention periods be shortened.[4] CBT also recommended the expansion of Part 42 to include additional items relating to computer software, computer systems divestiture activities, and community and civic activities.[5] In reply comments, AT&T contended that CBT offered no support for its position to expand record retention requirements. Further, AT&T noted that additional items were described in generic terms and no specific records or retention periods were recommended.

10. Nine respondents (AT&T, Ameritech, Contel, the OTCs, GTE, TRT, USTA, and Western Union; and MCI in reply comment) stated that Section 42.9, "List of Records", was outdated and should be revised. Six of these respondents submitted detailed listings of records and recommended retention periods for each (AT&T, Ameritech, GTE, the OTCs, UTS and Western Union).[6] AT&T recommended that the Commission remove from the list of records all records for which the Commission has specified retention periods as "optional". If part 42 was to be retained, Ameritech recommended the elimination of records from § 42.9 which are not routinely needed in regulatory proceedings.[7] In addition, for specific records, Ameritech favored the reduction of retention periods by 50 percent.[8] Contel indicated that all retention periods specified as "permanent" should be eliminated. Western Union and TRT (in reply comments in support of Western Union), would eliminate "permanent" retention periods for selected items. In reply comments, MCI also stated that most permanent retention periods could be eliminated and a six month retention period would seem adequate for most records. GTE and UTS comments indicated that records with retention periods of 25 to 40 years should have these periods substantially reduced. The OTCs recommended shorter retention periods for records [9] and the elimination of duplications with other governmental requirements. USTA stated that the record retention requirements should be revised to assure the availability of carrier records which may be necessary for the fulfillment of the FCC's regulatory responsibilities, but did not suggest specific retention requirements.

11. In comments relating to § 42.4, "Index of Records", the OTCs favored the elimination of requirements for a master index at the carriers' general offices because it duplicates requirements, also contained in § 42.4, to maintain indices at each location where records are stored. In reply comments, MCI indicated the requirement for a master index was a necessity and should not be eliminated as the OTCs recommended. MCI stated that such a requirement was a practical necessity for finding relevant documents of carriers that are maintained at different locations.

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[1] American Telephone and Telegraph Company (AT&T); the Ameritech Operating Companies—Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., the Ohio Bell Telephone Company and Wisconsin Bell, Inc. (Ameritech); Cincinnati Bell Telephone Company (CBT); Continental Telecom, Inc. (Contel); GTE Corporation (GTE); the Iowa State Commerce Commission (ISCC); Fourteen Operating Telephone Companies—The Bell Telephone Company of Pennsylvania, the Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, the Mountain States Telephone and Telegraph Company, Nevada Bell, New England Telephone and Telegraph Company, New Jersey Telephone Company, New York Telephone Company, Northeastern Bell Telephone Company, Pacific Bell, Pacific Northwest Bell Telephone Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, and Southwestern Bell Telephone Company (OTCs); TRT Telecommunications Corporation (TRT), the United States Telephone Association (USTA), United Telephone System, Inc. on behalf of the twenty operating companies comprising the United Telephone System (UTS) and the Western Union Telegraph Company (Western Union).

[2] AT&T, Ameritech, MCI Telecommunications (MCI), the OTCs, and TRT.

[3] 44 U.S.C. 3501 *et seq.*

[4] CBT Comments at p. 2.

[5] Id. at p. 9.

[6] Because of the volume and detail of these listings, we have limited descriptions to key elements. In addition, as discussed later in this NPRM, the scope of our proposal makes a more detailed discussion of these comments pertaining to § 42.9 unnecessary at this time.

[7] Id., Appendix.

[8] Id., Appendix.

[9] OTCs comments at Appendix A.

12. Six parties commented on the use of alternative storage methods such as microfilm and microfiche (AT&T, Ameritech, Contel, GTE, MCI, and UTS). AT&T, Ameritech and UTS, propose that carriers should be allowed under § 42.5, "Preparation and Preservation of Reproductions of Original Records," to store information in the medium of their choice. Contel wants the Commission to pursue a detailed inquiry on magnetic data storage. GTE believes that computer data bases should be considered only after a new list of items and their retention periods have been developed. MCI believes the provisions of § 42.5 are adequate, and already permit reproductions in any generally accepted media.

13. Section 42.6, "Destruction of Records," requires precautions to be taken to destroy the legibility of records the content of which cannot be divulged to unauthorized persons by law. Section 42.7, "Premature Destruction", requires that a certified statement be filed with the Commission listing the records destroyed and circumstances of premature destruction, accidential or otherwise. The statement is to be filed within 90 days of discovery of the destruction.

14. The OTCs recommended removal of the precautionary language in Section 42.6, and recommended annual reporting on the premature destruction of records, instead of within 90 days of discovery, as § 42.7 requires. MCI agreed with the annual reporting concept but added that such reports, when filed, should be kept (presumably at the Commission) at least as long as the retention periods applicable to the documents destroyed.

D. Other Matters

Extended Applicability

15. MCI in its reply comments recommended that Part 42 should be made applicable to AT&T Information Systems (ATTIS). MCI stated that AT&T might abuse its control over ATTIS, an offerer of services not subject to tariff. MCI believes that the recordkeeping requirements should be extended to ATTIS in order to detemine whether the expectations of how it will be operated prove justified by actual experience. MCI believes also that this requirement should be extended to other nonregulated affiliates of operating telephone companies to facilitate the audit of costs between the regulated entity and nonregulated entities, thus eliminating the possibility of cross-subsidization.

Part 42—Relationship to Section 415 of the Act

16. MCI stated that the most difficult question is whether the statute of limitations of two years in Section 415 of the Communications Act [10] implies a requirement to maintain all foreseeably relevant documents for that length of time. MCI believes there is no need to lengthen existing requirements for the purposes of section 415, but by the same token, no shortening of retention periods that are now two years or less would be justified for records that are needed in disposing of complaints.

Periodic Reviews

17. Although not directly addressed in the NOI, five commenters, AT&T, Ameritech, Contel, the OCTs and TRT, express the need for periodic reviews to update and streamline Part 42 record retention requirements. AT&T, and TRT indicated that the responsibility of undertaking such a review was up to the Commission. Contel believes the Commission should share the responsibility with industry representatives by forming a Records and Information Management Review Committee. Ameritech and the OTCs agreed that periodic reviews of Part 42 should be performed but did not indicate who should do the review.

The Department of Justice (DOJ) Petition

18. Subsequent to the filing of comments and reply comments to the NOI, a petition for rulemaking was received from the DOJ. The DOJ requested that the Commission's record retention requirement for Item 73(a) in the List of Records be increased so that communication common carriers maintain telephone toll records for 18 months instead of the six months currently prescribed. The DOJ claims that telephone toll records are often essential to the successful investigation and prosecution of today's sophisticated criminal conspiracies relating, for example, to terrorism, narcotics trafficking, organized crime and espionage. The DOJ states that in the investigation of sophisticated criminal activity, law officials do not always discover the need for telephone records, much less the existence of a criminal enterprise, until well after the six-month period has expired. The DOJ Petition cited support by the Advisory Committee for United States Attorneys, the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, the U.S. Postal Service, and the Immigration and Naturalization Service.

[10] Section 415 of the Communications Act of 1934 deals with the limitation periods for certain actions. These include such actions as those by carriers for recovery of their lawful charges, complaints against carriers for the recovery of damages not based on overcharges, etc.

IV. Discussion

A. Elimination of Part 42

19. After considering the comments of Ameritech and the OTCs, we are not persuaded that elimination of Part 42 would be in the public interest. In carrying out its regulatory responsibilities the Commission must have some mechanism at its disposal that provides instructions for the retention of records and enables it to take corrective actions when recordkeeping practices of carriers are unsatisfactory. We are aware, however, that other legal requirements and modern business practices require the maintenance of most records now contained in Part 42. Nevertheless, for the foreseeable future, our regulatory responsibilities under the Act, particularly under section 415, make Part 42 a necessity. We are not proposing the elimination of Part 42 here.

B. Proposed Modification

20. In connection with § 42.9, "List of Records", we are proposing to eliminate what one respondent characterized as a "laundry list" approach: the item by item identification of specific records and retention periods contained in § 42.9. With the exception of telephone toll records to be discussed in connection with the DOJ Petition, we are proposing to eliminate the List of Records. However, we are proposing to retain a modified requirement that each carrier maintain a master index identifying records, retention periods and location which would be subject to review by Commission representatives. Further, the Commission would retain the right to order the addition to new records or lengthen retention periods upon finding that retention periods are insufficient. We are proposing these changes because the detailed list imposes a substantial burden on the carriers to track records on an item by item basis in a pattern which may not achieve the most efficient results. This is especially true when many of these records serve a variety of different legal and business needs. We would still anticipate that in any implementation of this proposal carriers would still maintain lists of specific records, but the proposal is intended to permit carriers a greater freedom to develop more efficient systems and thereby greatly reduce the burdens the Commission imposes in this area.[11] In connection

[11] CBT would be free to add any records it felt necessary under this plan.

with the implementation of this increased reliance on the master index we are requesting comment on how the Commission should assure itself that essential records are retained. Among the alternatives would be a requirement to file a copy of the index and subsequent modifications with the Commission; reliance on periodic reviews by Commission representatives; or simply requiring modifications of the index as problems arise.

21. In § 42.4, "Index of Records", and for the reasons stated on the preceding paragraph and subject to the conditions discussed therein, we are proposing to retain the requirement for a master index at the general offices. We have noted the duplication mentioned by the OTCs between the master index at the general offices and the indices required to be maintained at locations where records are stored. Upon consideration, however, such a requirement does seem to be a practical necessity given the geographic dispersion of carrier facilities and the need for Commission staff to inspect records in a timely manner. Accordingly, we propose to retain the requirement for an index at each location where records are maintained.

22. In connection with § 42.5 "Preservation and Protection of Reproductions of Original Records", the comments indicated that this Section did not permit those subject to Part 42 the freedom to implement technological advances in alternative storage media (microfilm, microfiche and machine-readable media). In order to give the carriers a greater opportunity to take advantage of technological advances, we are proposing to amend § 42.5 to permit them to use the preservation media of their choice subject to certain conditions. First, we would not require the creation of a paper or microfilm record when the record is initially prepared in a machine-readable format. But carriers must retain records in such a manner that they are easily accessible; and the carrier shall have the facilities available to locate, identify and reproduce records in readable form without loss of clarity. Second, microfilm (including microfiche and aperture cards) must be a quality that can be easily read and that can be reproduced in paper similar in size to the original, without loss of clarity or detail. Like machine-readable data, carriers shall have the facilities available to locate, identify and read the microfilm, and reproduce it in paper form. Third, whether the record is in a machine readable format or on microfilm, it must be accompanied by a certificate attesting to its completeness and accuracy.

23. After considering the comments in relation to Section 42.6 "Destruction of Records," we are of the tentative view that there is no need for the precautionary language advising carriers to "macerate or destroy the legibility of records the content of which is forbidden by law to be divulged to unauthorized persons". The destruction of such records is a common event in business and does not seem to need reinforcement in Part 42. Nor do we believe there is any need to advise carriers that they may destroy other records in any manner they elect. This NPRM, therefore, proposes the elimination of § 42.6 and conforming changes to § 42.2 "Designation of Supervisory Official", which refer to the destruction of records.

24. We are proposing to eliminate the requirement in § 42.7 "Premature Destruction", which requires reporting of premature destruction of records within 90 days of discovery. In the past, this provision called attention to the premature destruction of records. It is now our intention to seek more direct ways of satisfying our regulatory needs. The elimination of this provision that we are proposing should not be construed as relieving carriers of their obligation to retain records in a manner consistent with their index.

C. Commission Alternative

25. While not embodied in the proposed rule, the Commission is soliciting comment on whether or not continuing to specify a List of Records would be preferable to the heavy reliance the proposed rule would place on the carriers' master index of records. If retaining the List of Records in Part 42 is preferable, the Commission would consider adopting a generic list with retention periods suited to our current needs. The list would be formulated based on the comments received in response to the NOI and any additional comments in response to this NPRM. If a List of Records specified by the Commission is preferable, the proposed modifications related to storage media (§ 42.5), destruction of records (§ 42.6), and the premature destruction of records (§ 42.7), would be unaffected.

D. Other Matters

26. MCI argued that the applicability of Part 42 should be extended to include ATTIS and other nonregulated affiliates of operating telephone companies. This is an area which gives the Commission some concern. Transactions between regulated and nonregulated affiliates will be closely monitored in the coming years; and since the Commission has also indicated elsewhere that complaint proceedings will play an important role, availability of records will be an important issue. The Commission will entertain recommendations in this rulemaking on a satisfactory resolution of its concerns. But the Commission, at this time, is not proposing in the attached proposed rule to extend the applicability of Part 42 to unregulated affiliates of telephone companies.

27. MCI addressed the relationship of Part 42 to section 415 of the Act and in this NPRM the Commission is proposing to place greater reliance on the master index of records as formulated by the carriers. We do not believe such reliance will bring Part 42 into conflict with the two year statute of limitations in section 415. As stated earlier, the Commission is retaining the right to review and order the modification of the master index. We believe this should be sufficient, but as an additional precaution we have added to the proposed § 42.7, a requirement for carriers to add to the index of records, any records relevant to complaint proceedings that are not already contained in the index. Section 42.7 would also require that the records be added to the index as soon as a complaint is filed, and that the records be retained until final disposition of the complaint. We would also add the same requirements when an inquiry or proceeding is instituted by the Commission.

28. We have included for comment the DOJ recomendation to extend the retention period for telephone toll records, which would be incorporated as a separate section. This separate section is necessary because we are also proposing elimination of § 42.9 "List of Records" where the toll record requirement is now contained. We believe that DOJ has made a *prima facie* case that such a requirement is in the public interest.

29. In view of the scope of the reduction in detailed recordkeeping requirements the Commission is proposing here it will address the suggestions for ongoing periodic reviews of recordkeeping requirements in the final rule.

30. Finally, we are also soliciting comment on the continuing usefulness the current § 42.8, "Extention of Period of Retention of Telegraph Messages," which has not been included in the proposed rule.

31. The Commission believes that the elimination of recordkeeping and reporting requirements it is proposing would be in furtherance of the

Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Under this Act an agency is required to review its Rules and Regulations and determine whether they are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. The Commission believes that the recordkeeping and reporting modifications discussed in the NPRM are in compliance with the Paperwork Reduction Act of 1980. However, implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

32. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the revisions to Part 42 of the Commission's Rules and Regulations can be readily implemented by all carriers without significant economic impact, and, in fact, will ease the recordkeeping and reporting requirements of these carriers, both large and small. The rationale for the proposed changes is outlined in the preceding discussion.

33. 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 oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy of the Commission's official receiving the oral presenatation. Each *Ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, § 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

34. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

V. Ordering Clauses

35. Accordingly, it is ordered, that pursuant to the provision of section 4(i) and 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 218, 219 and 220, there is hereby instituted a notice of proposed rulemaking to amend Part 42, Preservation of Records of Communication Common Carriers as set forth in the attached Appendix.

36. It is further ordered, that all interested persons may file comments on the specific proposals discussed in the NPRM on or before August 23, 1985. Reply comments shall be filed on or before September 9, 1985. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, D.C.

37. It is further ordered, that pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i) that the Secretary shall cause a copy of this Notice to be served on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX

The Federal Communications Commission is proposing to amend Part 42, *Preservation of Records of Communication Common Carriers* to read:

1. Part 42 is proposed to be revised in its entirety as follows:

PART 42—PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS

Applicability

Sec.

42.01 Applicability

General Instructions

42.1 Scope of the regulations in this part.
42.2 Designation of a supervisory official.
42.3 Protection and storage of records.
42.4 Index of records.
42.5 Preparation and preservation of reproductions of original records.
42.6 Retention of telephone toll records.
42.7 Retention of other records.

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154. Interprets or applies sec. 220, 48 Stat. 1078, 47 U.S.C. 220.

Applicability

§ 42.01 Applicability.

This part is prescribed and promulgated as the regulations governing the preservation of records of communication common carriers, subject to the jurisdiction of the Commission, engaged in furnishing telephone, wire telegraph, ocean cable, or radiotelegraph service. As used in the part, the term "telephone carriers" refers to those carriers primarily engaged in furnishing telephone service and the term "telegraph carriers" refers to those carriers primarily engaged in furnishing wire-telegraph, ocean-cable, or radiotelegraph service.

General Instructions

§ 42.1 Scope of the regulations in this part.

(a) The regulations in this part apply to all accounts, records, memoranda, documents, papers, and correspondence prepared by or on behalf of the carrier as well as those which come into its possession in connection with the acquisition of property, such as by purchase, consolidation, merger, etc.

(b) The regulations in this part shall not be construed as requiring the preparation of accounts, records, or memoranda not required to be prepared by other regulations, such as the Commission's Uniform System of Accounts, except as provided hereinafter.

(c) The regulations in this part shall not be construed as excusing compliance with any other lawful requirement for the preservation of records.

§ 42.2 Designation of supervisory official.

Each carrier subject to the regulations in this part shall designate one or more

officials to supervise the preservation of its records.

§ 42.3 Protection and storage of records.

The carrier shall protect records subject to the regulations in this part from damage from fires, floods, and other hazards and, in the selection of storage spaces, safeguard the records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

§ 42.4 Index of records.

Each carrier shall maintain at their general offices a master index of records. The master index shall identify the records retained, the related retention period, and the locations where the records are maintained. The master index shall be subject to review by Commission staff and the Commission shall reserve the right to add records, or lengthen retention periods upon finding that retention periods may be insufficient for its regulatory purposes. At each office of the carrier where records are kept or stored, such records shall be arranged, filed, and currently indexed so that they may be readily identified and made available to representatives of the Commission.

§ 42.5 Preparation and preservation of reproductions of original records.

(a) Each carrier may use a retention medium of their choice to preserve records in lieu of original records, provided that they observe the requirements of paragraphs (b) and (c) of this section.

(b) A paper or microfilm record need not be created to satisfy the requirements of this part if the record is initially prepared in machine-readable medium such as punched cards, magnetic tapes, and disks. Each record kept in a machine-readable medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it is complete and accurate. This statement shall be executed by a person having personal knowledge of the facts contained in the records. The records shall be indexed and retained in such a manner so that they are easily accessible, and the carrier shall have the facilities available to locate, identify and reproduce the records in readable form without loss of clarity.

(c) Records may be retained on microfilm (including microfiche, computer output microfilm and aperture cards).

(1) The microfilm shall be of a quality that can be easily read and that can be reproduced in paper similar in size to an original without loss of clarity or detail.

(2) Microfilm records shall be indexed and retained in such a manner as will render them readily accessiable, and the company shall have facilities available to locate, identify and read the microfilm and reproduce in paper form.

(3) Any significant characteristic, feature, or other attribute which microfilm will not preserve shall be clearly indicated at the beginning of each roll of film or series of microfilm records if applicable to all records on the roll or series, or on the individual record, as appropriate.

(4) The printed side of printed forms need not be microfilmed for each record if nothing has been added to the printed matter common to all such forms, but an identified specimen of the form shall be on the film for reference.

(5) Each roll of film or series of microfilm records shall include a microfilm of a certificate stating that the photographs are direct and facsimile reproductions of the original records and they have been made in accordance with prescribed regulations. Such a certificate shall be executed by a person having personal knowledge of these facts. Where the microfilm is computer output, the microfilm certificate states that the information is complete and accurate.

(6) The carrier shall be prepared to furnish at its own expense appropriate standard facilities for both reading and copying the reproductions. If the Commission so requests, the carrier shall furnish printed reproductions of records stored on any storage media.

§ 42.6 Retention of telephone toll records.

Each telephone carrier shall be required to preserve for a period of 18 months, all tickets, lists, or other detailed records of individual telephone toll calls used as a basis for billing to customers.

§ 42.7 Retention of other records.

Except as specified in § 42.6, carriers shall retain records identified in the master index of records for the period established therein. Records relevant to complaint proceedings not already contained in the index of records should be added to the index as soon as a complaint is filed and retained until final disposition of the complaint. Records the carriers are directed to retain as the result of a proceeding or inquiry by the Commission to the extent not already contained in the index will also be added to the index and retained until final disposition of the proceeding or inquiry.

[FR Doc. 85-18407 Filed 8-1-85; 8:45 am]

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47 CFR Part 100

[MM Docket No. 85-32]

Amendment of the Rules With Respect to Technical Standards for Direct Broadcast Satellite Service; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This Order extends the time for filing comments in MM Docket No. 85-32, concerning technical standards for Direct Broadcast Satellite Service, in response to a Motion for Extension of Time filed by the Direct Broadcast Satellite Association (DBSA).

DATES: Comments must be filed on or before December 6, 1985, and reply comments on or before January 10, 1986.

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

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published in the **Federal Register** on February 19, 1985, 50 FR 6971.

Order Extending Time for Filing Comments to Notice of Proposed Rule Making

In the Matter of amendment of Subpart C of Part 100 of the Commission's rules and regulations with respect to technical Standards for Direct Broadcast Satellite Service; MM Docket No. 85-32.

Adopted: July 19, 1985.
Released: July 23, 1985.
By the Chief, Mass Media Bureau.

1. The deadlines for filing comments and reply comments in this proceeding, as extended by an earlier *Order*, are now June 30, 1985, and July 15, 1985, respectively. On June 24, 1985, the Direct Broadcast Satellite Association (DBSA), the principal industry coordinating party in this proceeding, filed a request that more time be allowed for submission of comments on the recommended "voluntary" standards as outlined in the *Notice of Proposed Rule Making (Notice)*.

2. In support of this request DBSA stated that it is desirable to use the rule

making process as a "vehicle to solidify fundamental DBS standards, and to obtain veiwpoints from a wider constituency. . ." than represented in its association. Further, DBSA stated that in order to obtain an industry consensus on which transmission format DBS operators should use, its standards committee plans to test the different systems. DBSA reported that although these tests were originally to be completed in May 1985 it has taken longer than expected to design tests which examine different transmission formats. DBSA also stated that it has had difficulty in obtaining a test site and equipment. DBSA now expects to complete the test and submit an analysis to the Commission by early December 1985. Because many of the voluntary standards identified in the *Notice* are inextricably linked to the transmission format, DBSA believes that it will be able to provide comments on those standards in December 1985 as well. DBSA added that an undue delay in establishing standards could lead to the industry adopting multiple incompatible formats and systems. Nevertheless, DBSA believes that the date for submitting to the Commission its analysis on voluntary standards and standards for good industry practice could be extended to December 6, 1985, without harm to any party.

3. We note that while the *Notice* did invite comments on those standards that the Advisory Committee on Technical Standards for the DBS Service recommended should be voluntary instead of mandatory, we reiterate that our goal is to adopt only those standards which are required to limit interference and to assure a reasonable degree of interoperability among DBS systems and receivers in the hands of the public. Furthermore, as also stated in the *Notice*, we do have some reservations as to whether it is necessary to adopt any standards, either "mandatory" or "voluntary," in order to assure that the industry will have an adequate set of technical standards. We again encourage comments on both sets of standards and whether the industry's voluntary mechanisms are likely to obviate the need for any Commission Rules in this area. Extending the comment date should afford adequate opportunity for the industry to develop a unified position.

4. Accordingly, it is ordered that the time for filing comments and replies to comments to the above referenced *Notice* is extended to an including December 6, 1985, for comments and January 10, 1986, for reply comments.

5. This action is taken pursuant to authority found in sections 4(i), 5(c)(i), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85-18404 Filed 8-1-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS-80 Notice 3]

Transportation of Hazardous Liquids by Pipeline; Regulation of Intrastate Pipelines

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Notice of delay in taking action on petitions for reconsideration of final rule.

SUMMARY: A final rule extending the applicability of existing Federal safety standards for pipelines transporting hazardous liquids in interstate or foreign commerce to those transporting hazardous liquids that affect interstate or foreign commerce was published on April 23, 1985 (50 FR 15895). By notice published June 20, 1985 (50 FR 25602) MTB solicited comments on two petitions for reconsideration of that rule. Because of the need to evaluate petitions and the comments received thereon, MTB has been unable to take action on the petitions within ninety days of the publication of the rule. In order to avoid a need for postponement of the effective date of the final rule, MTB intends to take action on the petitions by September 20, 1985. MTB believes that it has adequate information to act on the petitions and intends to do so without further proceedings.

FOR FURTHER INFORMATION CONTACT: Barbara Betsock (202) 755-4972 regarding the content of this notice.

List of Subjects in 49 CFR Part 195

Interstate pipeline, Intrastate pipeline, Pipeline safety.

Authority: 49 U.S.C. 2002, 49 CFR 1.53 and Appendix A of Part 1.

Issued in Washington, D.C. on July 30, 1985.

Lucian M. Furrow,

Acting Associate Director, Office of Pipeline Safety Regulation.

[FR Doc. 85-18390 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 50, No. 149
Friday, August 2, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

MiniGrants; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds.

SUMMARY: This notice announces the availability of funds for Fiscal Year 1986 under the ACTION MiniGrant Program authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part C, 42 U.S.C. 4993).

Pursuant to MiniGrant Guidelines published in the **Federal Register** on October 12, 1984, (49 FR 40063) ACTION has established a MiniGrant funding priority for Fiscal Year 1986. The area for which MiniGrants will be awarded is:

—local level projects that develop new and innovative efforts to use volunteers in addressing specific community problems related to poverty

Eligibility: Private or public non-profit organizations which utilize, or will utilize volunteers as an integral part of their provision of services may apply for grants. Subject to the availability of Fiscal Year 1986 funding, approximately $150,000 will be available for grants averaging $8,000—$9,000 in size.

Deadlines: The deadline for submission of applications is October 31, 1985. Applications will be submitted to appropriate ACTION State Offices. Addresses of the State offices will be included in the application package.

In addition to the address list, the application package will contain in application form, a copy of the MiniGrant guidelines which were published in the **Federal Register**, October 12, 1984, and a guide to help individuals complete the application.

Application packages are available from ACTION's Office of Volunteer Liaison in Washington, D.C. To receive an application package, write to the Mini-Grant Program/OVL, ACTION, Room M–516, 806 Connecticut Ave, NW., Washington, D.C. 20525, or call (202) 634–9749.

Signed in Washington, D.C., on July 29, 1985

Donna M. Alvarado,

Acting Director, ACTION.

[FR Doc. 85–18396 Filed 8–1–85; 8:45 am]

BILLING CODE 6050–28–M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Arizona Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 noon on August 17, 1985, at the Arizona Biltmore Hotel, 24th and Missouri Streets, Prescott Room, Phoenix, Arizona. The purpose of the meeting is to provide orientation activities for new members and engage in program planning for fiscal year 1986.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John P. White or Philip Montez, Director of the Western Regional Office at (213) 688–3437 (TDD 213/894–0508).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–18369 Filed 8–1–85; 8:45 am]

BILLING CODE 6335–01–M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on August 30, 1985, at the Vanderbilt Plaza, 2100 West End Avenue, Kirkland Room, Nashville, Tennessee. The purpose of the meeting is to discuss future program plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James Blumstein or Bobby Doctor, Director of the Southern Regional Office, at (404) 221–4391 (TDD 404/221–4391).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–18370 Filed 8–1–85; 8:45 am]

BILLING CODE 6335–01–M

Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 6:00 p.m. on August 19, 1985, at the Holiday Inn, 8 Crawford Parkway, Portsmouth, Virginia. The purpose of the meeting is to discuss plans for a series of meetings designed to gather information from government officials and citizens about civil rights issues in housing, education, employment, voting, and the administration of justice.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Benjamin Bostic or John I. Binkley, Director of the Mid-Atlantic Regional Office at (202) 254–6717, (TDD 202/254–5461).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Committee.

Dated at Washington, D.C., July 30, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–18371 Filed 8–1–85; 8:45 am]

BILLING CODE 6335–01–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: Current Industrial Reports (CIR) (Voluntary Wave I)
Form Number: Agency—M37G, M37L, etc; OMB—0607-0393
Type of Request: Revision of a currently approved collection
Burden: 6,060 respondents; 23,843 reporting hours
Needs and uses: Census collects data in the CIR program in order to provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. The Federal Reserve Board uses CIR data in its index of industrial production, and the International Trade Administration uses many of the CIR tables in its *U.S. Industrial Outlook*. Other government agencies, such as the Department of Agriculture, use the data for industrial analysis projections and monitoring inport penetration.
Affected Public: Businesses or other for-profit institutions
Frequency: Monthly, quarterly, annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe 395-4814

Agency: Bureau of the Census
Title: Current Industrial Reports (CIR) (Mandatory Wave I)
Form Number: Agency—M20J, M20J, etc; OMB—0607-0392
Type of Request:
Burden: 10,256 respondents; 17,548 reporting hours
Needs and uses: Census collects data in the CIR program in order to provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. The Federal Reserve Board uses CIR data in its index of industrial production, and the International Trade Administration uses many of the CIR tables in its *U.S. Industrial Outlook*. Other government agencies, such as the Department of Agriculture, use the data for industrial analysis projections and monitoring inport penetration.
Affected Public: Businesses or other for-profit institutions
Frequency: Monthly, annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timpthy 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, N.W., Washington, D.C. 20230.

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: July 30, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-18421 Filed 8-1-85; 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: International Trade Administration
Title: Foreign Buyer Program/Overseas Trade Fair Certification Program Application
Form Number: Agency—ITA-4100P; OMB—0625-0130
Type of Request: Revision of a currently approved collection
Burden: 150 respondents; 1,050 reporting hours
Needs and uses: The Foreign Buyer Program allows domestic trade show organizers to apply to Commerce so that they can receive support in recruiting foreign buyers to their shows. The Overseas Trade Fair Certification Program allows organizations to apply for Commerce certification of overseas trade fairs. The requested information will be used to make a determination as to whether or not the trade fair or domestic trade show has a reasonable chance of success.
Affected Public: Businesses or other for-profit organizations; small businesses or organizations
Frequency: Required to obtain or retain a benefit
Respondent's Obligation: On occasion
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Foreign Buyer Program; Exhibits Data and Evaluation
For Number: Agency—ITA—4014P; ITA—4015P; OMB—N/A
Type of Request: New collection
Burden: 3,000 respondents; 500 reporting hours
Needs and Uses: The Foreign Buyer Program is being reestablished to focus on major domestic trade shows that have high export potential for foreign buyers to attend. One form will be used to determine which U.S. companies are interested in meeting with foreign visitors. The other form will be sent after the trade event to determine the results of bringing both parties together.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Mission/Exhibition Evaluation
Form Number: ITA—4075P; OMB—0625-0034
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 3,000 respondents; 250 reporting hours
Needs and Uses: This form collects information on results of firms participating in overseas trade promotion events managed and funded by the Department of Commerce. The information is used to evaluate efficiency, impact, and effectiveness of the Department's trade promotion events.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Foreign-Trade Zone Application
Form Number: Agency—N/A; OMB—0625-0139
Type of Request: Revision of a currently approved collection
Burden: 50 respondents; 3,625 reporting hours
Needs and Uses: The Foreign-Trade Zones Act requires that an application be made to the Foreign-Trade Zones Board for authority to establish a foreign-trade zone project in a port of entry community. The information gathered is used to grant this authority to establish or expand foreign-trade zones.
Affected Public: State or local governments; businesses or other for-profit institutions; non-profit institutions; small business or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Recordkeeping Requirements Contained in Export Administration Regulations (Parts 368 through 399)
Form Number: Agency—N/A; OMB—0625-0104
Type of Request: Revision of a currently approved collection
Burden: 7,395,953 respondents; 260,605 reporting hours
Needs and Uses: These records are required to be retained for investigative and enforcement purposes. The documentation is used to support these efforts.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: N/A—recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
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: July 30, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-18422 Filed 8-1-85; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 309]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for Special-Purpose Subzones in the Indianapolis Customs Port of Entry Area

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indianapolis Airport Authority, grantee of Foreign-Trade Zones 72, filed with the Foreign-Trade Zones Board (the Board) on December 22, 1983, requesting special-purpose subzone status for the phamaceutical and chemical manufacturing plants of Eli Lilly and Company located in Indianapolis, Lafayette, and Clinton, Indiana, adjacent to the Indianapolis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Foreign-Trade Subzones in Indianapolis, Indiana

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in our adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone No. 72, has made application (filed December 22, 1983, Docket 50-83, 49 FR 471) in due and proper form to the Board for authority to establish special-purpose subzones at the pharmaceutical manufacturing plants of Eli Lilly and Company in Indianapolis, Lafayette, and Clinton, Indiana, adjacent to the Indianapolis Customs port of entry area;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed December 22, 1983, the Board hereby authorizes the establishment of a subzone at Eli Lilly plants in Indianapolis, Lafayette, and Clinton, Indiana, designated on the records of the Board as Foreign-Trade Subzone Nos. 72B, 72C and 72D at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The Executive Secretary shall be notified by the grantee or operator for approval prior to the commencement of any manufacturing operations not approved as part of the application and when manufacturing activity is changed to include foreign items subject to inverted tariffs.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 26th day of July 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Theodore W. Wu,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternotes.

Attest:

Dennis M. Puccinelli,

Acting Executive Secretary.

[FR Doc. 85-18451 Filed 8-1-85; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 305]

Resolution and Order Approving the Application of the Greater Metropolitan Foreign-Trade Zone Commission for a Foreign-Trade Zone in the Minneapolis-St. Paul, MN Area

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Metropolitan Foreign-Trade Zone Commission, filed with the Foreign-Trade Zones Board (the Board) on April 27, 1984, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites within the Minneapolis-St. Paul Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Minneapolis-St. Paul Port of Entry Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Greater Metropolitan Foreign-Trade Zone Commission (the Grantee), a Minnesota public corporation, has made application (filed April 27, 1984, Docket No. 19–84, 49 FR 18880) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in the Minneapolis-St. Paul, Minnesota, port of entry area;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisified;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 119 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 24th day of July 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcom Baldridge,

Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 85–18450 Filed 8–1–85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–614–502]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that low-fuming brazing copper rod and wire from New Zealand is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of low-fuming brazing copper rod and wire from New Zealand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by October 15, 1985.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that low-fuming brazing copper rod and wire from New Zealand is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). For low-fuming brazing copper rod and wire sold by McKechnie Brothers (N.Z.) Limited, the only known exporter of the

subject merchandise, we have found that the foreign market value exceeded the United States price on 100 percent of the sales compared. The margin of dumping ranged from 16.7 percent to 35.9 percent. The weighted-average margin was 24.35 percent.

Case History

On February 19, 1985, we received a petition in proper form from American Brass, Century Brass, and Cerro Metal Products of Rolling Meadows, IL, Waterbury, CT, and Bellefonte, PA, respectively, filed on behalf of the U.S. low-fuming brazing copper rod and wire industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from New Zealand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry. On May 10, 1985, a letter supporting the petition was filed by J.W. Harris Company of Cincinnati, Ohio, another domestic producer of low-fuming brazing rod and wire.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 11, 1985 (50 FR 10522), and notified the ITC of our action. We stated that we expected to issue a preliminary determination by July 29, 1985.

On April 5, 1985, the ITC found that there is a reasonable indication that imports of low-fuming brazing copper rod and wire from New Zealand are materially injuring, or threatening material injury to, a U.S. industry (USITC Pub. No. 1673, April 1985).

On March 22, 1985, we presented a questionnaire to counsel for the manufacturer McKechnie Brothers (N.Z.) Limited (McKechnie), who accounts for all New Zealand exports of the subject merchandise to the United States. On May 10, 1985, we received a reply to the questionnaire. We examined 100 percent of the sales made by McKechnie during the period of investigation. We made fair value comparisons between sales of identical merchandise which was sold by McKechnie in both the United States and New Zealand markets. Such merchandise comprised 98 percent of McKechnie's sales to the United States.

Standing

On March 20, 1985, Aufhauser Brothers Corporation ("Aufhauser") requested that we rescind our initiation of this investigation, alleging that the petitioners had not filed "on behalf of" the domestic industry, as required by section 732 of the Act. This allegation was also raised in the context of our countervailing duty investigation of low-fuming brazing copper rod and wire from New Zealand. We investigated and found in the preliminary countervailing duty determination that there is no reason to conclude that petitioners do not have standing (50 FR 21328). We have received no further evidence to change that determination, as stated in our final countervailing duty determination, made concurrently with this preliminary antidumping determination.

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA) under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the CIF packed price to unrelated customers in the United States. We made deductions for New Zealand inland freight, ocean freight and marine insurance.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales.

We calculated foreign market value on the basis of ex-railhead or delivered prices to unrelated purchasers. From these prices, we deducted, where appropriate, New Zealand inland freight. We made adjustments, where appropriate, for differences in credit and as an offset for commissions paid on certain sales to the United States but not on home market sales in accordance with § 353.15 of our regulations (19 CFR 353.15). We deducted home market packing costs and added U.S. packing.

We disallowed a claimed adjustment for cost differences in producing different quantities of merchandise. The data submitted indicated that quantity discounts do not exist. Furthermore, the data do not contain evidence of differences in price associated with differences in quantity as required by § 353.14 of our regulations (19 CFR 353.14).

We also disallowed a claimed adjustment for differences in level of trade based on McKechnie's assertion that home market sales are to retailers and sales to the United States are to wholesalers. We disallowed this claimed adjustment because the respondent was unable to quantify appropriately the cost differential due to the different levels of trade. McKechnie, instead of providing data on levels of trade differences in New Zealand, requested that we use information pertaining to levels of trade differences in the United States to represent their experience in New Zealand. We cannot use costs incurred in the United States at one level of trade to represent the costs that would be incurred if that level of trade existed in the home market. We do not believe that using the experience of McKechnie's U.S. customers would give an accurate indication of what costs at the distributor level in New Zealand would be, because we cannot assume that the market conditions and distribution network in the United States would be the same as in New Zealand.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of low-fuming brazing copper rod and wire from New Zealand that are entered, or withdrawn from warehouse, for consumption, on or after the date of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the teble below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies, as determined in the final affirmative countervailing duty determination on low-fuming brazing copper rod and wire from New Zealand, will be subtracted from the dumping margin for deposit or bonding purposes.

Manufacturer/producer/exporter	Weighted-average margin percentage
McKechnie Brothers (N.Z.) Ltd	24.35
All others	24.35

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on August 29, 1985, at the United States Department of Commerce, Room B-841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 22, 1985. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 353.46, all written views will be considered if received not less than 30 days before the final determination. Written views should be filed at Room B-099 at the above address in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 29, 1985.

[FR Doc. 85-18425 Filed 8-1-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Mackerel Stock Assessment Group to analyze conditions of the king and Spanish mackerel stocks, from 9:30 a.m. to 5 p.m., August 14, 1985, and from 8:30 a.m. to approximately 3 p.m., August 15, at the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, FL. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone (813) 228-2815.

Dated: July 29, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-18399 Filed 8-1-85 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting to discuss reports of the lobster, groundfish, swordfish, scallop, striped bass, foreign fishing and enforcement committees; reports on Atlantic salmon and the Chairmen's meeting, as well as other fishery management and administrative matters. The public meeting will be convened at the Woods Hole Oceanographic Institute, Quisset Campus, Woods Hole, MA, from 1 p.m., August 13, 1985, and will adjourn August 14, at approximately 4:30 p.m.

For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: July 29, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-18400 Filed 8-1-85; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagics Plan Development Team will convene a public meeting on July 29, 1985, at 9 a.m., at the National Marine Fisheries Service (NMFS) Honolulu Laboratory Conference Room, 2570 Dole Street, Honolulu, HI, to review comments submitted on the revised draft Fishery Management Plan (April 1985) by the NMFS, the Office of General Counsel, Southwest Region, NMFS, and the U.S. Department of State. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 546-8923.

Dated: July 29, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-18401 Filed 8-1-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1985 commodities and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 2, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 1, May 24, April 12, and April 26, 1985 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 4726, 50 FR 21486, 50 FR 14412 and 50 FR 16531) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1985:

Commodities

Pad, Pre-Operative Preparation: 6530–00–457–8193
Cover, Mattress: 7210–00–543–6002, 7210–00–140–4233
Strap, Shoulder, Quick Release, Left Hand: 8465–00–269–0482
(Requirements for Richmond, Virginia Depot only)

Services

Commissary Shelf Stocking and Custodial, Fort Sheridan, Illinois
Commissary Shelf Stocking and Custodial, Fort Benjamin Harrison, Indiana

C.W. Fletcher,

Executive Director.

[FR Doc. 85–18398 Filed 8–1–85; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1985; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received a proposal to add to and delete from Procurement List 1985 a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: September 4, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodity

Handkerchief, Men's: 8440–00–261–4246

Services

Commissary Shelf Stocking and Custodial, Hickam Air Force Base, Hawaii
Commissary Shelf Stocking and Custodial, Fort Sill, Oklahoma
Janitorial/Custodial, Federal Office Building, 591 Park Avenue, Idaho Falls, Idaho

Deletion

It is proposed to delete the following service from Procurement List 1985, October 19, 1984 (49 FR 41195):

Tax Form Order Fulfillment Service, Internal Revenue Service, Buffalo, New York.

C.W. Fletcher,

Executive Director.

[FR Doc. 85–18397 Filed 8–1–85; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Citrus Associates of the New York Cotton Exchange; Proposed Amendments Relating to the Frozen Concentrated Orange Juice Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Citrus Associates of the New York Cotton Exchange ("CANYCE" or "Exchange") has submitted a proposal to amend its frozen concentrated orange juice futures contract. The proposed amendments would provide for the delivery of frozen concentrated orange juice ("FCOJ") from Exchange-licensed tank storage facilities on the FCOJ futures contract in addition to the contract's current delivery method of delivery of FCOJ in drums at Exchange-licensed warehouses. The CANYCE's proposal would also increase the futures contract's minimum Brix requirement for deliverable FCOJ and clarify geographical boundaries of the contract's current delivery area. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before September 3, 1985.

SUPPLEMENTARY INFORMATION: The contract's current rules call for the delivery of a warehouse receipt representing 15,000 pounds of solids of frozen concentrated orange juice (FCOJ) packed in drums and stored in an Exchange-licensed warehouse. Under the proposed amendments, delivery from Exchange-licensed tank storage facilities would be permitted in addition to delivery of FCOJ in drums at Exchange-licensed warehouses as currently provided in the contract. The tank delivery proposal would call for futures delivery of shipping certificates for 15,000 pounds of FCOJ issued by Exchange-licensed tank storage facilities.

Under the proposed amendments, issuers of shipping certificates would be required to have on hand the quantity of FCOJ specified on each certificate issued for delivery on the contract and

to deliver the FCOJ to the certificate holder promptly upon the holder's demand. The certificate issuer would be required to deliver the FCOJ within ten days from the date of the holder's demand unless the holder requests delivery of FCOJ on more than one certificate and the issuer determines that delivery of FCOJ against the certificates is impractical to complete within ten days from the date of demand.

The proposed terms of the shipping certificates would also require the certificate holder to pay to the issuer any storage fees accrued following futures delivery of the certificate as well as charges for the load-out of the FCOJ from the issuer's tank facility. In addition, the proposal provides that issuers of shipping certificates may elect to convert any shipping certificate which has been outstanding for one year or more to a warehouse receipt representing FCOJ packed in drums and stored in an Exchange-licensed warehouse. At the time of such a conversion, the proposed terms would require that the issuer give notice of the conversion to the holder if the holder's identity and location have been furnished to the issuer.

In addition to the proposed tank delivery provisions, the CANYCE is proposing to revise the contract's minimum Brix requirement for FCOJ delivered against warehouse receipts and shipping certificates. The proposal would increase the minimum required Brix level of deliverable FCOJ to 57 degrees from the contract's current minimum requirement of 51 degrees.

The CANYCE is also proposing amendments to the FCOJ futures contract which would specify the geographical area containing the contract's delivery points. The current terms of the futures contract provide that delivery of FCOJ may be made at delivery points designated by the Exchange's Board of Directors, but do not specify a geographical description of the location of the contract's delivery points. Currently, the contract's delivery points consist of Exchange-licensed warehouses located in the State of Florida. The proposed amendments would provide that delivery may be made at delivery points in the following Florida counties: Brevard, Lake, Orange, Hillsborough, Polk, Pasco, Hernando, Highlands, St. Lucie, Hendry, Manatee, Desoto, Volusia, Martin, Pinellas and Indian River. These counties include all of the current Exchange-licensed delivery warehouses as well as all of the tank storage facilities in Florida that are potentially licensable by the Exchange under the proposed tank delivery alternative for the FCOJ futures contract.

Exchange officials have indicated that the Exchange intends to apply the proposed changes to all delivery months following the July 1986 delivery month.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CANYCE concerning its frozen concentrated orange juice futures contract is of major economic significance. Accordingly, the principal amendments being proposed by the CANYCE are printed below, using bracketing to indicate deletions and underlining to indicate additions:

* * * * *

Section 82 Frozen Concentrated Orange Juice Tenderable Against Exchange Contracts

[Beginning with deliveries on the July 1981 contract,] "U.S. Grade A" with a Brix value of not less than that [51] *57* degrees having a Brix value to acid ratio of not less than 13 to 1 nor more than 19.0 to 1 and a minimum score of 94, with the minimums for the component factors fixed at 37 for color, 37 for flavor and 19 for defects, is the quality of frozen concentrated orange juice that is deliverable under Exchange contract, provided that frozen concentrated orange juice with a Brix value of more than 66 degrees shall be calculated as having 7.278 pounds of solids per gallon delivered. The United States Standards for Grades of concentrated orange juice for manufacturing effective November 17, 1964 shall be used as the Standards for the grade and quality of all frozen concentrated orange juice delivered on contract for future delivery. In the event of an amendment to the official U.S. Standards for Grades of concentrated orange juice for manufacturing, such amended Standards shall become effective for deliveries on and after the effective date of such standards. Frozen concentrated orange juice with pulp wash solids is not deliverable on contract.

* * * * *

Section 85. Form of Delivery

Each contract for frozen concentrated orange juice may be delivered by drum delivery (i.e., stored in drums) or tank delivery (i.e., stored in tanks), at the option of the seller, as follows:

(a) Each contract delivered by drum delivery shall require the delivery of a warehouse receipt for frozen concentrated orange juice stored in drums meeting the specifications for delivery by drums in accordance with the Rules of the Exchange.

(b) Each contract delivered by tank delivery shall require the delivery of a shipping certificate for frozen concentrated orange juice meeting the specifications for delivery by tank in accordance with the Rules of the Exchange.

Section 86. Licensed Facilities for Frozen Concentrated Orange Juice

A warehouse facility and tank facility may be licensed for the storage, handling and delivery of frozen concentrated orange juice upon the filing of an application therefor, approved by the Warehouse Committee and the Board of Directors.

A license so granted shall be subject to such terms and conditions as are approved by the Board of Directors.

* * * * *

Rule 44. Shipping Certificate—Frozen Concentrated Orange Juice

The following form of Frozen Concentrated Orange Juice Shipping Certificate shall be used:

Citrus Associates of the New York Cotton Exchange, Inc. (Exchange) Frozen Concentrated Orange Juice Shipping Certificate for Delivery in Satisfaction of an Exchange Contract

Licensed Tank Facility
Located at
Tank Facility No. ———
Shipping Certificate No. ———

This is to certify that the aforesaid tank facility has on hand and shall deliver to bearer 15,000 lbs. solids (plus or minus 3%) of frozen concentrated orange juice at the unloading platform of said facility meeting the specifications for deliverable frozen concentrated orange juice under the By-Laws, Rules and Regulations of the Exchange upon the surrender of this shipping certificate and the payment only of all unpaid storage charges due to the facility for periods subsequent to the date of the issuance of this certificate and of such load-out charges which have not been previously paid to the facility.

Terms and Conditions

(1) The facility agrees to deliver for shipment the frozen concentrated orange juice promptly upon demand by the holder of this certificate within a reasonable period following such demand in accordance with industry

practice, provided, however, that said delivery shall take place not later than 10 days from the date of demand by the holder of this certificate and, provided, further, that where the holder of this certificate holds other similar certificates and demands delivery under said certificates on the same date, the obligaion of the facility to deliver need not be completed on said date where it is impracticable to do so.

(2) The facility agrees to deliver for shipment the frozen concentrated orange juice at a maximum temperature of 20 degrees Fahrenheit.

(3) In the event of a failure of the holder of this certificate to pay storage for three months, the undersigned reserves the right to sell or dispose of the frozen concentrated orange juice hereunder and claims a lien against the frozen concentrated orange juice or against the person entitled under this document or on the proceeds thereof in his possession for charges for storage, transportation, loading, handling (including the demurrage and terminal charges), labor and other charges present or future in relation to the goods and for expenses necessary for the preservation of the goods or reasonably incurred in their sale pursuant to law.

(4) This shipping certificate is subject to conversion to a warehouse receipt requiring delivery by drums upon demand of the facility after the expiration of one year from the date hereof. In case of such demand, the facility shall give notice thereof to the holder of this certificate if its identify and location have been furnished to the facility. The holder of this certificate should notify the facility of its identity and location not later than one year from the date hereof, failing which, delivery of the frozen concentrated orange juice represented by this certificate may require conversion to a warehouse receipt prior to its delivery. Notice of the holders identity and location shall be held confidential by the facility.

Signed a' _____
Dated _____
Tank Facility _____
By: _____
Authorized Signatory of Licensed Facility

Rule 45 Registration of Shipping Certificates-Frozen Concentrated Orange Juice

Shipping certificates in order to be eligible for delivery must be registered by the licensed facility with the Registra appointed by the Warehouse Committee. Registration of shipping certificates shall also be subject to the following requirements:

(a) No notice of intention to deliver by shipping certificate shall be tendered by a seller unless said certificate is registered, is in the possession of the clearing member tendering the notice and represents Frozen Concentrated Orange Juice for which the storage charges have been paid to a date in the delivery month.

(b) When a notice of intention to deliver a shipping certificate has been tendered by a seller, said certificate shall be considered to be "outstanding" until its registration is cancelled. The clearing member issuing such notice shall transmit to the Registrar, at the same time the notice is tendered to the Clearing Corporation, the shipping certificate number and the number of the licensed facility. From this information and his own records of registration and of cancellation of outstanding shipping certificates, the Registrar shall maintain a current record of the number of shipping certificates outstanding and shall be responsible for posting this record on the Exchange's bulletin board.

(c) When a licensed facility regains control of an outstanding shipping certificate issued by it, such shipping certificate shall be cancelled and such cancellation shall be reported to the Exchange in its next weekly report.

* * * * *

Rule 50 Delivery of Invoice and Documents

(a) (*1*) *On drum delivery* the deliverer shall tender the receiver before 1:00 p.m. on the day prior to the day of delivery the following documents: [a Frozen Concentrated Orange Juice Certificate] *an Exchange Certificate*, a Certificate of Quality and Condition issued by the U.S.D.A., a Packer's Manifest showing drum numbers, net weight, Brix, Brix *to acid* ratio and pounds of solids, a recently paid up storage bill, and a completed invoice. The deliverer shall tender before 2:00 p.m. on the day of delivery a negotiable warehouse receipt as provided for in these [By-Laws] *Rules* issued to bearer and signed by the warehouseman. The *clearing* member receiving same shall return the Notice of Delivery to the *clearing* member making the delivery. The delivery of frozen concentrated orange juice shall be considered complete when the documents as above provided shall have been delivered to the receiver. All frozen concentrated orange juice must be delivered to the receiver with labor in and storage charges to and including the date of delivery paid, receiver to refund to the deliverer all storage charges (not in excess of thirty (30) days) paid beyond date of delivery at the rates prevailing at the delivery point at the time the frozen concentrated orange juice was made into contract units and stored in the licensed warehouse.

(*2*) The weight of a contract of frozen concentrated orange juice as figured from the Packer's Manifest shall be binding upon all parties.

(b)(1) On tank delivery, the deliverer shall tender the receiver before 1:00 p.m. on the day prior to the day of delivery the following documents: a recently paid up storage bill and a completed invoice. The deliverer shall tender before 2:00 p.m. on the day of delivery a shipping certificate as provided for in these Rules issued to bearer and signed by the tank facility operator. The clearing member receiving same shall return the Notice of Delivery to the clearing member making the delivery. The delivery of frozen concentrated orange juice shall be considered complete when the documents as above provided shall have been delivered to the receiver. All frozen concentrated orange juice must be delivered to the receiver with labor in and storage charges to and including the date of delivery paid, receiver to refund the deliverer all storage charges (not in excess of thirty (30) days) paid beyond date of delivery at the rates prevailing at the delivery point at the time the shipping certificate was issued.

(*2*) The weight of a contract of frozen concentrated orange juice as weighed by the tank facility operator immediately after delivery into the receiver's truck, tanker or other conveyance shall be binding upon all parties.

* * * * *

Rule 57 Delivery Points

Delivery of frozen concentrated orange juice on contract may be made at delivery points located in the following counties in Florida: Brevard, Lake, Orange, Hillsborough, Polk, Pasco, Hernando, Highlands, St. Lucie, Hendry, Manatee, DeSoto, Volusia, Martin, Pinellas and Indian River. The foregoing delivery points may be changed by adding one or more delivery points or deleting one or more previously designated delivery points upon adequate notice to the membership.

* * * * *

Other materials submitted by the CANYCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17

CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by September 3, 1985.

Issued in Washington, D.C., on July 30, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-18420 Filed 8-1-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application under Pub. L. 95-202 and DODD 1000.20 (Stevedore Superintendents Who Served With the U.S. Army Transportation Corps During the Period October 1944 to November 1945)

Under the provisions of section 401 of Public Law 95-202 and DODD 1000.20, the DOD Civilian/Military Service Review Board has accepted an application on behalf of Stevedore Superintendents Who Served with the U.S. Army Transportation Corps During the Period October 1944 to November 1945. Persons with information or documentation pertinent to the determination of whether the service of this group was equivalent to active military service are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington DC 20330-1440. For further information contact Lt. Colonel Michael J. Dandar, Jr., USAF, Telephone No. 692-4743.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-18413 Filed 8-1-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Notice To Amend the Pell Grant Student Eligibility Report Sub-system *

AGENCY: Department of Education.

ACTION: Notice to amend a system of records.

SUMMARY: The Secretary gives notice to amend the Privacy Act system of records notice described as: 18-40-0015/ Pell Grant Student Eligibility Report Sub-system, ED/OPE-OSFA. The Secretary proposes to revise the first routine use for this system of records notice and makes clarifying changes which do not affect the substance of the notice. The revised routine use clearly permits the disclosure of information in this system of records to educational institution agents that process the Department's records of Pell Grant payments to students. This disclosure will expedite Pell Grant operational procedures. The textual changes are made to improve the clarity of the notice.

DATES: Comments on the revised routine use must be received on or before September 3, 1985. The proposed changes to the system of records notice are effective without further notice on that date unless the Secretary publishes a revised notice.

ADDRESSES: Interested persons are invited to submit written data, views, or arguments on the revised routine use for this system of records. Comments on the revised routine use should be addressed to the Privacy Act Officer, Office of Legislation and Public Affairs, Department of Education, Room 2089, FOB-6, 400 Maryland Avenue, SW., Washington, D.C. 20202. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 2089 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jana Henderson, Section Chief, Information Management Section, Pell Grant Branch, Division of Program Operations, Room 4651, ROB-3, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 447-9001.

SUPPLEMENTARY INFORMATION: The notice for this system of records—the Pell Grant Student Eligibility Report Sub-system ED/OPE/OSFA—was published in the **Federal Register** at 46 FR 29633, June 2, 1981. Minor changes to the notice were published in the Education Department's last annual **Federal Register** publication of system notices at 47 FR 16832, April 20, 1982.

The amendments to the notice made by this document revise one of the routine uses for the system of records and make technical changes. The changes are designed to clarify the notice for the system of records. The proposed routine use, which will expedite Pell Grant operational procedures, is added to clarify that the Department may disclose information contained in this system of records to agents that process records of Pell Grant payments to students. These students attend institutions that have contracted with an agent or consulting firm (referred to herein as "agents") to process these records.

Currently, the first routine use for this sub-system is "To prepare annual student validation rosters for submission to schools in order to verify payments made to students." Student Validation Rosters contain student payment data (also known as "recipient data") on students who have received Pell Grants. Many institutions manually complete reports on these students. However, many schools contract with private firms which provide automated data processing services for reporting this recipient data to the Department via magnetic tapes. The Department has been sending the processing results of these submissions to the respective institutions to ensure compliance with the above-stated system of records notice. The institutions then re-forward the tapes to their agents for processing.

This amendment to the notice will make it clear that the Department may release the processed student payment data records from this sub-system directly to an institution's processing agent. As discussed, the agent already receives this information from the schools. This direct release to the agent from the Department, however, will result both in time and cost savings. Time will be saved because the institution no longer will need to perform the liaison activity between its agent and the Department; costs will be saved because the Department will be able to prepare only one consolidated tape containing the data from as many as 25 institutions instead of being required to process one tape for each school with which a particular agent contracts. Even if only one school is involved, time still will be saved because the Department will be able to send the tape directly to the agent. It should be pointed out that schools using agents to process their data have been receiving standard hard-copy reports

pertaining to their recipients, and that the revision of this notice will not change this procedure.

The following technical change, which relates to the previously-discussed revision, also is required. The term "student validation rosters" is changed to "processed student payment data." Previous to the 1984–85 award year (July 1, 1984—June 30, 1985), institutions were required to update the recipient data of students at the end of the award year via the "Student Validation Roster." Commencing with the 1984–85 award year, a new Pell Grant Disbursement System is enabling institutions to update recipient data throughout the year, thus eliminating the need for the Student Validation Roster. This means that the Department will be preparing the processed student payment data tapes more frequently.

Another technical change is that the word "Aid" replaces "Eligibility" in the phrase "Student Eligibility Report[s]" in the "System Name," "Storage" and "Record Source Categories" sections of this notice because the name of this report was changed to "Student Aid Report."

These amendments to the Pell Grant Student Eligibility Report Sub-system do not alter the system of records. The same individuals are covered by the notice, the type and categories of information remain the same, the manner in which the records are organized, indexed, and retrieved remains the same, and the purpose of the system of records remains unchanged.

Because the changes to this system of records are discussed comprehensively in this preamble, the Secretary publishes only the amendments to this notice.

Dated: July 30, 1985.

William J. Bennett,

Secretary of Education.

The Secretary revises the system of records notice for system 18–40–0015, Pell Grant Student Eligibility Report, by amending the system name, the first sentence under the routine uses and the STORAGE and RECORD SOURCE CATEGORIES portion of the systems notice, as follows:

18–40–0015

SYSTEM NAME:

Pell Grant Student Aid Report Sub-system. ED/OPE/OSFA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES.

To prepare processed student payment data for submission to schools or their agents in order to verify payments made to students.

* * * * *

STORAGE:

Original Student Aid Reports and hard copy are maintained in standard file cabinets.

* * * * *

RECORD SOURCE CATEGORIES:

Student Aid Report.

[FR Doc. 85–18417 Filed 8–1–85; 8:45 am]

BILLING CODE 4000–01–M

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages

AGENCY: Department of Education.

ACTION: Notice of Final List of Critical Foreign Languages.

SUMMARY: The Secretary of Education (the Secretary) issues a list of foreign languages which have been determined to be critical to national security, economic, and scientific needs. Publication of this list is required by section 212(d) of Title II of the Education for Economic Security Act (EESA), Pub. L. 98–377, 98 Stat. 1282 (20 U.S.C. 3972(d)).

EFFECTIVE DATE: This Notice takes 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 this Notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Richard T. Thompson, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3923, ROB–3, Washington, D.C. 20202. Telephone: (202) 245–2356.

SUPPLEMENTARY INFORMATION:

Background

Section 212(d) of Title II of the Education for Economic Security act (EESA), Pub. L. 98–377, 98 Stat. 1282 (20 U.S.C. 3972(d)) requires the Secretary to publish a list of foreign languages which have been determined to be critical to national security, economic, and scienific needs.

The list has been developed by the Secretary in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, and the Director of the National Science Foundation, as required by section 212(d).

In the State Grant Program under section 207(c) of Title II of the EESA, State agencies for higher education must use a percentage of the funds they receive under Title II for cooperative programs for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, and critical foreign languages. Similarly, in the Secretary's Discretionary Program for Mathematics, Science, Computer Learning and Critical Foreign Languages under section 212(b)(1), the Secretary makes grants for programs of national significance in mathematics and science instruction, computer learning, and foreign language instruction in critical languages. In addition, under section 212 (c), the Secretary reserves 25 percent of the funds appropriated under Section 212 to make grants to institutions of higher education for the improvement and expansion of instruction in critical foreign languages. Under the regulations for the Secretary's Discretionary Program (published as final regulations on June 24, 1985, 50 FR 25972–25980), the Secretary is authorized to choose, as annual funding priorities, particular languages from this list. Similarily, under the State Grant Program, State agencies for higher education must choose languages from this list.

Language teaching, learning, and research are critical to national security, economic, and scientific needs. This comprehensive list was developed to address adequately these national needs, after considering:

—The national security interest in diplomatic and military situations, or strategic geographic locations;

—The economic security interest of the United States in our economic ties with other nations; and

—Scientific inquiry and research which have significant world-wide or regional importance.

On April 15, 1985, the Secretary published in the **Federal Register** (50 FR 14743—14744) a proposed list of critical foreign languages. Interested parties were provided 30 days to submit their comments to the Secretary. The following is a summary of the public comments received and the Secretary's response to those comments.

Comment. Two commenters objected to the term Oromo (Galla) to refer to the language of the Oromo people, and proposed Oromiffa in its place.

Response. A partial change has been made. The term Galla has been deleted. Oromiffa or the language of the Oromo has not been accepted in place of Oromo since such designations as "the

language of" have not been used for the other African languages.

Comment. Two commenters recommended that Thai-Lao be listed as two separate languages Thai and Lao, since the differences between Thai and Lao in linguistic and other terms are generally considered sufficiently divergent to warrant separate listings.

Response. The change has been made. The comment is accepted and Thai and Lao now appear separately in the list.

Comment. One commenter noted the omission of Ojibwe (Chippewa), an American Indian language spoken in the United States.

Response. No change has been made. Although the list of critical languages does contain the names of some American Indian languages, only those spoken outside of the United States have been included. For the purposes of this program Ojibwe (Chippewa) is not considered to be a foreign language.

Comment. One commenter recommended Neo-Melanesian be replaced by the more linguistically accurate Tok Pisin.

Response. The change has been made. The suggestion is accepted and the language now appears in the list as Tok Pisin.

After careful consideration of comments received, the Secretary is adopting the following list as the List of Critical Foreign Languages.

List of Critical Foreign Languages

Achinese
Acoli
Afrikaans
Akan (Twi-Fanta)
Albanian
Amharic
Arabic (all dialects)
Armenian
Assamese
Aymara
Azerbaijani
Bahasa Indonesia
Balinese
Baluchi
Bamileke
Bashkir
Basa
Bemba
Bengali
Berber (all languages)
Bhojpuri
Bikol
Bulgarian
Burmese
Buryat
Byelorussian
Cambodian (Khmer)
Catalan
Chinese (all dialects)
Chokwe
Chuvash
Czech
Danish
Dari (Afghan Persian)
Dinka
Dutch
Efik
Eskimo
Estonian
Ewe-Fon
Fijian
Finnish
French
Fulani
Ga
Ganda
Gbeya
Georgian
German
Greek, modern
Guarani
Gujarati
Haitian Creole
Hausa
Hebrew, modern
Hindi
Hmong
Hungarian
Iban (Sea Dayak)
Icelandic
Igbo
Ilocano
Irish
Italian
Japanese
Javanese
Kamba
Kannada
Kanuri
Kashmiri
Kazakh
Kikuyu
Kirghiz
Kongo
Korean
Kpelle (Guerze)
Krio
Kumauni
Kurdish
Lahnda
Lamani
Lao
Latvian
Lithuanian
Luba
Macedonian
Madurese
Maithili
Malagasy
Malay
Malayalam
Manchu
Mandekan (Bambara)
Mainpuri
Marathi
Mayan (all languages)
Mende
Minangkabao
Mixtec
Mongolian
Mordvin
More (Mossi)
Mundari-Ho
Nahuatl
Nepali
Newari
Ngala (Bangala)
Norwegian
Nyanja (Chewa)
Oriya
Oromo
Papiamentu
Pashto
Persian (Farsi)
Polish
Polynesian
Portuguese
Panjabi
Quechua
Rappang Buginese
Romanian
Romany
Rundi
Russian
Rwanda (Ruanda)
Sango (Ngbandi, Yakoma)
Santali
Serbocroatian
Shona
Sindhi
Sinhalese
Slovak
Slovene
Somali
Songhai (Djerma)
Sotho
Spanish
Sunda
Swahili
Swedish
Tagalog
Tajik
Tamil
Tatar
Telugu
Temne
Thai
Tibetan
Tigrinya
Tiv
Tok Pisin
Toba Batak
Tsonga
Tungus
Turkish
Turkmen
Tuvin
Uigur
Ukrainian
Urdu
Uzbek
Vietnamese
Visayan (Cebuano; Hiligaynon-Ilonggo)
Wolof
Yakut
Yao
Yiddish
Yoruba
Yucatec
Zapotec
Zulu-Xhosa

(20 U.S.C. 3972(d))

(Catalog of Federal Domestic Assistance Number 84.168F for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages)

Dated: July 30, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-18418 Filed 8-1-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; U.S. Refinery Capability Task Group; Meeting Cancellation

The eighth meeting of the U.S. Refinery Capability Task Group, scheduled for August 1, 1985, at the Houston Airport Marriott Hotel, Houston, Texas, has been cancelled. The meeting will be rescheduled at a later date. Notice of this meeting appeared in 50 FR 29251, Thursday, July 18, 1985 (FR DOC 85-17142 filed 7/17/85).

Issued at Washington, D.C., July 29, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-18440 Filed 8-1-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP84-347-001 et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

July 26, 1985.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP84-347-001]

Take notice that on July 9, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-347-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Zanesville Stoneware Company (Zanesville) under the certificate issued in Docket No. CP83-76-000 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.

It is stated that in Docket No. CP84-347-000, pursuant to the prior notice and protest procedure prescribed in Section 157.205 of the Commission's Regulations, Columbia was authorized to transport up to 100 million MBtu of natural gas per day through March 28, 1985, to a plant in Zanesville, Ohio. Columbia proposes to continue this transportation service through October 31, 1985, on the same terms and conditions as the existing transportation authorization.

Comment date: September 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85-670-000]

Take notice that on July 1, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-670-000 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

sales tap and related facilities necessary to enable Applicant to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc., 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 construct and operate a sales tap on its Line H at Station 25+57 in Section 31, Township 20 North, Range 3 East, Union Parish, Louisiana, to enable arkla to deliver gas to Charles D. Johnson, who it is estimated would use approximately 300 Mcf per year for domestic farm purposes.

Arkla states that this would be a routine delivery of gas to a customer served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. The gas would be delivered from Arkla's general system supply, which it is stated is adequate to provide the service.

Comment date: September 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP85-686-000]

Take notice that on July 10, 1985, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-686-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport and deliverd natural gas for the account of certain direct sale customers [1] situated on El Paso's interstate system under the certificate issued in Docket No. CP82-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso requests a term for the proposed services to expire on the earlier of October 31, 1985, or the date of a final order issued in the proposed rulemaking issued in Docket No. RM85-1-000 or some later date permitted by the Commission even though the terms of the transportation contracts expire in 1986 and 1988.

El Paso states that the direct sale customers have negotiated purchase contracts with various sellers for volumes of natural gas which were not committed or dedicated to interstate commerce on November 8, 1978.

El Paso proposes to receive volumes of natural gas purchased by the direct sale customers from the suppliers at existing receipt points located on El Paso's system and redeliver thermally equivalent volumes to the direct sale customers at existing points on El Paso's system.

El Paso proposes to deliver the following peak day and average day volumes during the term of the requested authorization:

Name of customer	Peak day/ average day (Mcf)
Apache	2,000
ASARCO	15,000
Chino	14,000
Inspiration	6,000
Magma Copper	10,000
Phelps Dodge	25,000
Paul Lime	5,500

El Paso requests flexible authority to add or delete sources of supply or receipt/delivery points if such altered service is on behalf of the same end user, at the same end-user location, within the maximum daily and annual volumes authorized in this docket. El Paso indicates that following the addition or deletion of any gas supplies or receipt or delivery points, it will file with the Commission certain information within 30 days following the implementation of such changes.

El Paso states that it would charge the direct sale customers the rates provided by its Rate Schedule TEU-1 of 18.42¢, 16.21¢ and 15.91¢ per dt for mainline transportation in Arizona, New Mexico and Texas, respectively. El Paso also states that it would also charge all of the customers except Magma Copper and Phelps Dodge the Sun Juan Triangle Facilities Charge of 6.22¢ per dt set forth in El Paso's FERC Gas Tariff, Volume 1-A, or superseding tariff.

El Paso has also submitted a statement from Valero Transmission Company that it has sufficient capacity to transport gas to Inspirtion, ASARCO and Chino without detriment to its other customers.

Comment date: September 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

[1] El Paso indicates it has entered individually into transportation arrangements with the following existing direct sale customers: (1) Apache Power Company (Apache); (2) ASARCO, Incorporated (ASARCO); (3) Chino Mines Company (Chino); (4) Inspiration Consolidated Copper Company (Inspiration); (5) Magma Copper Company (Magma); (6) Phelps Dodge Corporation (Phelps Dodge); and (7) CAN-AM Corporation, Paul Lime Division (Paul Lime); collectively referred to as "the direct sale customers."

4. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-702-000]

Take notice that on July 15, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-702-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate three sales taps and appurtenant facilities under the certificate issued in Docket Nos. CP83-59-000, CP83-59-001, and CP83-59-002 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.

Applicant proposes to construct and operate sales taps for the following customers:

(1) Jack M. Ross—for residential service in Wichita County, Texas, from Line A at Station 1184+70.

(2) John Summers—for residential service in McClain County, Oklahoma, from Line GD at Station 80+00.

(3) Borden Company—for commercial service in Cooke County, Texas, from Line G at Station 58+27.

Applicant proposes to sell aproximately 100 Mcf of gas per year to each of the residential customers and approximately 900 Mcf per year to the commercial customer at its residential and commercial rates which are approved by the Oklahoma Corporation Commission and the Texas Railroad Commission.

Comment date: September 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP85-336-001]

Take notice that on June 10, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-336-001 a request pursuant to § 157.205 of the Commission Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to modify its transportation arrangement with Brownsville Utility Department, City of Brownsville, Tennessee (Brownsville), as agent for the Haywood Company (Haywood), under the certificate issued in Docket No. CP82-407-000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas now proposes to transport a maximum contract demand of 600 Mcf

of natural gas per day in lieu of the original contract demand of 250 Mcf per day for Brownsville, as agent for Haywood, until June 30, 1985, with an extension for a term to end no later than October 31, 1985, should the Commission extend the end-user transportation program beyond June 30, 1985. Texas Gas indicates that the gas to be transported would be purchased by Haywood from Champlin Petroleum Company (Champlin) and would be used for low-priority space heating, boiler fuel and generator fuel at Haywood's plant in Brownsville, Tennessee.

Texas Gas states that it would receive such gas for Haywood's account from United Gas Pipe Line Company (United) in Ouachita Parish, Louisiana. Texas Gas states that Brownsville is the existing distribution company that serves Haywood in Brownsville, Tennessee.

Texas Gas indicates that it would charge Brownsville its Rate Schedule TSC-1 rate for Rate Schedule SC customers, currently 45.28 cents per Mcf, plus a 1.25-cent GRI surcharge for each Mcf of natural gas transported. In addition, Texas Gas states that it would retain 1.86 percent of the gas delivered to it for fuel, company use, and unaccounted-for and loss volumes.

Comment date: September 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket Nos. CP85-469-000 and CP85-469-001]

Take notice that on April 26, 1985, as supplemented on June 27, 1985 and June 28, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-469-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport fuel oil displacement gas for an end-user under the certificate issued in Docket No. CP82-430-000 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.

It is stated that Everflow Energy, Inc., acting as agent for Scott Paper Company (Scott), has purchased gas from Production Marketing Specialists, Inc. (PMS) in Mississippi and from Avery Gas Resources (AGR) in Louisiana. It is stated that United would receive from AGR up to 10,000 Mcf of gas per day for the account of Scott, at the interconnection of facilities in Webster Parish, Louisiana. It is explained that United would then transport and redeliver said gas, for the account of Scott, to an existing point of interconnection between United's and Texas Eastern Transmission Corporation's (TETCO) facilities near Kosciusko, Attala County, Mississippi. United states that TETCO, under separate agreement, would delvier the gas to Philadelphia Electric Company at Delaware County, Pennsylvania, for further transportation to Scott's Chester, Pennsylvania, plant. It is explained that 80 percent of the gas so transported would be utilized as boiler fuel and the remaining 20 percent of the gas would be utilized for other paper drying hoods at Scott's Chester, Pennsylvania, manufacturing facility.

United states that it would charge Scott in accordance to its currently effective rate Schedule IT, a transportation rate of 26.68 cents per Mcf, which includes the cost attributable to gas consumed in the operation of United's pipeline system. It is also stated that there is no added incentive charge for this service.

It is explained that the transportation agreement would be effective on February 18, 1985, and would remain in full force and effect from the date of initial deliveries until the earlier date of the final rule by the Commission in Docket No. RM85-1-000 for low-priority end-use transports or October 31, 1985, or until terminated by either party upon thirty days prior written notice.

On July 11, 1985, United filed in Docket No. CP85-469-001 an amendment to the pending application pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for flexible authority to add or delete sources of supply or receipt/delivery points, if such altered services are on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes authorized in this docket, and under the same terms and conditions authorized for the basic service.

Comment date: September 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

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. 85-18366 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

Natural Gas Policy Act; Well Category Determinations, etc.

[Docket No. GP85-36-000]

Issued: July 29, 1985.

On June 26, 1985, Conoco, Inc., filed a petition requesting the Commission to reopen and vacate two final well category determinations. On May 1, 1979, the subject wells, designated as South Marsh Island 108 G-6 and G-8 were held to qualify for the maximum lawful price for new reservoirs on old Outer Continental Shelf leases under section 102(d) of the Natural Gas Policy Act of 1978 (NGPA) by the United States Department of the Interior, Minerals Management Service (MMS). On May 14, 1979, MMS notified the Commission of the determinations, which became final on June 28, 1979, 45 days following notification purusant to section 275.202(a) of the Commission's regulations.

Conoco states that its NGPA section 102(d) applications for the G-6 and G-8 wells were based upon interpretations of geological data existing at the time the applications were filed. Conoco states that recent analysis of bottom hole pressure data shows that the wells are in reservoirs that have been producing since 1969 from other wells located on platform "G" in South Marsh Island Block 108. This new information constitutes the basis for Conoco's petition.

Gas produced from the wells is sold to ANR Pipeline Company (ANR) under Conoco's Rate Schedule No. 342. Conoco has notified ANR of the bottom hole pressure data analysis and of its petition to reopen and vacate the well determiantions. Conoco states that it is currently calculating the amount of refunds due ANR as a result of the reclassification of these wells under NGPA section 104 and will make the refund as soon as the calculations are complete.

Any person desiring to be heard or to make any protest to Conoco's petition, should file, within 30 days after this notice is published in the **Federal**

Register, a motion to intervene or a protest under Rules 214 or 211 of the Commission's Rules of Practice and Procedure. Filings should be made with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18367 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-607-000, et al.]

Hillsboro Energy Co., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

July 26, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Hillsboro Energy Co.

[Docket No. QF85-607-000]

On July 12, 1985, Hillsboro Energy Co., (Applicant) of P.O. Box 9349, Fort Worth, Texas 76107 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined cycle cogeneration facility will be located on the CertainTeed Corporation's plant site in Hillsboro, Texas. It will consist of three combustion turbine-generator sets with three waste heat recovery boilers, and an extraction-condensing turbine generating unit. Extraction steam produced by the facility will be used by the CertainTeed Corporation for its industrial process. The electric power production capacity of the facility will be 80 MW. The primary energy source will be natural gas. The installation of the facility will begin in the first quarter of 1987.

2. General Electric Credit Corporation, Cogentrix Leasing Corporation, United States Trust Company

[Docket No. QF83-263-002]

On July 11, 1985, General Electric Credit Corporation, of 260 Long Ridge Road, Stamford, Connecticut 06902, Cogentrix Leasing Corporation, Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, and United States Trust Company of New York, Owner Trustee, 45 Wall Street, New York, New York 10005 (Applicants), submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kenansville, North Carolina. The facility will consist of two 50% capacity spreader stoker-type, coal-fired boilers and a single shell, single flow, condensing steam turbine. The gross electric power production capacity of the facility will be approximately 35 MW. The primary energy source for the facility will be coal. The facility is expected to commence commercial operation during the first calender quarter of 1986.

3. General Electric Credit Corporation, Cogentrix Leasing Corporation, United States Trust Company

[Docket No. QF83-278-002]

On July 11, 1985, General Electric Credit Corporation, of 260 Long Ridge Road, Stamford, Connecticut 06902, Cogentrix Leasing Corporation, Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, and United States Trust Company of New York, Owner Trustee, 45 Wall Street, New York, New York 10005 (Applicants), submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Lumberton, North Carolina. The facility will consist of two 50% capacity spreader stoker-type, coal-fired boilers and a single shell, single flow, condensing steam turbine. The gross electric power production capacity of the facility will be approximately 35 MW. The primary energy source for the facility with be coal. The facility is expected to commence commercial operation during the fourth calender quarter of 1985.

4. Grand Central Sanitary Landfill, Inc.

[Docket No. QF85-592-000]

On July 8, 1985, Grand Central Sanitary Landfill, Inc. (Applicant), of 1963 Pen Argyl Road, Pen Argyl, Pennsylvania 18072, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located on a fifty two acre landfill site in Northampton County, Pennsylvania. The facility will consist, in part, of electric generating equipment of an unspecified type. The electric power production capacity of the facility will not exceed 2.25 megawatts. The primary source of energy will be biomethane gas.

5. Montenay International Corporation

[Docket No. QF85-596-000]

On July 10, 1985, Montenay International Corporation, (Applicant), of Suite 8419, One World Trade Center, New York, New York 10048 submitted for filing an application for certification of a facility as a qualifying Cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Brooklyn Navy Yard, Brooklyn, New York. It will consist of two (2) combustion turbine-generator sets with two (2) waste heat recovery boilers. Steam produced by the facility will be sold to customers for industrial, commercial, heating or cooling purposes. The electric power production capacity of the facility will be between 7 and 12 MW. The primary energy source will be natural gas. The installation of the facility will begin during the last quarter of 1985.

6. Turbine Tech. Inc.

[Docket No. QF85-597-000]

On July 10, 1985, Turbine Tech. Inc. of 9000 Eucalyptus Street, Bakersfield, California, 93306 (Applicant) submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Bakersfield, California. The facility will consist of a natural gas fired internal combustion engine driving an electric generator, with waste heat recovered from the engine cooling water and exhaust gases used to separate water from oil produced during oil-drilling operations and to heat this oil for shipping purposes. The primary energy source will be well-head natural gas. The electric power production capacity will be 53.6 kilowatts. The facility will be ready for operation by August 15, 1985.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18368 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC85-20-000]

Minnesota Power & Light Co.; Filing

July 29, 1985.

The filing Company submits the following:

Take notice that on July 22, 1985, Minnesota Power & Light Company filed an Application for Authority to Sell its entire five (5) percent undivided ownership share of the Coyote steam electric generating station Unit No. 1, located in the State of North Dakota, and associated transmission and substation facilities. These facilities are presently owned by the following parties in the following respective ownership shares: Otter Tail Power Company—35 percent; Northern Municipal Power Agency—30 percent; Montana-Dakota Utility Co.—20 percent; Northwest Public Service Company—10 percent; and Minnesota Power & Light Company—5 percent. This five percent ownership interest is equal to approximately 21.05 megawatts of accredited capacity by the Mid-Continent Area Power Pool. Minnesota Power & Light Company has enterd into a Purchase Agreement with Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. for purchase of the same. The Purchase Agreement provides for a three part sale. One fourth of Minnesota Power & Light Company's ownership share of plant property will be purchased on or about September 5, 1985; one-fourth will be purchased on May 2, 1986; and the remaining one-half will be purchased on May 2, 1988.

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, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18363 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-635-000]

The Montana Power Co.; Cancellation

July 29, 1985.

The filing Company submits the following:

Take notice that on July 15, 1985, The Montana Power Company (Montana Power) tendered for filing Notice of Cancellation of Montana Power's Rate Schedule FPC No. 36. Montana Power states that the associated agreement has been cancelled in accordance with its definitions, having expired by its own terms, and that Notices of Cancellation have been submitted to the participating parties.

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, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to invervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18358 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-605-000, et al.]

Appalachian Power Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Appalachian Power Company

[Docket No. ER85-605-000]

July 25, 1985.

Take notice that American Electric Power Service Corporation (AEP) on July 5, 1985 tendered for filing on behalf of its affiliate Appalachian Power Company (APCO), which is an AEP operating subsidiary, Modification No. 21 dated May 30, 1985 to the Agreement dated February 1, 1948 (1948 Agreement) between APCO and Virginia Electric and Power Company (Virginia Company). The Commission has previously designated this Agreement as APCO's Rate Schedule FERC No. 16.

Sections 1 through 4 of Modification No. 21 increase the transmission demand charge for Third Party Weekly Short Term Power to $0.46 per kilowatt per week ($0.92 per kilowatt per day) when APCO is the supplying party to $0.30 per kilowatt per week ($0.60 per kilowatt per day) when Virginia Company is the supplying party. In addition, sections 5 and 6 of this Agreement increase the transmission demand rate for Limited Term Power to $2.00 per kilowatt per month when APCO is the supplying party, and to $1.60 per kilowatt per month when Virginia Company is the supplying party. These rates pertaining to APCO are the same as the rates for such service presently in effect on the AEP system and accepted for filing by the Commission.

It is respectfully requested that the Commission waive any requirements not already complied with under Section 35.13 of the Commission's Regulations and permit this Modification to become effective immediately. Permitting this Modification to become effective immediately will allow AEP to offer similar services at similar rates to electric utility systems interconnected with AEP affiliate operating subsidiaries.

Comment date: August 6, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Columbus & Southern Ohio Electric Company

[Docket No. ER85-640-000]

July 26, 1985.

Take notice that American Electric Power Service Corporation (AEP) on July 22, 1985 tendered for filing on behalf

of its affiliate Columbus & Southern Ohio Electric Company (CSOE), which is an AEP affiliated operating subsidiary. Modification No. 1 dated June 1, 1985 to the Agreement dated August 1, 1984 between CSOE and the City of Jackson, Ohio (Municipality). The Commission has previously designated the 1984 Agreement as CSOE's Rate Schedule FERC No. 35.

Section 1 of Modification No. 1 replaces the Delivery Point presently described in the 1984 Agreement with a new Delivery Point. This new Delivery Point is to be constructed as provided by section 2. Section 3 assigns responsibility for the costs of this construction to Municipality. In addition, Section 4 of this Agreement reduces the advance notice required of Municipality on requests for Transmission Service from one year to sixty days.

Section 5 of Modification No. 1 increases the transmission demand rate for Transmission Service from $1.50 per kilowatt per month to $2.00 per kilowatt per month and deletes the distribution charge of $0.50 per kilowatt per month. These changes offset each other so there is no net change in CSOE's rate for Transmission Service. This proposed rate for Transmission Service is the same as in other AEP filings presently on file with the Commission.

Copies of this filing were served upon Municipality and the Public Utilities Commission of Ohio.

It is requested that the Commission permit this Modification to become effective upon sixty (60) days Notice to the Commission or as soon as practicable. This will allow AEP to charge similar rates to electric utility systems interconnected with AEP affiliated operating subsidiaries since the rates included in this filing would coincide with the rates previously filed and accepted for filing by the Commission.

Comment date: August 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ES83-52-000]

July 26, 1985.

Take notice that on July 17, 1985, Gulf States Utilities Company (Applicant) filed an amended application with the Federal Energy Regulatory Commission, pursuant to section 204(a) of the Federal Power Act, seeking authorization (i) to increase from $304,500,000 to $350,000,000 the amount of pollution control revenue bonds to be issued by the Parish of West Feliciana, State of Louisiana which the Applicant is authorized to secure through the execution of one or more Guaranty Agreements and/or the issuance of First Mortgage Bonds and/or the delivery of bank letters of credit and (ii) to enter into lease, purchase or reimbursement and other agreements related thereto and (iii) to extend by one year (to October 20, 1986) the period of time for which such authorization shall be in effect.

Comment date: August 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Indiana & Michigan Electric Company

[Docket No. ER85-606-000]

July 25, 1985.

Take notice that on July 5, 1985, American Electric Power Service Corporation (AEP) tendered for filing on behalft of its affiliate Indiana & Michigan Electric Company (IM&E), which is an AEP operating subsidiary, Modification No. 2 dated May 31, 1985 to the Agreement dated September 1, 1982 (1982 Agreement), between Indiana Municipal Power Agency (IMPA) and I&ME. The Commission has previously designated the 1982 Agreement as I&ME's Rate Schedule FERC No. 74.

Section 1 of Modification No. 2 increases the transportation demand rate for Transmission Service from $1.50 per kilowatt per month to $2.00 per kilowatt per month when I&ME is the supplying party. This rate for Transmission Service is the same as the rates for such service presently in effect on the AEP System and accepted for filing by the Commission. In addition, Section 3 of this Modification revises Article 4–Service Conditions of the 1982 Agreement to provide for greater operating flexability between the Parties.

It is respectfully requested that the Commission waive any requirements not already complied with under Section 35.13 of the Commission's Regulations and permit this Modification to become effective as of May 31, 1985. AEP has requested an effective date of May 31, 1985 to coincide with the renewal of IMPA's Transmission Service reservation which started on June 1, 1985. IMPA was timely informed prior to the renewal date of this reservation that I&ME would request the above effective date to be consistent with AEP's policy of offering similar rates for similar services. However, the process of negotiating and executing of this Agreement delayed this filing until now. Please note that the rate of $2.00 per KW month has been AEP's standard monthly rate for transmission service reservations entered into after April 15, 1985.

A copy of the filing was served upon IMPA, the Public Utilities Commission of Ohio, and the Michigan Public Service Commission.

Comment dates August 6, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Long Sault, Inc.

[Docket No. ER85-619-000]

July 26, 1985

Take notice that on July 11, 1985, Long Sault, Inc. (Long Sault) tendered for filing as an initial rate schedule a contract between Long Sault and Cedar Rapids Transmission Company.

This initial rate schedule provides for Long Sault to perform for Cedar Rapids certain transmission services and make available certain transmission facilities located near Massena, New York. The transmission facilities of Long Sault and Cedar Rapids interconnect at the International boundary between the United States and Canada.

Long Sault requests an effective date of August 1, 1985.

Copies of this filing were served upon Cedar Rapids Transmission Company, Niagara Mohawk Power Corporation, and the Public Service Commission of the State of New York.

Comment date: August 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Middle South Services, Inc.

[Docket No. ER82-483-002]

July 26, 1985.

Take notice that on June 28, 1985, pursuant to Ordering Paragraphs (N), (O), and (P) of Opinion No. 234, 31 FERC ¶ 61,305 (1985), Middle South Services, Inc. (MSS) tendered for filing six copies each of (1) revised page 1–5 of Service Schedule MSS–1, (2) revised page 2–3 of Service Schedule MSS–2, (3) revised page 4–3 of Service Schedule MSS–4 and (4) revised page 1–2 of Service Schedule MSS–1 of the 1982 System Agreement.

The first three revisions reflect an allowance of 16.0% for rate of return on common equity as found just and reasonable in Opinion No. 234. A 16.0% rate of return on common equity has been used since January 1, 1983 in accordance with the FERC letter order dated March 29, 1984 in Docket No. ER84-283-000. (See Opinion No. 234, Ordering paragraph (s)).

The fourth revision modifies the Adder contained in section 10.02(c) of Service Schedule MSS–1 to reflect the seller's actual reserves; in accomplishing this modification only the definitions for

"A", "FP", "SL" and "SC" have been changed.

Comment date: August 12, 1985, in accordance with Standard Paragraph H at the end of this notice.

7. Northwestern Public Service Company

[Docket No. ER85-514-000]

July 26, 1985.

Take notice that on May 13, 1985, Northwestern Public Service Company (Northwestern) tendered for filing 3rd Revised Sheet No. 3 of Northwestern's tariff reflecting a base cost of fuel exclusive of the cost items and which are the subject of staff objections. Applicable adjustments deriving the adjusted base cost of fuel are shown on Schedule B.

Comment date: August 5, 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 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. 85-18365 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-641-000]

Columbus & Southern Ohio Electric Co.; Changes in Rates and Charges

July 29, 1985.

The filing company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on July 23, 1985 tendered for filing on behalf of its affiliate Columbus and Southern Ohio Electric Company (CSOE), which is an AEP affiliated operating subsidiary, Modification No. 5 dated January 15, 1985 to the Interconnection Agreement dated April 1, 1977 between CSOE and The Cincinnati Gas & Electric Company (CG&E). The Commission has previously designated this Agreement as CSOE's Rate Schedule FERC No. 26 and CG&E's Rate Schedule FERC No. 38.

Sections 1 and 2 of Modification No. 5 provide for an increase in the transmission demand rate for Short Term Power when CSOE is the supplying party to $0.46 per kilowatt per week and to $0.092 per kilowatt per day. Section 3 revises the Short Term Power Service Schedule to provide for a rate of "up to" each parties' present generation demand rates. The proposed rates, terms, and conditions included in this Modification No. 5 for Short Term Power are the same as those previously established in an Agreement among Indiana and Michigan Electric Company, Ohio Power Company (both of which are AEP affiliated operating subsidiaries), and CG&E (Docket No. ER85-324-000), and others, which have been filed by AEP on behalf of AEP affiliated operating subsidiaries and accepted for filing by the Commission.

AEP requests an immediate effective 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 (which includes an agreement between other AEP affiliated operating subsidiaries and CG&E) and therefore requests waiver of this Commission's Notice requirements.

Copies of this filing were served upon CG&E and the Public Utilities Commission of Ohio.

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 and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18354 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-636-000]

Connecticut Light & Power Co.; Filing

July 29, 1985.

The filing Company submits the following:

Take notice that on July 17, 1985, Connecticut Light and Power Company (CL&P) tendered for filing Amendment No. 1 (the "Amendment"), dated as of July 1, 1985, to the Unit Contract Connecticut Yankee (Rate Schedule FERC No. 225) (the "CY Unit Contract") between CL&P and Connecticut Municipal Electric Energy Cooperative (CMEEC) by which CL&P resells to CMEEC a portion of the capacity and net electrical output of the Connecticut Yankee Nuclear plant (The "CY Plant") purchased by CL&P from Connecticut Yankee Atomic Power Company (CY) under the Connecticut Power Contract, dated July 1, 1964, as amended and supplemented ("Power Contract").

CL&P states that the Amendment does not change any of the present charges being collected pursuant to the existing rate schedule. CL&P further states that the Amendment incorporates into the CY Unit Contract CMEEC's pro rata share of obligations and benefits under the Additional Power Contract, dated as of April 30, 1984, between CY and CL&P. The Additional Power Contract provides for payment of any necessary decommissioning costs and any other costs (including potential taxes) with respect to the CY Plant after December 31, 1997. The Additional Power Contract also provides for the continue purchase and sale of power, if any, from the CY Plant after December 31, 1997, the temination date of the Power Contract arrangements existing prior to the acceptance of the Additional Power Contract.

CL&P and CMEEC propose to make Amendment No. 1 to the CY Unit Contract effective on January 1, 1998. CL&P requests waiver of the Commission's notice requirements to allow an effective date of more than 120

days prior to the date on which the Amendment becomes effective.

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, 385.214). All such motions or protests should be filed on or before August 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18355 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-174-000]

Consolidated Gas Transmission Corp.; Joint Petition for Approval of Stipulation and Agreement

July 29, 1985.

Take notice that on July 22, 1985, Consolidated Gas Transmission Corporation (Consolidated) and North Penn Gas Company (North Penn) jointly filed a petition for an order that declares that a Stipulation and Agreement they have reached with respect to the resolution of certain minimum bill issues is in the public interest and should be approved.

The joint petition and accompanying Stipulation and Agreement resolve the parties' differences over the application of the force majeure provision of Consolidated's tariff and the minimum bill requirements contained in Consolidated's service agreement for sales of natural gas to North Penn and is consistent with Commission Order No. 380. Essentially, the Stipulation and Agreement, as more fully set forth therein, provides that: (1) North Penn s payments pursuant to the February 21, 1984 letter agreement constitute full payment for service under Consolidated's RQ Rate Schedule for the period June, 1983 through December 31, 1983; (2) North Penn's payments during the period January 1, 1984 through July 30, 1984 constitute full payment for service under Consolidated's RQ Rate Schedule for that period; (3) North Penn shall withdraw its claim of force majeure effective July 30, 1984; (4) Effective July 31, 1984, North Penn's minimum bill payments shall be determined in accordance with Consolidated's tariff and service agreement applicable to North Penn's purchases of natural gas from Consolidated and Commission orders respecting the Order No. 380 series, with the proviso that in determining North Penn's minimum bill payments from and after July 31, 1984, gas costs shall not be included in that determination even if the Order No. 380 series is modified to permit the inclusion of gas costs. Unless the parties to the Stipulation and Agreement otherwise agree, the provisions of the Stipulation and Agreement respecting the determination of minimum bill payments from and after July 31, 1984, shall terminate on December 31, 1990. In all other cases, the disposition of the Order No. 380 series shall govern North Penn's minimum bill payments to Consolidated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18356 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-639-000]

El Paso Electric Co.; Filing

July 29, 1985.

The filing company submits the following:

Take notice that on July 19, 1985, El Paso Electric Company (EPE) submitted for filing, as a supplemental rate schedule, "Service Schedule C-Short-Term Sale of Energy" (Schedule C) dated May 1, 1985. EPE states that this agreement supplements an existing interchange agreement between EPE and M-S-R Public Power Agency (M-S-R) and serves to establish an arrangement wherein M-S-R may schedule for delivery to EPE 70 MW of interruptible energy. EPE has requested that Schedule C be accepted for filing and made effective on May 1, 1975, and that waiver of the notice provision be granted as appropriate.

EPE further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission and the M-S-R Public Power Agency.

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, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18357 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-26-000 and TA85-3-26-001]

Natural Gas Pipeline Company of America; Change in Rates

July 26, 1985.

Take notice that on July 22, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below-listed tariff sheets to be effective September 1, 1985:

Second Substitute Fifty-eighth Revised Sheet No. 5
Second Substitute Twenty-fifth Revised Sheet No. 5A
Twelfth Revised Sheet No. 5C
Twelfth Revised Sheet No. 5D

Natural states the purpose of the instant filing is to reflect rate adjustments pursuant to Sections 18 and 29 of the General Terms and Conditions of Natural's Tariff (PGA and Incremental Pricing) and Section 24 of the Tariff (Research, Development and Demonstration). Adjustments are also included in compliance with Article IX of the final Settlement Agreement for Docket No. RP83-68 (Gas in Line Pack) and Article XI (Advance Payments). Further adjustments are provided with respect to Article XX of the final Settlement Agreement for Docket No.

RP78-78 (Straight Line Remaining Life Issue—1954 to 1970 Property Additions).

The overall effect of the filed for adjustments is to decrease Natural's DMQ-1 commodity rate by 1.65 cents and to decrease the DMQ-1 demand and entitlement rates by $.14 and .77 cents, respectively. Appropriate adjustments have been made with respect to Natural's other sales rate schedules. The effect of these rate changes over the next six-month deferred account recovery period is a revenue decrease of $15.7 million. This revenue decrease is comprised of a $14.6 million decrease in gas costs, a $7.4 million decrease associated with the Straight Line Remaining Life Issue and a $.2 million decrease associated with the Advance Payment adjustment. Offsetting such decreases are a $6.3 million increase due to the increase in the deferred account recovery rate and the effect of the Gas in Line Pack adjustment of $.2 million. No rate adjustments is required for the Research, Development and Demonstration adjustment.

Sheets Nos. 5C and 5D reflect no projected incremental pricing surcharges (MSAC) for the six-month period beginning September 1, 1985.

Natural requests any waivers to the Commission's Regulations to the extent, if any, required to put the proposed sheets into effect on September 1, 1985.

Natural states that copies of this filing have been mailed to its jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-18359 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-637-000]

New England Power Pool; Filing

July 29, 1985.

The filing company submits the following:

Take notice that on July 15, 1985, the New England Power Pool (NEPOOL) tendered for filing a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by UNITIL Power Corp. UNITIL Power Corp. has its principal office in Bedford, New Hampshire. NEPOOL Indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make UNITIL Power Corp. a participant in the pool.

NEPOOL requests waiver of the Commission's customery notice requirement to permit UNITIL Power Corp.'s participation in the power pool to commence on May 1, 1985, the date requested by UNITIL Power Corp.

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, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determing 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. 85-18360 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC85-19-000]

Northern States Power Co.; Application

July 29, 1985.

Take notice that on July 22, 1985, Northern States Power Company tendered for filing, pursuant to section 203 of the Federal Power Act, an Application for Commission approval for the sale of certain utility property to the Southern Minnesota Municipal Power Agency of Rochester, Minnesota.

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, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18364 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-008]

Northwest Pipeline Corp.; Proposed Rate Change

July 26, 1985.

Take notice that on July 12, 1985, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance Original Volume No. 1-A to be part of its FERC Gas Tariff. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until July 22, 1985.

Original Volume No. 1-A establishes transportation Rate Schedules T-2, T-3, T-4 and T-5 and contains related General Transportation Terms and Conditions and Forms of Transportation Agreement. The instant filing is made pursuant to and implements certain provisions of the Offer of Settlement in Docket No. RP85-13-000 which was approved by Commission order dated May 31, 1985.

Northwest has requested an effective date of May 1, 1985, coincident with the effective date of rates approved by the May 31, 1985 Commission order noted above. Northwest also states that it has mailed copies of this filing to all parties of record in Docket No. RP85-13-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,

385.214). All such motions or protests should be filed on or before August 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-18361 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-638-000]

Resources Recovery (Dade County), Inc.; Cancellation

July 29, 1985.

Take notice that on July 15, 1985, Resources Recovery (Dade County), Inc., tendered for filing notice that effective the 21st day of June 1985, Rate Schedule FERC No. 1, effective date January 11, 1982 and filed with the Federal Energy Regulatory Commission by Resources Recovery (Dade County), Inc., is to be cancelled.

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' Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18362 Filed 8-1-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2874-2]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed July 22, 1985 Through July 26, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850313, Draft, COE, FL, Martin County Beach Erosion Control Project, Martin County, Due: September 16, 1985, Contact: Dan Malanchuk, (904) 791-1689.

EIS No. 850314, Final, FHW, OK, OK-74 Expressway Construction, N.W. 63rd Street to N.W. 178th Street, Oklahoma County, Due: September 3, 1985, Contact: Frank Cunningham, (405) 231-4624.

EIS No. 850315, FSuppl, STAT, PRO, Cannabis Eradication in Foreign Western Hemisphere Nations, Aerial Application of Herbicide Paraquat, Due: September 3, 1985, Contact: Paul J. Glasoe, (202) 632-6527.

EIS No. 850316, DSuppl, GAS, RI, Hoskins Park, Old Wickford, Naval Gardens, and Gould Island, Disposal of Surplus Government Property, Kent and Newport Counties, Due: September 16, 1985, Contact: Pasquale Vaccaro, (617) 223-2651.

EIS No. 850317, Final, COE, MO, Ste. Genevieve Flood Control Plan, Mississippi River, Ste. Genevieve County, Due: September 3, 1985, Contact: David Gates, (314) 263-5711.

EIS No. 850318, Final, FHW, IL, FAP-406 Supplemental/IL-121 Freeway Construction, I-55 to I-74, Logan and Tazewell Counties, Due: September 3, 1985, Contract: Jay Miller, (217) 492-4600.

EIS No. 850319, Draft, AFS, UT, Fishlake National Forest, Land and Resource Management Plan, Due: October 24, 1985, Contact: Andrew Godfrey, (801) 896-4491.

EIS No. 850320, Draft, BLM, AK, Central Yukon Planning Area, Resource Management Plan, Northwest Resource Area, Fairbanks County, Due: October 25, 1985, Contact: Dave Ruppert, (907) 356-5385.

EIS No. 850321, Final, COE, OH, Lorain Small Boat Harbor Construction, Recreational Navigation Improvements, Lake Erie, Lorain County, Due: September 3, 1985, Contact: William Butler, (716) 876-5454.

EIS No. 850322, Draft, FHW, NJ, NJ-147 Improvement, US-9 to New Jersey Avenue and Spruce Avenue Intersection, Cape May County, Due: September 16, 1985, Contact: Paul Lariviere, (609) 989-2274.

EIS No. 850323, Draft, AFS, MI, Hiawatha National Forest, Land and Resource Management Plan, Due: November 1, 1985, Contact: Roy Droege, (906) 786-4062.

Amended Notices

EIS No. 850144, Draft, AFS, SD, MT, ND, Custer National Forest, Land and Resource Management Plan, Due: September 3, 1985, Published FR 4-19-85—Review extended.

EIS No. 850306, Final, BLM, CA, Amselco Colosseum Gold Mine Extraction and Milling Operation, Reopening and Expansion, Approval, San Bernardino County, Due: September 3, 1985, Published FR 7-26-84—Review period reestablished.

EIS No. 850297, Draft, COE, VA, James City County Dam and Water Supply Reservoir, Construction and Development, 404 Permit, Ware Creek, James City County, Due: September 9, 1985, Published FR 7-19-85—Review period reestablished.

Dated: July 30, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-18423 Filed 8-1-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2874-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 15, 1985 through July 19, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BLM-J01068-UT, Rating EO2, PR Spring Combined Hydrocarbon Lease Conversion, Approval, UT. **Summary:** The EPA review raised concerns regarding expected violations of air quality standards for both total suspended particulates and nitrogen dioxide. Cumulative impacts on air quality, as well as appropriate mitigative measures must be addressed. Geologic and hydrologic information is not adequate to assess potential ground water impacts. Additionally, proposed

levels of commercial production need to be clearly defined.

ERP No. D–BLM–J70001–CO, Rating EC2, Grand Junction Resource Area, Resource Mgmt. Plan, CO. The EPA review raised concerns related to sedimentation and salinity increases in the Colorado River and the adequacy of provisions for control of riparian/wetland degradation. EPA suggested that interagency and increased public involvement is needed to assist in management activities.

ERP No. DS–USA–G11010–00, Rating EC2, Binary Chemical Munitions Program, Newport Army Ammunition Plant or Vertac Chemical Plant, IN and AR. **Summary:** EPA's review has identified potential environmental impacts and health risks that should be further investigated and discussed in the FSupp. EIS. The manufacture of QL at either of these two sites involves many toxic chemicals and the possibility of an accidental release of toxic materials endangering human health must be quantified and disclosed to the public. Exposure precautions should be taken with certain production processes and EPA has asked for other clarifying information in order to more fully assess the environmental impact of the proposed action and strengthen the FSupp. EIS.

Final EISs

ERP No. FA–COE–D32012–VA. Norfolk Harbor and Channels Deepening and Dredged Material Disposal Site, Designation, VA. **Summary:** EPA has completed its review of the FSupp. EIS and remains concerned about impacts to migrating fish, reduction of dissolved oxygen, and general water quality. EPA recommends further technical study of the project impacts, including modification of the dredging schedule and an accelerated monitoring schedule.

ERP No. F–FHW–E40181–MS, I–59 and US 84 Corridors Relocation, Laurel Bypass, Improvements, MS. **Summary:** EPA has requested that the other bypass alternatives be reevaluated before the Record of Decision for the preferred alternative is approved. If the preferred alternative is pursued, EPA suggested that additional wetland and noise mitigation be developed.

Dated: July 30, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–18424 Filed 8–1–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

July 26, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: None
Title: Section 74.1284, Rebroadcasts
Action: Existing collection in use without OMB approval
Respondents: Licensees of FM translators
Estimated Annual Burden: 741 Responses; 741 Hours

OMB Numbers: None
Title: Section 73.1680, Emergency Antennas
Action: Existing collection in use without OMB approval
Respondents: Radio and television broadcast stations
Estimated Annual Burden: 107 Responses; 107 Hours

OMB Number: None
Title: Section 73.51, Determining Operating Power
Action: Existing collection in use without OMB approval
Respondents: AM radio stations
Estimated Annual Burden: 4,733 Recordkeepers; 1,183 Hours

OMB Number: None
Title: Section 78.11, Permissible Service
Action: Existing collection in use without OMB approval
Respondents: Cable television relay service station (CARS) licensees
Estimated Annual Burden: 93 Responses; 1,850 Recordkeepers; 972 hours

OMB Number: 3060–0246
Title: Section 74.452, Equipment Changes
Action: Revision
Respondents: Remote pickup broadcast station licensees
Estimated Annual Burden: 600 Responses; 150 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–18406 Filed 8–1–85; 8:45 am]

BILLING CODE 6712–01–M

Digital Paging Systems, Inc., and VideOhio, Inc.; Memorandum Opinion and Order

In re Applications of: CC Docket No. 85–228; Digital Paging Systems, Inc., File No. 50099–CM–P–74; and VideOhio, Inc.; File No. 50030–CM–P–75; for Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at Dayton, Ohio.

Adopted July 15, 1985.
Released July 23, 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 Dayton, Ohio. The applications are therefore mutually exclusive and 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]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

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., VideOhio, 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, Inc., 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. 85-18409 Filed 8-1-85; 8:45]

BILLING CODE 6712-01-M

Valley Broadcasting Co.; Memorandum Opinion and Order

In re Applications: MM Docket No. 85-228; Valley Broadcasting Company (KVBC(TV)), Las Vegas, Nevada; for renewal of license; File No. BRCT-830601KM; William H. Hernstadt, et al., Las Vegas, Nevada, for construction permit; File No. BPCT-830901KK.

Adopted: July 22, 1985.

Released: July 29, 1985.

By the Commission: Commissioner Rivera not participating.

1. The Commission has before it for consideration: (a) The above-captioned application of Valley Broadcasting Company (Valley) for renewal of the license of Station KVBC(TV), Channel 3, Las Vegas, Nevada; (b) the above-captioned mutually exclusive application of William, Judith, Edward, Liane, and Ruth Hernstadt (collectively referred to as "Hernstadt Family") for a construction permit for a new commercial television station to operate on that channel; (c) an Application for Review filed by the Hernstadt Family on August 10, 1984 and directed to the actions of the Video Services Division requiring William Hernstadt to elect whether he would prosecute his television application or his application for a new FM radio station to operate on Channel 293 in Winchester Township, Nevada (BPH-820524AW); (d) Valley's August 27, 1984, Motion to Dismiss that Application for Review; (e) Valley's November 16, 1984, Motion to Dismiss Contingent Application; and (f) related pleadings.

2. William Hernstadt is the individual applicant for a new commercial FM radio station to operate in Winchester Township, Nevada. In addition, he and his former wife, Judith, each has a 24.5% general partnership interest in an application for a new VHF television station in Las Vegas, Nevada, with the remaining 51% being divided evenly among their three adult children. Because Winchester Township would be completely encompassed by the proposed VHF television station's predicted Grade A contour, Hernstadt's ownership, operation, or control of a VHF television station and an FM station would be in violation §73.3555(b) of the Commission's Rules. On February 27, 1984, the Chief, Television Branch, recognized that only one of Hernstadt's applications could be granted and afforded him ten days in which to elect which of the applications he proposed to prosecute. Hernstadt was advised that his failure to elect within the time provided would result in the dismissal of his television application. Rather than elect, Hernstadt, on March 8, 1984, sought Commission review of the staff letter. In support of that application for review, Hernstadt argued that the Commission had, in the past, permitted an individual to prosecute applications, the grant of which would violate the multiple ownership rules, so long as he divested himself of his interest in one before the other went on the air, citing *Comark Television, Inc.*, 51 R.R. 2d 738 (1982).[1] Hernstadt further argued that, despite the fact that the television applicant is owned entirely by members of his family, he is not responsible for the shares owned by his former wife and his adult children.

3. Subsequently, on July 30, 1984, the Chief, Video Services Division, dismissed Hernstadt's application for review after concluding that the staff letter of February 27 was not a final action and that Hernstadt, at that juncture, had not suffered any legal detriment. Nevertheless, the pleading was considered as an informal petition for reconsideration, and it was denied on its merits. In so doing, the staff reasoned that, if Hernstadt were permitted to withdraw from either of his applications in the event of a grant of the other, he might opt to withdraw from the FM proposal. Because he is an individual applicant for the FM station, however, his withdrawal from that proposal would necessarily result in its dismissal. Accordingly, it found that the prosecution of such an application in full knowledge of the fact that its grant might not result in the inception of service to the public would be unfair to the other applicants in the FM proceeding. Consequently, Hernstadt was afforded an additional ten days in which to elect which application he intended to prosecute. At the same time, the staff found it unnecessary to reach the question of whether Hernstadt's wife and children were independent of him, but noted that a commonality of interests between spouses is assumed and that his wife might also have to divest herself of her interest in the television application. *Lady Sarah McKinney-Smith*, 59 F.C.C. 2d 398 (1976).

4. On August 10, 1984, the Hernstadt Family filed the instant application for review, again arguing that Commission precedent allowed Hernstadt to prosecute both applications provided that he dispose of his interest in either the radio station or the television station before the other station went on the air. However, in response to another staff request for clarification, Hernstadt represented that in the event of a grant of his FM application, he would divest himself of his interest in the televison application. He also noted that his withdrawal from the television application would not cause any adverse impact on it, since parties

[1] In *Comark*, the Commission permitted an individual having minority interests in two different companies, which together had three television stations and applications for eight more on file, to prosecute a twelfth application, providing that grant of that application would be conditioned on his divestiture of his interest in one of the entities. Such divestiture avoided violation of § 73.636(a)(2) of the Rules (predecessor to § 73.3555(d)), which then limited an individual to interests in seven television stations. The presiding Administrative Law Judge in the Las Vegas FM proceeding, relying on the holding in *Comark*, found that it was beyond his authority to force an election and denied a motion by one of the parties to require Hernstadt to elect. *Voice Intersectorio Verdad America, Inc.*, Mimeo No. 3086 (released February 13, 1984).

holding an original 75.5% equity interest would continue its prosecution. Thus, maintains Hernstadt, the concerns about the prosecution of an application that might not result in the inception of service to the public are resolved.[2]

5. On November 16, 1984, Valley filed a Motion to Dismiss Contingent Application. At the outset, Valley contends that Hernstadt's refusal to elect which of the two applications he intends to prosecute is inconsistent with the multiple ownership rule (47 CFR 73.3555), the rules barring contingent, inconsistent, and multiple applications (47 CFR 73.3517, 73.3518, and 73.3520), and the Commission's policy against "processing and hearing applications which cannot all be granted . . . ." *Comark Televison Inc., supra* at 742. Valley argues that it is wasteful of Commission resources to process both applications when they cannot both be granted as presently constituted. It further maintains that grant of either is contingent upon the denial of the other—a situation specifically proscribed by § 73.3517 of the rules. Valley adds that there is also a question as to whether Hernstadt, despite his 24.5% interest, actually controls the television applicant as well. In that regard, Valley notes that Hernstadt repeatedly refers to the television application as "my application." It also maintains that Judith Hernstadt's 24.5% interest should also be attributed to her former husband, since their divorce was not reported until after the "B" cut-off date. Moreover, Valley contends that the 51% interest held by the Hernstadt children must also be attributed to their father, since they have not supplied statements as to their independence from him. In futher support of its position that Hernstadt is the controlling partners in the television application, Valley points out that ownership of a majority stock interest is not essential to a finding of control. *Jefferson Amusement Co.*, 19 F.C.C. 481, 492 (1954). It also notes that, where there is a close, intertwined family relationship" among the principals and where the entities appear to have been structured for technical compliance with the multiple ownership rules, the principals involved have the burden of establishing that the stations wold be independently operated and controlled. *Alabama Radio Corp.*, 69 F.C.C. 2d 1256, 1256, 1262–63 (1978). Valley again argues that Hernstadt Family has failed to meet that burden and notes that two of the three Hernstadt children live far from Las Vegas and, thus, would be physically incapable of exercising control over the television station. Finally, because grant of both applications would be inconsistent with the Commission's multiple ownership rules, it concludes that the television application must be dismissed as later-filed.

6. Of pivotal importance in this case is the extent, if any, to which Hernstadt controls the television applicant. The Commission has long held that a familial/business relationship, standing by itself, is not sufficient to create a presumption of common control for the purpose of applying the multiple ownership rule. *See, Southern Indiana Broadcasters*, 14 R.R. 117 (1956). We do, however, assume a commonality of interests between spouses, so that a wife's ownership interests are attributable to her husband. *Lady Sarah McKinney-Smith, supra.* Here, Hernstadt states that his children, all of whom are adults, are independenet of him, and in the absence of any other probative facts to the contrary, we need not solicit statements from the children to verify that statement. Further, there is no basis for Valley's conclusion that the interests of the two absent children automatically vest in their father. First, out-of-town residence does not absolve a principal of responsibility, nor does it confer rights on anyone else. Moreover, William and Judith Hernstadt are now divorced, and any commonality of interests that there once might have been can no longer be assumed. There is no indication that they are otherwise engaged in common business activities so as to require the attribution of their interests to each other. The divorce, however, did not take place until eight months after the cut-off date. Accordingly, the reporting of it will be accepted for Section 1.65 purposes only. Finally, we agree with the Bureau that no significance should be attached to Hernstadt's casual references to the television application as "my application." We, therefore, conclude that Hernstadt's interest in the television application is limited to the 24.5% indicated therein.

7. We now turn to the question of whether that 24.5% interest, coupled with his 100% interest in the FM application, is consistent with the Commission's Rules and policies. First, § 73.3555(b)(2) of the Rules proscribes a party from owning, operating, or controlling more than one broadcast station where, as here, the predicted Grade A contour of the television station would encompass the principal community of the FM station. Because the Hernstadt Family application is for a new VHF television station, the rule provides a flat prohibition, not the case-by-case review called for when dealing with UHF televeison stations. Hernstadt does not challenge this fact, but maintains that he can cure any violation of the rule by divesting himself of his interest in the television application should his FM application be granted.[3] Valley argues, however, that divestiture is in order only if an application is acceptable for filing and that Hernstadt Family's is not due to violations of §§ 73.3517, 73.3518, and 73.3520 of the Rules. We disagree. First, we find no violation of § 73.3520, which proscribes a party from filing multiple applications for stations of the *same class* to serve the same community. Here we are dealing with two different classes of stations (FM and television), and the rule, therefore, does not apply. We also find no violation of § 73.3517, which prohibits the filing of one application contingent on the outcome of another in another proceeding. Grant of Hernstadt's FM application would have no effect on the television application itself but, rather, only on interests attributable to him. We have already found, however, that only a 24.5% interest in the television applicant is attributable to Hernstadt, and that minority interest could be divested without causing the dismissal of the application. *Comark Television, Inc., supra.* Consequently, its grant is not contingent on the outcome of the FM proceeding, and no violation of the rule would occur.

8. We further find no violation of § 73.3518 of the Rules or its intent. The rule proscribes the filing of inconsistent or conflicting applications "filed by, or on behalf of, or for the beneift of the *same applicant.* . . . " (emphasis supplied). The rule is specifically limited to circumstances where the person or entity files inconsistent or conflicting applications. Here, however, Hernstadt

[2] We agree and, accordingly, the application for review will be dismissed as moot. Similarly mooted by Hernstadt's representation is the motion to dismiss the application for review which was filed by Valley and which raised several procedural objections to Commission consideration of that pleading. Valley's motion also contained various factual and legal arguments which were repeated in Valley's later-filed motion to dismiss the Hernstadt Family's television application. See paragraphs 5 & 7 *infra*. Those matters will be fully considered and addressed with respect to our dispositon of that motion to dismiss.

[3] On October 5, 1984, the Administrative Law Judge in the Las Vegas FM proceeding issued his Initial Decision granting Hernstadt's application. *Voce Intersectario Verdad America, Inc.*, Mimeo No. 0163, FCC 84D–71 (ALJ, released October 11, 1984). On review, the Review Board reversed that award and, on a comparative basis, granted the competing application of JaDonn Communications, Inc., FCC 85R–44, released May 30, 1985. The Review Board's decision has not as yet become effective. See § 1.102(a) of the Commission's Rules.

has only a minority interest in the television applicant, but is himself the FM applicant. They are different applicants. Another question arises, however, when one examines the intent of the rule which, as spelled out in *Comark Television Inc., supra*, is to avoid the waste of Commission resources, prejudice to other applicants, and delay of service to the public which arises when the Commission must process applications by the same person or entity, not all of which can be granted. That is not the situation here. If Hernstadt were to divest himself of his interest in the television applicant, both the television application and the FM application could still be granted. If, however, he were to divest himself of his interest in the FM application, that application would have to be dismissed, and it is that eventuality against which § 73.3518 was intended to protect. Up to September 4, 1984, it was unclear exactly what Hernstadt's position was on this matter. Then he unequivocally represented that he would divest himself of his interest in the television application upon a final grant of the FM application. Thus, there is no conflict with the rule and Valley's motion to dismiss will be denied. A grant of the television application will be appropriately conditioned.

9. On January 31, November 1, and December 13, 1984, Valley amended its application pursuant to § 1.65 of the Rules to reflect minor ownership changes among existing stockholders. Since the amendments were not filed until after the cut-off date, they will be accepted for § 1.65 purposes only.

10. There is currently a rule making proceeding pending in MM Docket 84–625 proposing to substitute Channels 2† and 4— for Channel 3 in Las Vegas. If the proposal is adopted, the successful applicant in this proceeding would be required to change channels. Accordingly, in the event of a grant of either application, the construction permit/license will be subject to the outcome of the rulemaking proceeding.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

13. It is further ordered, that the Application for Review filed by the Hernstadt Family and the Motion to Dismiss Hernstadt Family's Application for Review filed by Valley are dismissed; and that the Motion to Dismiss Contingent Application, filed by Valley is denied.

14. It is further ordered, that amendments filed by Valley on January 31, November 1, and December 13, 1984, and an amendment filed by Hernstadt Family on September 4, 1984, are accepted for § 1.65 purposes only.

15. It is further ordered, that, in the event of a final grant of Hernstadt's application for a new FM station to operate on channel 293 in Winchester Township, Nevada, William Hernstadt shall certify to the Commission that he has severed all interest in and connection with the television application.

16. It is further ordered, that, in the event of a grant of either application, the construction permit/license shall be subject to the outcome of the rule making proceeding in MM Docket 84–625.

17. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

18. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–18410 Filed 8–1–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Banks of Mid-America, Inc.; Application To Engage de Novo In Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Banks of Mid-America, Inc.*, Oklahoma City, Oklahoma; to expand the geographic scope of its subsidiary's (Mid-America Credit Life Assurance Company, Inc., Oklahoma City, Oklahoma) credit related insurance activities from the State of Oklahoma to Nationwide.

Board of Governors of the Federal Reserve System, July 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-18337 Filed 8-1-85; 8:45 am]

BILLING CODE 6210-01-M

Big Coal River Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted from 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 August 23, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Big Coal River Bancorp, Inc.*, Whitesville, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Whitesville State Bank, Whitesville, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Lowndes Bancshares, Inc.*, Hahira, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Banking Company, Hahira, Georgia.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Americorp Financial, Inc.*, Rockford, Illinois; to acquire 100 percent of the voting shares of The Illinois National Bank & Trust Company of Rockford, Rockford, Illinois.

2. *Irwin Union Corporation*, Columbus, Indiana; to indirectly acquire through its wholly-owned subsidiary, IUC Holding, Inc., Columbus, Indiana, 100 percent of the voting shares of Midwest National Bank, Indianapolis, Indiana. In this regard, IUC Holdings has applied to become a bank holding company by acquiring 100 percent of the voting shares of Midwest National Bank.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The First and Farmers Bank Holding Company*, Portland, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of the First and Farmers Bank, Portland, North Dakota.

Board of Governors of the Federal Reserve System, July 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-18338 Filed 8-1-85; 8:45 am]

BILLING CODE 6210-01-M

Chase Manhattan Corporation; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 1985.

A. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Chase Manhattan Corporation*, New York, New York, and its subsidiary bank holding company, *Chase Manhattan National Corporation*, New York, New York: to engage *de novo* directly or indirectly in the issuance and sale at retail of money orders and similar consumer-type payment instruments having a face value of not more than $10,000; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks. This application may be inspected at the Federal Reserve Bank of New York. The sale of money orders and similar consumer-type payment instruments having a face value of not more than $10,000 has been approved by Board Order as permissible for bank holding companies. *BankAmerica Corporation*, 70 Federal Reserve Bulletin 364 (1984); *Citicorp*, 63 Federal Reserve Bulletin 416 (1977).

Board of Governors of the Federal Reserve System, July 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-18339, Filed 8-1-85; 8:45 am]

BILLING CODE 6210-01-M

First Union Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding co npanies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated of the offices of the Board of Governors not later than August 23, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Atlantic Bancorporation, Jacksonville, Florida, thereby indirectly acquiring Atlantic National Bank of Florida, Jacksonville, Florida, and Atlantic National Bank of Miami, Miami, Florida.

First Union Corporation has also applied to acquire Atlantic Mortgage & Investment Corporation, Jacksonville, Florida, thereby engaging in the activity of making, acquiring, and/or servicing loans for itself or for others such as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, July 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-18340 Filed 8-1-85; 8:45 am]

BILLING CODE 6210-01-M

USBANCORP, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be 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 August 23, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *USBANCORP, Inc.*, Johnstown, Pennsylvania; to merge with McKeesport National Corporation, McKeesport, Pennsylvania, thereby indirectly acquiring McKeesport National Bank, McKeesport, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cameron Bancshares, Inc.*, Cameron, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Cameron, Cameron, West Virginia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to acquire 17.5 percent of the voting shares of Hancock Bancshares Corporation, Greenfield, Indiana, thereby indirectly acquiring Hancock Bank & Trust, Greenfield, Indiana.

2. *Mt. Zion Bancorp, Inc.*, Mount Zion, Illinois; to acquire 70.40 percent of the voting shares of First National Bank of Mount Zion, Mount Zion, Illinois.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Town & Country Financial, Inc.*, Dundee, Kentucky; to become a bank holding company by acquiring at least 85.56 percent of the voting shares of The Bank of Dundee, Dundee, Kentucky.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *McLaughlin Bancshares, Inc.*, Ralls, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of South Plains Bancshares, Inc., Idalou, Texas, thereby indirectly acquiring Idalou State Bank, Idalou, Texas and Security State Bank & Trust Co., Ralls, Texas.

2. *New East Texas Bancshares, Inc.*, Livingston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of East Texas Bancshares, Inc., Livingston, Texas, thereby indirectly acquiring First National Bank of Jasper, Jasper, Texas and First State Bank of Livingston, Livingston, Texas.

Board of Governors of the Federal Reserve System, July 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-18341 Filed 8-1-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunication Standards

AGENCY: Office of Information Resources Management, General Services Administration.

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunication Standard (FED-STD) 1033, "Telecommunications: Data Communication Systems and Services—User-Oriented Performance Parameters" is approved by the General Services Administration (GSA) and will be published. This standard supersedes Interim Federal Standard INT-FED-STD 1033 dated August 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Bodson, Office of Technology and Standards, National Communications System (NCS), telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System as the responsible agent for the development of telecommunication standards for NCS interoperability and the computer-communication interface.

2. On February 9, 1984, a notice was published in the **Federal Register** (49 FR 4988) that a proposed draft Fedral Telecommunications Standard entitled "Telecommunications: Digital Communication Performance Parameters" was being proposed for Federal use.

3. The justification package, as approved by the National Security Council, was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305–2010.

4. The approved standard adopts American National Standard X3 102–1983, "ANS Data Communication Systems and Services—User-Oriented Performance Parameters" which defines 21 data communication performance parameters that are applicable to all classes of data communication systems independent of topology, protocol, code, or other design characteristics.

5. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), Room 6039, 7th and D streets, SW, Washington, DC 20407; telephone (202) 472–2205.

Dated: May 28, 1985.

Frank J. Carr,

Assistant Administrator, Office of Information Resources Management.

[FR Doc. 85–18414 Filed 8–1–85; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 26, 1985.

Public Health Service

Food and Drug Administration

Subject: Notice of Claimed Investigational Exemption for a New Drug—Reinstatement (0910–0014)

Respondents: Businesses or other for-profit institutions, small businesses or organizations

OMB Desk Officer: Bruce Artim

Centers for Disease Control

Subject: Trade Named Products Ingredient Clarification—Extension—(0920–0135)

Respondents: Businesses or other for-profit institutions

National Institutes of Health

Subject: National Library of Medicine Library Resource Improvement Grant Application Extension—(0925–0015)

Respondents: Non-profit institutions, state/local governments

OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Request to Obtain Financial Data from States which Administer Their Own Supplementary Payment Programs—Extension (0960–0240)

Respondents: State/local governments

OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: July 29, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–18386 Filed 8–1–85; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Project Grants for Preventive Health Services—Sexually Transmitted Diseases Professional Education; Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for two Project Grants for Sexually Transmitted Diseases (STD) Professional Education. One of these grants will be for the Northwestern area of the United States, consisting of Idaho, Oregon, and Washington, and one for the South Central area consisting of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. These grants will be funded under the Sexually Transmitted Diseases Research, Demonstrations, and Public and Professional Education Grant Program. The Catalog of Federal Domestic Assistance Number is 13.978. This program is authorized by section 318(b) of the Public Health Service Act, as amended (42 U.S.C. 247c(b)). Regulations governing Grants for Sexually Transmitted Diseases Research, Demonstrations, and Public and Professional Education (formerly Veneral Disease Research, Demonstrations, and Public Information and Education) are codified in Part 51b at Subparts A and F of Title 42, Code of Federal Regulations.

Purpose

The objectives of the program of grants under section 318(b) of the Public Health Service Act are to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to support particularly deserving STD public and professional education programs. The professional education objective is the purpose of this announcement. It is designed to meet the 1990 Objective for the Nation which states that 95 percent of health providers seeing suspected cases of STD will be capable of diagnosing and treating all diseases and syndromes that fall within that definition. This will be accomplished primarily by training health department STD clinicians, but also by updating the STD knowledge of private sector practitioners, by educating physicians-in-training to whatever extent their curricula permits, and by demonstrating quality standards for the care of patients with STD. The

achievement of the 1990 objective to improve clinical capability and the other objectives to reduce STD cases and complications are mutually dependent and are national in scope. Therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of the local STD program. It must also be coordinated with CDC to assure that the total training environment represents a national model, that training is consistent with guidelines and is uniform nationwide, and that all course offerings can be broadly publicized by CDC. The objective of these specific grant offerings is to establish two STD Prevention/Training (P/T) Centers to serve the clinical training needs primarily of STD clinicians from the Northwestern and South Central parts of the United States.

Eligible Applicants

Eligible applicants are the official State or local health agencies in Idaho, Oregon, and Washington for the Northwestern area and Arkansas, Louisiana, New Mexico, Oklahoma, and Texas for the South Central area. Awards will be limited to applicants who meet the following minimum requirements:

1. Plan to locate the P/T Center in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients,

b. Serves an average of at least 300 patients per 40 weekly service hours, and

c. Serves patients of sufficient demographic variety and morbidity to support and stimulate the learning process.

2. Have at least one university school of medicine in the vicinity and provide evidence of support, experience, and a firm interest in participating from such a local institution.

3. Provide assurance that a full schedule of training activities will continue without interruption if the award is made to an existing P/T Center, or if a new P/T Center is created as a result of this announcement, training will begin within 180 days of the date of grant award.

4. Provide evidence of their capability of adhering to the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1982" (Clinic QAG) in providing diagnostic and treatment services, and to applicable portions of the CDC document entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) in the training of health personnel prior to beginning any training activities.

Availability of Funds

Approximately $485,000 will be available for Fiscal Year 1986 to fund two new grant awards ranging from $230,000 to $250,000. It is expected that the initial grants will begin on or about December 1, 1985, and will be funded for 12 months in a 2- to 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, compliance with the P/T Center Guidelines and the Clinic QAG, or future updates thereof, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Use of Funds

Funds will not be awarded for the purchase or lease of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T Center should be located in the health department facility. Funds will not be awarded to renovate existing space, without adequate justification, including appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

Reporting Requirements

Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Guidelines for Application Narrative

Applications must include a narrative which, in addition to the minimum requirements for an eligible application as stated above, details the following: (1) Evidence that the State/local health department is willing to work toward meeting STD 1990 Objectives for the Nation; (2) evidence that the training component of this project will function in concert with the operating STD clinic and STD intervention outreach components of the local control program; (3) long- and short-term objectives of the proposed training which address the applicant's expected role over the project period in meeting the STD 1990 Objectives for the Nation and which establish the applicant's anticipated training accomplishments for the initial budget period; (4) the activities and methods which will be employed to accomplish the objectives, (including relationships, responsibilities, and procedures that ensure the P/T Center functions according to the Clinic QAG and the P/T Center Guidelines); (5) a description of the existing medical school-health department liaison activities needed to develop and implement clinical training; (6) an evaluation plan which will help determine if the methods are effective and the objectives are being achieved; (7) a budget with justification; and (8) any other information which will support the request for assistance.

Review and Evaluation Criteria

Grant applications will be reviewed and evaluated based on the evidence submitted which specifically describes (with documentation and attachments) the applicant's ability to meet the following criteria:

1. The applicant conveys a satisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation, and specifically, that objective related to the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities.

2. The applicant satisfactorily describes how the P/T Center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T Center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the total training environment represents a national model.

3. The applicant's expected role over the project period in meeting STD 1990 Objectives for the Nation and anticipated training accomplishments for the initial budget period are satisfactorily addressed in the long- and short-term objectives.

4. The applicant adequately assures that STD diagnostic and treatment services will be provided principally in accordance with the Clinic QAG, in particular:

a. There will be adequate space and staff to accommodate patient volume.

b. There will be at least 5 days of full clinical services provided (a minimum of 35 registration hours during a minimum of 40 patient service hours, including at least one evening or Saturday session each week) with no interim daily shutdowns.

c. Clinic management responsibility will be assigned to one person with clinical and/or administrative skills and experience.

d. Diagnosis and treatment will be provided for most STD and their

syndromes (e.g., syphilis, gonorrhea, nongonococcal urethritis, pelvic inflammatory disease, herpes, trichomoniasis, human papilloma virus, scabies, etc.).

e. A nurse clinician or nurse clinician and physician assistant model of care will be used with a physician available on-site for consultation.

f. An integrated flow will be used which minimizes the number of patient stops and the amount of patient waiting time.

g. Patients will be seen, regardless of sex, by the next available clinician.

h. Confidentiality will be observed during both patient registration and patient care service delivery.

i. A standardized (e.g., "checkoff"), fully auditable, STD medical record will be employed.

j. There will be an on-site laboratory facility which offers a range of immediately available (stat) tests for commonly seen STD.

k. There will be quality assurance procedures through which clinical care is audited systematically and the proficiency of stat laboratory activities are assessed periodically through smear/culture and serologic test coorelations.

l. CDC diagnostic guidelines will be used (e.g., bimanual examinations for women, complete genital examinations for males).

m. The policies and procedures of the STD clinic will harmoniously complement the activities of the disease intervention outreach component of the program.

n. CDC recommended treatment schedules will be used.

5. The applicant adequately assures that the development and operation of the clinical training component of the proposed P/T Center will be according to the P/T Center guidelines, in particular:

a. There will be adequate training space for clinical courses and assurances that it will be available for all scheduled courses.

b. Classroom space will be adequately furnished and equipped.

c. A P/T Center Coordinator will be identified or provided for through a proposal to create and fill such a position.

d. A clerical resource will be identified and available on-site to assist the P/T Center Training coordinator or will be provided for through a proposal to create and fill such a position.

e. The curricula will be developed according to P/T Center Guidelines.

f. The clinic and stat laboratory practicum will be structured such that Participants are provided an opportunity to demonstrate their clinical skills under the supervision of P/T Center personnel by performing STD examiniations on patients and practicing STD stat laboratory procedures.

g. There will be an evaluation of student and medical school teaching faculty performance.

h. A minimum of 400 hours of instruction will be provided annually to P/T Center students which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of courses offerings, as described by the P/T Center Guidelines.

i. The medical school personnel will play a dominant role in classroom training.

6. There is a commitment in principle from a local university medical school to participate with the applicant in the establishment of a P/T Center which addresses the following:

a. Part of time of a liaison/coordinating person (a physician, preferably a physician in the second or third year of a fellowship) with the expense of medical school faculty instructional services being covered by the most cost-effective mechanism possible.

b. The medical school's participation in the development of curriculum that is governed by the P/T Center Guidelines.

c. A minmum of 400 hours of instruction that will be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described in the P/T Center Guidelines.

d. Faculty assistance from the medical school in clinic practicum through the use of residents or fellows.

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum.

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the center for training and clinic practicum.

7. The applicant provides a satisfactory evaluation plan which will help determine if the methods are effective and the objectives are being achieved.

8. The budget request is clearly explained, adequately justified, reasonable, cost-effective, and consistent with the intended use of grant funds.

9. The site of the proposed P/T Center is sufficiently near to major highways that accessibility by car is a reasonable option.

10. The location of the proposed P/T Center is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport.

Site visits may also be made in connection with the review of applications.

Application Information

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.) on September 20, 1985.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or,

2. Sent on or before the deadline and received in time for submission to the independent review group. (Applicants must 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.)

B. *Late Applications:* Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. *Review Requirements:* Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

D. *Where to Obtain Additional Information:* Information on application procedures, copies of application forms, and other material may be obtained from Betty Feeley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Cheryl A. Blackmore, Division for Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 329-2558 or FTS 236-2558.

Dated: July 26, 1985.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-18343 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement To Partially Support a Conference on Smoking and Reproductive Health Sponsored by Family Health International; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with Family Health International for partial support of a conference on smoking and reproductive health. This cooperative agreement is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Family Health International has solicited the support of national and international agencies to participate in a scientific forum for those interested in collaborating on smoking and reproductive health issues. CDC, having substantial scientific interest in these areas, will provide both scientific and financial assistance. This is not a formal request for applications, and other applications will not be accepted. Approximately $40,000 from Fiscal Year 1985 funds will be available for this Conference.

FOR FURTHER INFORMATION CONTACT:

Technical: James Marks, M.D., Assistant Director for Science, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, NE. Atlanta, Georgia 30333, Telephone: (404) 321-2263 or FTS 236-2263

Business: Mrs. Betty P. Feeley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6575

Dated: July 26, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-18342 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 76P-0418]

Availability of Approved Variance for Radiographic Equipment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that an extension of a variance from the performance standard for radiographic products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the MAM II and III Mammographic X-ray Systems manufactured by Elscint, Inc. The radiographic systems incorporate the MFX x-ray tube and are used in magnification radiography of the breast.

DATES: The extension of the variance became effective March 27, 1984, and ends March 27, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Elscint, Inc., 775 Nicholas Blvd., Elk Grove Village, IL 60007, an extension of its variance, granted to the original manufacturer, Radiologic Sciences, Inc., from a provision of the performance standard for radiographic equipment (21 CFR 1020.31) for the MAM II and III Mammographic X-ray Systems.

The specific provision of the standard for which a variance has been granted pertains to the requirement in § 1020.31(h)(2) that mobile or portable x-ray systems (other than dental) be provided with a means to limit the source-to-skin distance to not less than 30 centimeters. All other provisions of the performance standard remain applicable to the product. The extension of the variance will allow for the continuing distribution of this product into commerce.

CDRH has determined that the x-ray systems (a) provide suitable means of radiation safety and protection; and (b) are intended for the special purpose of direct radiographic magnification, which cannot be accomplished with equipment meeting all requirements of the standard. Therefore, on April 29, 1985, FDA approved the requested extension by a letter from the Deputy Director of CDRH to the manufacturer. The extension of the variance became effective on March 27, 1984, and will terminate March 27, 1989.

So that the product may show evidence of the variance for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: July 24, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-18351 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

PUBLIC HEALTH SERVICE

Assessment of Medical Technology; Ambulatory Blood Pressure Monitoring

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, and indications for the fully automated ambulatory blood

pressure monitoring of hypertension. Specifically, the PHS is soliciting information as to whether data produced by such monitoring is more effective, more accurate and of greater percision than standard sphygmomanometric blood pressure readings in ordinary clinical settings, in terms of contributing to the improved management of patients. In addtion, information is sought as to whether ABPM improves the identification of clinically important subsets of patients, alters the need for drug therapy, facilitates the selecting of therapeutic modalities, and benefits patient outcomes.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than November 1, 1985 (or within 90 days from the date of publication of this notice).

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies, and information related to the clinical acceptability and effectiveness of this technology as well as characterization of the patient population most likely to benefit from ambulatory fully automatic monitoring. Proprietary information is not being sought.

Written material should be submitted to: Richard S. Bodaness, M.D., Ph.D., National Center for Health Services Research and Health Care Technology Assessment, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4990.

Dated: July 25, 1985.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-18387 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-85-1539; FR-2132]

Availability of Funding Under the Fair Housing Assistance Program; Non-Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of non-competitive solicitation of funding available to State and local agencies under the Fair Housing Assistance Program.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for funding under the Fair Housing Assistance Program. Agencies must meet specific eligibility criteria, set out in this announcement, as well as in 24 CFR Part 111, in order to qualify for consideration under this program.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5214, 451 Seventh Street, SW., Washington, D.C. 20410-2000. Telephone: (202) 426-3500. (This is not a toll-free number.) Application kits are available upon written or telephone request from the above address. To assure a prompt response, it is suggested that requests for application kits be made by telephone.

DATE: Applications for Type I, non-competitive funding may be submitted between August 2, 1985 and August 31, 1985. No application received after the specified date will be considered unless it is received before awards are made and qualifies for a late application exception as specified in the application kit.

SUPPLEMENTARY INFORMATION: This announcement of solicitation for non-competitive funding under the Fair Housing Assistance Program (FHAP) is issued under 24 CFR Part 111. Interested agencies are urged to review 24 CFR Part 111, 24 CFR Part 115 and the information in this announcement, to determine eligibility for application. It should be noted that on December 29, 1983, Part 111 was amended to enable all eligible agencies to apply for and receive training funds, regardless of the number of years they have participated in the program. (47 FR 57272). Additionally, on August 9, 1984 (effective October 8, 1984) (49 FR 32046), the Department: (1) Amended the threshold agency eligibility criteria of 24 CFR §111.104 to permit agencies that have entered into agreements regarding interim referrals of complaints or other utilization of services, to participate in Type I funding; and (2) made other substantial amendments to procedures under 24 CFR Part 115 governing the recognition of jurisdictions with substantially equivalent fair housing.

The FHAP has two types of funding: Type I-Non-Competitive Funding and Type II-Competitive Funding. Type I-Non-Competitive Funding includes capacity building, training, complaint monitoring and reporting systems and contributions. Type II-Competitive Funding includes specified project proposals developed by State and local agencies to enhance their fair housing programs. Under this announcement, eligible agencies can apply for Type I funding only.

The notice makes several changes to the funding formulae that were used in last year's notice (49 FR 25043). For capacity building funding, the maximum payment levels for agencies receiving in excess of 25 complaints have been increased by varying modest amounts. Agencies with complaint levels of 25 or less, however, will continue to be eligible for a maximum payment of $20,000. For training funding, the minimum support level has been increased from $1,000 to a new level of $1,500 and the maximum support level has increased from $5,000 to a new funding level of $6,000. For contribution funding, the reimbursement level has been increased from $500 per complaint to a new level of $600 per complaint. There has been no change to the complaint monitoring and reporting system funding formula. The cited changes are the first increase to the funding formulae since 1980.

Under previous notices, agencies eligible for their second year of support were permitted to elect to apply for contribution funding rather than capacity building funding, if the agency could demonstrate that it would be entitled to a greater level of funding based on the direct reimbursement formula for contribution funding. Under the formulae announced in this notice, it is impossible for any agency to make such a showing. Accordingly, this election has been deleted from the notice.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-30 (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing and in the provision brokerage services. Section 810(c) of that Title provides that

wherever a State or local fair housing law provides rights and remedies substantially equivalent to those in the Federal Fair Housing Law, the Secretary is required to notify the appropriate State or local agency of any complaint filed with HUD that appears to constitute a violation of State or local law. Section 816 provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, may use their services and their employees and may reimburse the agencies for services rendered in carrying out the Federal Fair Housing Law. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing capabilities of State and local rights agencies.

This program is described in the Catalog of Federal Domestic Assistance at 14.401, Fair Housing Assistance Program.

Collection of information requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2529–0005.

FHAP Funding Requirements in This Announcement

I. Eligibility

To be eligible to apply for funds under the program, an agency must meet the criteria prescribed in 24 CFR § 111.104. Specifically, an agency must be recognized (and such recognition must continue to be outstanding) as a substantially equivalent agency under the standards set forth at 24 CFR Part 115, and must have executed a written memorandum of understanding; or an agency must have entered into a written agreement for interim referral or other utilization of services under 24 CFR 115.11. The memorandum of understanding/written agreement must describe the working relationship to be in effect between the agency and the appropriate HUD Regional Office of Fair Housing and Equal Opportunity.

Notwithstanding the above, an agency that has not yet been recognized as substantially equivalent under 24 CFR Part 115 may *apply* for Type I funds if the Department has determined that the State or local law administered by the agency provides, on its face, substantially equivalent rights and remedies. Evidence of the Department's determination shall consist of either:

1. The publication of a proposal under 24 CFR 115.4(b), as in effect prior to October 8, 1984, to add the jurisdiction to the list of recognized jurisdictions; or

2. The publication of a notice under 24 CFR 115.6(b) seeking public comments on the current practices and past performance of the agency and on the equivalence of the State or local fair housing law administered by the agency.

Such an agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity to develop a memorandum of understanding or other written agreement meeting the criteria set forth in 24 CFR 115.6(c), and may at the same time submit funding proposals. No funds will be obligated to an agency until it: (1) Has received recognition under 24 CFR Part 115 and has entered into a memorandum of understanding with the Department under 24 CFR 111.104(a)(2); or (2) has entered into arrangement with the Department regarding interim referrals or utilization of other services under 24 CFR 115.11.

All Type I proposals must pertain to housing discrimination based on race, color, religion, sex or national origin.

II. Methods of Distribution

A. *Scope:* Applications are solicited for non-competitive funding as described at 24 CFR 111.102. A total of $3,000,000 is available under this announcement.

B. *Categories of Funding:*

1. *Capacity Building:* Under 24 CFR 111.102(a), HUD will provide all agencies seeking capacity building support for the first and second years of their participation in the FHAP with a level of funding based upon HUD records showing the number of complaints of housing discrimination received by HUD from that agency's jurisdiction during the period of January–December 1984. The maximum payments will be determined by HUD in accordance with the following formula:

Number of complaints	Maximum payment
25 or less	$20,000
26 to 50	35,000
51 to 75	50,000
76 to 100	60,000
For each additional complaint over 100	600

Under 24 CFR 111.105(b), all agencies seeking capacity building support must submit a written narrative justification documenting that within their jurisdiction there is a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

2. *Training:* Agencies receiving Type I funds will be required to participate in HUD-sponsored training. (See 24 CFR 111.105(a)(4)). Funds to support participation in this training are available to the agency at 10% of their capacity building or contributions allocation, but such allocation shall not exceed $6,000, nor be less than $1,500. Any agency which is otherwise eligible to receive funding for capacity building or contributions, but elects not to apply for it, may apply for training support funds up to the level which the agency would have been entitled to receive had it applied for capacity building or contribution funding.

3. Complaint Monitoring and Reporting Systems: Any agency applying for capacity building funds will be entitled to receive funds for the creation, modification or improvement of the agency's complaint information and monitoring capability, to result in a system compatible with HUD's, provided that the agency has not previously been funded for that purpose. Complaint monitoring and reporting systems funds are available in a fixed funding amount, and on a one-time only basis, in accordance with the following formula, which uses the same complaint levels referred to in paragraph II. B. 1., above:

Number of complaints	Maximum payment
50 or fewer complaints	$3,000
51 to 100 complaints	5,000
More than 100	8,000

4. *Contributions:* Under 24 CFR § 111.102(b), agencies eligible for their third-or-later year of non-competitive support, will be provided with support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by the agency. (A dual-filed complaint is a complaint which has been docketed at both HUD and the agency.) The unit reimbursement level will be $600 per complaint, not to exceed cooperative agreement maxima based upon projected complaint levels that consider prior year activity and anticipated changes.

C. *Applications:* To receive first or second year funding, applicants must submit all information required in the Type I-non-competitive application kit. Applicants eligible for third-or-later year funding will be sent a cooperative agreement based solely on the number of dual-filed housing discrimination complaints expected to be processed by the agency. HUD will incorporate the training allotment into that agreement.

(This collection of information requirement has been assigned OMB control number 2529–0005.)

D. *Award Procedures:* Applications for Type I funding will be reviewed upon receipt for completeness and conformity with 24 CFR 111.105. (See also, paragraph III. below.)

III. Application Notification and Award Procedures

A. *Notification:* All Applicants will be notified of the results of their Type I applications as soon as the evaluation of their application is completed. Awards for Type I applications are expected to be announced within four weeks of receipt.

B. *Negotiations:* After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations.

C. *Type of Funding Instrument:* Applicants will generally be funded under fixed-price cooperative agreements. However, HUD reserves the right to employ the form of agreement determined to be most appropriate after negotiation.

(Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601–30) Section 7(d)), Department of HUD Act (42 U.S.C. 3535(d))

Dated: July 25, 1985.

W. Scott Davis,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 85–18426 Filed 8–1–85; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–41005]

Non-Competitive Sale of Public Lands in Clark County, NV

Correction

In FR Doc. 85–16547 beginning on page 28287 in the issue of Thursday, July 11, 1985, the subject heading was inaccurate. "Clark County, NE" should have read "Clark County, NV" as set forth above.

BILLING CODE 1505–01–M

Sodium Lease Sale; Wyoming

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The Wyoming State Office, Bureau of Land Management, is proposing to hold a competitive sodium lease sale in the Fall of 1985. Currently, two tracts are proposed to be offered for sale as follows:

Tract 1

T. 21 N., R. 108 W., 6th P.M., WY
Sec. 20: all;
Sec. 30: lots 5, 6, 7, 8, E½, E½,W½.
T. 20 N., R. 109 W., 6th P.M., WY
Sec. 2: lots 5, 6, 7, 8, 9, 10, 11, 12.
Containing 1595.34 acres, more or less.
T. 17 N., R. 109 W., 6th P.M., WY
Sec. 4: lots 1, 2, 3, 4, S½N½, S½
Sec. 6: lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼, NW¼, E½SW¼, SE¼
T. 18 N., R. 109 W., 6th P.M., WY
Sec. 32: all.
T. 17 N., R. 110 W., 6th P.M., WY
Sec. 2: lots 1, 2, 3, 4, S½N½, S½.
Containing 2592.74 acres, more or less.

BLM is now in the process of soliciting comments concerning the makeup of the proposed lease tracts. Additionally, BLM is requesting comments concerning any other tracts of interest that should be offered for sale, on which application for lease has already been made. If you wish to identify such additional lease tracts to be offered, the following points must be addressed:

1. The location (township, range, section) of the proposed tract;

2. A brief justification of the needs for the sodium reserves contained in the tract;

3. An approximate timeframe of when the reserves would be produced from the tract; and

4. Evidence that the lands are valuable for sodium, and mode of occurrence of the deposit, per regulation 43 CFR 3521.2–1(c).

This information will help BLM to prioritize tracts to be offered for sale, and will allow BLM to develop a schedule for holding additional lease sales at a later date, if necessary.

DATE: Public imput is welcome through September 1, 1985.

ADDRESS: Public imput should be submitted to the Bureau of Land Management, Chief, Branch of Solid Minerals, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902–1869.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902–1869..

Hillary A. Oden,

State Director.

[FR Doc. 85–18391 Filed 8–1–85; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for 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 collection of information and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Officer of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Procedure to Process and Recover Value of Right-of-Use and Administrative Costs.

Abstract: Applicants for a right to use land under the jurisdiction of the Bureau of Reclamation must provide certain specified information. The required information will accompany the application and is the basic information necessary to enable the Bureau of Reclamation to determine whether or not the use can be granted. The information to be collected consists of the applicant's name and address, a description of the land on which the use is desired, the use to which the land will be put, the length of time the use will be in effect, and a map or drawing showing the area on which the desired use is to be located. If the use involves construction, the applicant may also be required to provide detailed construction plans, information needed by Reclamation to meet any environmental or cultural resource requirements, and additional information necessary to assure Reclamation that the proposed use will not conflict with the purpose for which Reclamation administers the land.

Bureau Form Number: No forms are involved

Frequency: On occasion

Description of Respondents: Individuals, firms and agencies desiring to use Bureau of Reclamation-administered land for any purpose.

Annual Respondents: 400

Annual Burden Hours: 800

Bureau Clearance Officers: Alma L. Gonzales, a.c. 202 343–4247

Dated: July 30, 1985.

R.A. Olson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 85-18383 Filed 8-1-85; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Lake Mead National Recreation Area Plan of Operations, Capitol Camp Mine

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of proposed Plan of Operations for Mining Exploration and Testing.

SUMMARY: Pursuant to 36 CFR Part 9, this notice announces the availability of the Plan of Operations for exploration and test mining on patented mining claims collectively known as the Capitol Camp claims. These claims are located within the boundaries of Lake Mead National Recreation Area, approximately four miles southeast of Nelson, Nevada.

DATE: Comments on the Plan of Operations should be received no later than August 15, 1985.

ADDRESS: Persons wanting to review this document may do so between 7:30 a.m. and 4:00 p.m. weekdays at National Park Service Headquarters, Chief Ranger's Office, 601 Nevada Highway, Boulder City, Nevada. Comments on the Plan of Operations should be submitted to: Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005.

FOR FURTHER INFORMATION CONTACT: Jerry D. Wagers, Superintendent, Lake Mead National Recreation Area, Telephone: (702) 293-4041.

Dated: July 25, 1985.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 85-18429 Filed 8-1-85; 8:45 am]

BILLING CODE 4310-70-M

Alaska Region; Subsistence Resource Commission Meeting

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Denali National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Approval of July 1984 meeting minutes.
2. Subsistence hunting program.
3. Priorities for subsistence hunters.
4. Review recommendations of July 1984 meeting for formal vote of approval.
5. Seasons and bag limits.
6. Trapping and hunting area maps.
7. Cantwell subsistence zone.
8. Other new business.

DATE: The meeting will begin at 9:00 a.m. on August 9, 1985, and conclude the afternoon of August 10, 1985.

ADDRESS: The meeting will be held in the Denali National Park, Headequarters Recreation Hall, McKinley, Alaska.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Superintendent, Denali National Park, P.O. Box 9, McKinley Park, Alaska 99755, Phone (907) 683-2294.

SUPPLEMENTARY INFORMATION: The Denali National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: July 23, 1985.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-18430 Filed 8-1-85; 8:45 am]

BILLING CODE 4370-10-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, September 7, 1985, at 1:00 p.m. at the Western Maryland Railroad Station, Canal Street, Cumberland, Maryland.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

Matters to be discussed at this meeting include:

1. Old and new business.
2. Superintendent's report.
3. Committee reports:

Plans and Projects Committee.

Recreation Policies and Issues Committee.

Resource Protection Committee.

4. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headequarters, Sharpsburg, Maryland.

Dated: July 29, 1985.

Lowell V. Sturgill,

Acting Regional Director, National Capital Region.

[FR Doc. 85-18431 Filed 8-1-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent corporation and address of principal office.* American Precast Trucking Company, a division of Jefferson Corporation, One Virginia Avenue, Indianapolis, IN 46204.

2. *Wholly-Owned subsidiaries that will participate in the operations, and State(s) of incorporation.*

American Precast Concrete, Inc., an Indiana Corporation, One Virginia Avenue, Indianapolis, IN 46204;

and

Jefferson Concrete Systems, Inc., an Indiana Corporation, One Virginia Avenue, Indianapolis, IN 46204.

Note.—American Precast Trucking Company also intends to engage in compensated intercorporate hauling on behalf of the two divisions of American Precast Concrete, Inc.:

Span Deck of Indiana, 1030 South Kitley Avenue, Indianapolis, IN 46203;

and

American Precast Concrete of Ohio, 3400 Jackson Pike, P.O. Box 475, Grove City, OH 43123.

1. Parent corporation and address of principal office: Anderson, Clayton & Co., Interfirst Plaza, 1100 Louisiana Street, Suite 3800, Houston, TX 77002.

Mailing address: P.O. Box 2538, Houston, TX 77252.

2. Wholly-owned subsidiaries which will participate in the operations, and their states of incorporation:

(i) Gaines Foods, Inc., Red Oak Plaza, West Red Oak Lane, White Plains, New York 10604; Incorporated in the State of Delaware.

(ii) Igloo Corporation, 1001 West Belt Drive, P.O. Box 19332, Houston, TX 77024; Incorporated in the State of Delaware.

(iii) Anderson Clayton Foods, Inc., 12221 Merit Drive, Dallas, TX 75251; Incorporated in the State of Delaware.

(iv) ACCO Feeds, Inc., P.O. Box 521, 774 China Street, Abilene, TX 79604; Incorporated in the State of Delaware.

3. Wholly-owned division which will participate in the operations: (i) Gulf Atlantic Distribution Services, 3721 Dacoma, Houston, TX 77092.

1. Parent corporation and address of principal office: INTERCO Incorporated, 10 Broadway, St. Louis, Missouri 63102.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Delmar Sportswear, Inc., Maryland
Big Yank Corporation, Delaware
Patriot Investment Company, Missouri
Fine's Men's Shops, Inc., Virginia
F M Stores, Inc., Missouri
United Shirt Distributors, Inc., Delaware
Golde's Department Stores, Inc., Missouri
QCS, Inc., Missouri
Cowden Manufacturing Company, Kentucky
Stuffed Shirt, Inc., Delaware
Queen Casuals, Inc., Delaware
Northeast Factory Outlet, Pennsylvania
Londontown Corporation, Delaware
Matthew Manufacturing Company, Maryland
Star Sportswear Manufacturing Corp., Delaware
The Scranton Outlet Corporation, Delaware
Washington Holding Company, Georgia
Milford Sportswear, Inc., Delaware
Sky City Stores, Inc., Delaware
Broyhill Furniture Industries, Inc., North Carolina
The Lone Star Hat Company, Texas
Grand Entry Hat Corp., New York
Central Hardware Company, Missouri
Witte Hardware Corporation, Missouri
T A Whitney Ltd., Delaware
INTERCO Export, Ltd., Missouri
Lease Management, Inc., Missouri
Abe Schrader Corporation, Delaware
SS Advertising Associates, Inc., New York
The Biltwell Company, Inc., Missouri
Ace Sweater Mills, Inc., South Carolina
Campus Sweater & Sportswear Export Company, Ohio
Carolina Sportwear Company, North Carolina
Central Sportswear Company, North Carolina
Chester Sportswear Company, South Carolina
Creedmoor Sportswear Company, South Carolina
Ellwood Knitting Mills, Inc., Pennsylvania
Warren Shirt Company, Pennsylvania
St. Paul Sportswear Company, Virginia
Label Corp., South Carolina
Kenbridge Sportswear Company, Virginia
H & H Manufacturing Corp., Georgia
Nationwide-Penncraft, Inc., Georgia
Rogin, Inc., Georgia
LaCrosse Sportswear Corporation, Virginia
Factory Outlet Company, Delaware
Clayton Trading Company, Missouri
Lexington Sportswear Company, South Carolina
Louisburg Sportswear Company, North Carolina
Morgan Sportswear Company, Georgia
Olympic Sweater & Sportswear Company, Ohio
Southampton Sportswear Corporation, Ohio
Swainsboro Sportswear Company, Georgia
Campus Far East Company, Ohio
Flat Rock Manufacturing Company, Georgia
The Florsheim Shoe Store Company of Fairfield, Alabama
The Florsheim Shoe Store Company of Hollywood, California, California
The Florsheim Shoe Store Company of Santa Barbara, California
The Florsheim Shoe Store Company of Merle Hay Mall, Iowa
The Florsheim Shoe Store Company of San Diego, Ltd., California
The Florsheim Shoe Store Company of California, California
Thayer McNeil Shoe Company of San Mateo, California
The Florsheim Shoe Store Company of Tremont, Colorado
The Florsheim Shoe Store Company of Waterbury, Connecticut
The Florsheim Shoe Store Company of Clarence, N.Y. Inc., New York
The Florsheim Shoe Store Company of Dadeland, Florida, Florida
The Florsheim Shoe Store Company of Georgia, Georgia
Thayer McNeil of Miami, Inc., Florida
The Florsheim Shoe Store Company of Miami Beach, Florida, Florida
The Chicago Florsheim Shoe Store Company, Illinois
The Florsheim Shoe Store Company of Lafayette Square, Inc., Indiana
The Florsheim Shoe Store Company of Braintree, Inc., Massachusetts
The Florsheim Shoe Store Company of Woodland, Michigan
The Florsheim Shoe Store Company of Brookdale, Minnesota, Minnesota
The Florsheim Shoe Store Company of Oxmoor, Kentucky
The Florsheim Shoe Store Company of Southdale, Minnesota
The Florsheim Shoe Store Company of New Orleans, Inc., Louisiana
The Florsheim Shoe Store Company of Baltimore, Maryland
The Florsheim Shoe Store Company of West County, Missouri
L. J. O'Neill Shoe Company, Missouri
The Florsheim Shoe Store Company of Moorestown, New Jersey
The Florsheim Shoe Store Co., Inc., New York
The Florsheim Shoe Store Company of Livingston, New Jersey
The Florsheim Shoe Store Company of Sunrise Mall, Inc., New York
The Florsheim Shoe Store Company of Arkron, Ohio, Ohio
The Florsheim Shoe Store Company of Canton, Ohio
The Florsheim Shoe Company, Ohio
The Florsheim Shoe Store Company of Cincinnati, Ohio
The Florsheim Shoe Store Company of Southwyck, Ohio
The Florsheim Shoe Store Company of Cleveland Heights, Ohio, Ohio
The Florsheim Shoe Store Company of Cleveland, Ohio, Ohio
The Florsheim Shoe Store Company of Eastland, Ohio
The Cleveland Florsheim Shoe Company, Ohio
The Florsheim Shoe Store Company of Fairview, Ohio
The Florsheim Shoe Store Company of Mentor, Ohio
The Florsheim Shoe Store Company of Franklin Park, Ohio
The Florsheim Shoe Store Company of Shepard Mall, Oklahoma
The Florsheim Shoe Store Company of Alder Street, Oregon
The Florsheim Shoe Store Company of Lloyd Center, Oregon
The Florsheim Shoe Store Company of Neshaminy, Pennsylvania
The Florsheim Shoe Store Company of Monroeville, Pennsylvania
The Florsheim Shoe Store Company of Pittsburg, Pennsylvania, Pennsylvania
Thayer McNeil Shoe Company of Pittsburg, Pennsylvania
The Florsheim Shoe Store Company of Warwick, Rhode Island
The Florsheim Shoe Store Company of Whitehaven, Tennessee, Tennessee
The Florsheim Shoe Store Company of North Park, Texas
The Florsheim Shoe Store Company of Philadelphia, Pennsylvania, Pennsylvania
The Philadelphia Florsheim Shoe Store Company, Pennsylvania
The Florsheim Shoe Store Company of Houston, Texas, Texas
The Florsheim Shoe Store Company of Memorial City, Texas
The Florsheim Shoe Company, Utah
The Florsheim Shoe Store Company Incorporated of Richmond, Virginia, Virginia

The Florsheim Shoe Store Company of Cloverleaf, Virginia
The Florsheim Shoe Store Company of SouthCenter, Washington
The Florsheim Shoe Store Company of Brookfield, Inc., Wisconsin
Duane's East, Inc., New York
Thompson, Boland & Lee, Inc., Delaware
The Florsheim Shoe Store Company of Hawaii, Delaware
Miller Taylor Shoe Company, Georgia
Senack Shoes, Inc., Missouri
Senack Shoes of Alabama, Inc., Alabama
Senack Shoes of Arkansas, Inc., Arkansas
Senack Shoes of California, Inc., California
Senack Shoes of Illinois, Inc., Illinois
Senack Shoes of West Virginia, Inc., West Virginia
Senack Shoes of Central States, Inc., Wisconsin
Senack Shoes of Iowa, Inc., Iowa
Senack Shoes of Kansas, Inc., Kansas
Senack Shoes of Kentucky, Inc., Kentucky
Senack Shoes of Louisiana, Inc., Louisiana
Senack Shoes of Minnesota, Inc., Minnesota
Senack Shoes of Mississippi, Inc., Mississippi
Senack Shoes of Missouri, Inc., Missouri
Senack Shoes of Nebraska, Inc., Nebraska
Senack Shoes of New Mexico, Inc., New Mexico
Senack Shoes of New York, Inc., New York
Senack Shoes of Connecticut, Inc., Connecticut
Senack Shoes of Northeast, Inc., Missouri
Senack Shoes of Oklahoma, Inc., Oklahoma
Senack Shoes of Tennessee, Inc., Tennessee
Senack Shoes of Texas, Inc., Texas
Idaho Department Store Company, Colorado
Wigwam Stores Ltd., Washington
Keith O'Brien Stores Inc., Oregon
Keith O'Brien, Inc., Utah
Carithers Stores, Inc., California
Keith O'Brien Investment Company, Idaho
Thorntons Realty Co., Texas
Ethan Allen Inc., Delaware
Andover Wood Peoducts, Inc., Maine
EA Enterprises, Inc., Florida
Ethan Allen Adco, Inc., New York
Lake Avenue Associates, Inc., Connecticut
Northeast Consolidated, Inc., Vermont
Riverside Water Works, Inc., Vermont
KEA International Inc., New York
General Furniture Corporation, Delaware

1. Parent corporation and address of principal office: USG Corporation, 101 South Wacker Drive, Chicago, Illinois 60606.

2. Wholly-owned subsidiaries which will participate in the operations and addresses of their principal offices:

Corporation and principal office address	Incorporated in
(a) A.P. Green Refractories Co., Green Boulevard, Mexico, MO 65265.	Delaware.
(b) The E.J. Bartells Company, 700 Powell S.W., Renton, WA 98055.	Washington.
(c) Bigelow-Liptak Corporation, 21201 Civic Center Drive, Southfield, MI 48076.	Michigan.
(d) Bigelow-Liptak of Canada Limited, 1831 Maffawa Avenue, Mississippi, Ontario L4X 1K7, Canada.	Canada.
(e) Bigelow-Liptak Export Corporation, 8921 Railwood, Houston, TX 77021.	Texas.
(f) A. Lynn Thomas Company, Incorporated, 10 East Belt Boulevard, Richmond, VA 23225.	Virginia.
(g) Canadian Gypsum Company Limited/La Companie Du Gypse Du Canada, Limitee, 777 Bay Street, Toronto, Ontario M5W 1K8, Canada.	Canada.
(h) C.N.G. Distribution Limited, 777 Bay Street, Toronto, Ontario M5K 1K8, Canada.	Canada.
(i) Brisco Mining, Ltd., 7411 Butler Avenue, Burnady, British Columbia V5T 456, Canada.	Canada.
(j) Fundy Gypsum Company Limited, Windsor, Nova Scotia B0N 2T0, Canada.	Canada.
(k) Little Narrows Gypsum Company Limited, 777 Bay Street, Toronto, Ontario M5W 1K8, Canada.	Canada.
(l) L&W Supply Corporation, 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
(m) Columbia Building Materials Corporation, 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
(n) C-S-W Drywall Supply Company, 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
(o) Stocking Specialists, Inc., 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
(p) Marstrat, Inc., 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
(q) United States Gypsum Export Company, 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
(r) Wiss, Janney, Elstner Associates, Inc., 330 Pfingsten Road, Northbrook, IL 60062.	Illinois.
*(s) United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
*(t) Gypsum Energy Management Company, P.O. Box 220, Pembroke, NY 14056.	Delaware.
*(u) Westbank Planting Company, 648 North Poplar Street, Greenville, Mississippi 38701.	Louisiana.
*(v) USG Industries, Inc., 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
*(w) Masonite Corporation, 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
*(x) USG Acoustical Products Company, 101 South Wacker Drive, Chicago, IL 60606.	Delaware.
*(y) Marbrite Manufacturing Company, 101 South Wacker Drive, Chicago, IL 60606.	New York.

*Indicates changs.

James H. Bayne,
Secretary.

[FR Doc. 85-18377 Filed 8-1-85; 8:45 am]
BILLING CODE 7035-01-M

[Docket Nos. AB-105 (Sub-9X), AB-72 (Sub-8X)]

The Western Pacific Railroad Co.—Discontinuance of Operations Exemption—in Sutter County, CA, and Sacramento Northern Railway—Abandonment Exemption—in Sutter County, CA; Exemption

The Western Pacific Railroad Company (WP), operator of the line, and Sacramento Northern Railway (SN), owner of the line to be abandoned, have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights.* SN will abandon and WP will discontinue service on a portion of the Tarke Branch rail line from milepost 7.11 to the end of the line at milepost 10.45, near Tarke, a distance of approximately 3.34 miles, in Sutter County, CA.

Applicants have certified (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective September 1, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by August 12, 1985 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 22, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 19, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 85-18380 Filed 8-1-85; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30694]

Burlington Northern Railroad Co., Missouri-Kansas-Texas Railroad Co.; Trackage Rights; Exemption.

Missouri-Kansas-Texas Railroad Company (MKT) has agreed to continue to grant trackage rights to Burlington Northern Railroad Company (BN) between Dallas and Waxahachie, TX, a distance of approximately 29.13 miles. The trackage rights renewal became effective July 23, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may

be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: July 25, 1985.

By the Commission Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-18378 Filed 8-1-85; 8:45 am]

BILLING CODE 7035-01-M

Atchison, Topeka and Santa Fe Railway Co.; Passenger Train Operation

[I.C.C. Order No. P-85]

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 Los Angeles, California, via 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 Coachella, California, are temporarily out of service because of a chemical fire. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Los Angeles, California and Phoenix, Arizona, via Barstow, California.

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 Barstow, California, and a connection with Southern Pacific Transportation Company at Phoenix, Arizona.

(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 Service 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 9:10 p.m., (EDT), June 26, 1985.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (PDT), June 30, 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 Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 26, 1985.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 85-18379 Filed 8-1-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-122 (Sub-No. 2)]

Lease of Equipment and Drivers to Private Carriers—Petitions for Modification

AGENCY: Interstate Commerce Commission.

ACTION: Reopening of policy statement.

SUMMARY: In Ex Parte No. MC-122 (Sub-No. 2), *Lease of Equipment and Drivers to Private Carriers*, 47 FR 7885, February 23, 1982) 132 M.C.C. 756 (1982), the Commission established a new test for determining whether private carriers or shippers utilizing leased equipment and drivers from an unregulated single source are engaged in for-hire or proprietary transportation. The test is comprised of six minimum criteria, one being that the minimum lease term be for 30 days.

In adopting the proposal in Ex Parte No. MC-43 (Sub-No. 15), *Elimination of Thirty Day Leasing Requirement*, 49 FR 47850 (December 7, 1984), to eliminate the requirement that equipment be leased by regulated carriers for a minimum duration of 30 days when operated by its owner, the Commission acknowledged one of three petitions seeking to also eliminate the 30-day criterion in this proceeding. We request comments on whether the requirement of a 30-day lease should be deleted in leases of equipment and drivers to private carriers.

Copies of the petitions are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423, and from petitioners' representatives:

For Private Truck Council of America, Inc.: Richard P. Schweitzer, Private Truck Council of America, Inc., 2022 P. St., NW., Washington, DC 20036.

For Private Carrier Conference, Inc., and National-American Wholesale Grocers' Association: William H. Borghesani, Jr., Keller and Heckman, 1150 17th St., NW., Suite 1000, Washington, DC 20036.

DATES: Comments from interested persons are due September 3, 1985.

ADDRESS: An original and 15 copies of comments should be sent to: Ex Parte No. MC-122 (Sub-No. 2), Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein, (202) 275-7912 or Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision that is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, or may be purchased from TS InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

This notice and accompanying decision are issued pursuant to 5 U.S.C. 553.

Decided: July 24, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor concurred with a separate expression.

James H. Bayne.

Secretary.

[FR Doc. 85-18381 Filed 8-1-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under OMB Review

July 30, 1985.

The Office of Management and Budget (OMB) has been sent 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. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether Section 3504(h) of Pub. L. 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633–4312
(2) Office of Justice Programs, Department of Justice
(3) CRIME VICTIMS COMPENSATION GRANT GUIDELINES
(4) None
(5) Semi-annually
(6) State and local governments. The information requested is necessary to (1) submit a statutorily-required report to the Congress on the effectiveness of the Victims of Crime Act; (2) efficiently manage the victims program; and, (3) assure grantees' compliance with statutory criteria. The affected public consists of the 40 State crime victim compensation program offices.
(7) 40 respondents
(8) 640 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 85–18385 Filed 8–1–85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15,861 and TA-W-15, 880]

Avondale Mills, Sycamore, and Lafayette, AL; Negative Determination Regarding Applications for Reconsideration

By application dated July 12, 1985, the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at Avondale Mills' Sycamore and Lafayette, Alabama plants. The Sycamore determination was published in the **Federal Register** on July 9, 1985 (50 FR 28047). The Lafayette determination was published in the **Federal Register** on July 16, 1985 (50 FR 28854).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that imports of yarn already incorporated into a finished article must be considered as like or directly competitive with manufactured yarn. The company also claims that there was an 85 percent increase in imports of yarn in 1983 compared to 1982 and that this increase must be considered significant.

The Department's review shows that although U.S. imports of yarn were increasing in 1983 they were negligible when compared to total U.S. production. The investigation findings also showed that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the Sycamore and Lafayette, Alabama plants. This test is generally demonstrated through a customer survey of the firm's customers. The customer survey for the Sycamore plant revealed that most of the responding customers which accounted for the major share of the Sycamore plant's 1984 sales did not import polyester and cotton yarn. Those responding customers which reduced purchases from Avondale and increased imports reported a level of increase in imports which was negligible relative to the survey group's total purchase decline from Avondale Mills. The customer survey for the Lafayette plant showed that none of the responding customers, which represented the major share of the Lafayette plant's 1984 sales, imported yarn.

In discussing the term "like or directly competitive" as used in the Trade Act of 1974, the courts have concluded that imported finished articles are not like or directly competitive with domestic component parts thereof. *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506 F. 2d 174 (1974). In that case, the court held that imported finished women's shoes were not like or directly competitive with shoe counters.

Similarly, garments cannot be considered to be like or directly competitive with combed polyester and cotton yarn. Imports of yarn must be considered in determining import injury to workers producing yarn at the Sycamore and Lafayette, Alabama plants of Avondale Mills.

Conclusion

After review of the applications and the investigative files, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the applications are denied. Signed at Washington, D.C., this 25th day of July 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 85–18446 Filed 8–1–85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,728 and TA-W-15,728A]

Weisner Products, North Bergen, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), on May 7, 1985 the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance applicable to all workers of the West Babylon, Long Island, New York plant, Weisner Products that were affected due to increased import purchases of ladies' bedroom slippers in 1983 compared with 1982.

On January 8, 1985 the Office of Trade Adjustment Assistance received a petition dated January 2, 1985 filed on behalf of workers of the Weisner Products, Long Island, New York, producing slippers. An investigation pursuant to the petition was instituted on February 4, 1985 (TA-W-15,728).

The petition received on January 8, 1985 was filed by workers from the West Babylon, Long Island, New York (TA-W-15,728) and North Bergen, New Jersey (TA-15,728A) facilities of Weisner Products. Inadvertently the North Bergen, New Jersey facility was omitted from the certification issued by the Department of Labor on May 7, 1985 in accordance with Section 223 of the Trade Act of 1984 (19 U.S.C. 2273).

Therefore, the certification is revised to extend coverage to all workers of the North Bergen, New Jersey plant of Weisner Products (TA-W-15,728A) not previously covered in the original certification.

The revised certification appliable to TA-W-15,728 is hereby issued as follows:

All workers at the North Bergen, New Jersey plant of Weisner Products who became totally or partially separated from employment on or after January 2, 1984 and are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of July 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85-18447 Filed 8-1-85; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the annual list are effective on August 1, 1985.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, 601 D Street, N.W., Attention: TEESS, Washington, D.C. 20213. Telephone: 202-376-6191.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of LSAs on September 26, 1984, (49 FR 37865).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the annual list of labor surplus areas, effective August 1, 1985. The following additions to the annual list of LSAs are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C., on July 30, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS (AUGUST 1, 1985)

Labor surplus area	Civil jurisdiction included
Georgia:	
Pulaski County	Pulaski County.
Dodge County	Dodge County.

[FR Doc. 85-18448 Filed 8-1-85; 8:45 am]

BILLING CODE 4510-30-M

[V-85-6]

Union Boiler Co.; Application for Variance and Interim Order and Granting of Interim Order

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: (1) Notice of application for variance and interim order.

(2) Grant of Interim Order.

SUMMARY: This notice announces the application of Union Boiler Company for a variance and an interim order from the standards prescribed in 29 CFR 1926.451(1)(5) concerning boatswain's chairs and in 29 CFR 1926.552(c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), (c)(14)(iii) and (c)(16) concerning personnel hoists. It also announces the granting of an interim order until a decision is rendered on the application for variance.

DATE: The effective date of the interim order is August 2, 1985. The last date for interested persons to submit comments is September 3, 1985. The last date for affected employers and employees to request a hearing on the application is September 3, 1985.

ADDRESS: Send comments and requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Room N-3656, Washington, D.C. 20210, Telephone: (202) 523-7193.

FOR FURTHER INFORMATION CONTACT:
James J. Concannon, Director, Office of Variance Determination, at the above address, Telephone: (202) 523-7193

or the following Regional Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 16-18 North Street, 1 Dock Square Building, 4th Floor, Boston, Massachusetts 02109

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza)—Room 3445, New York, New York 10036

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, N.E.—Suite 587, Atlanta, Georgia 30367

U.S. Department of Labor, Occupational Safety and Health Administration, 32nd Floor—Room 3244, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Department of Labor, Occupational Safety and Health Administration, 525 Griffin Street—Room 602, Dallas, Texas 75202

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street—Room 406, Kansas City, Missouri 64106

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 1554, 1961 Stout Street, Denver, Colorado 80294

U.S. Department of Labor, Occupational Safety and Health Administration, 11349 Federal Building, 450 Golden Gate Avenue—P.O. Box 36017, San Francisco, California 94102

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6003, 909 First Avenue, Seattle, Washington 98174

I. Notice of Application

Notice is hereby given that Union Boiler Company, P.O. Box 425, Nitro, West Virginia 25143, 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 a variance from the standards prescribed in 29 CFR 1926.451 (1)(5) concerning boatswain's chairs and 1926.552(c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), (c)(14)(iii), (c)(16) concerning personnel hoists and for an interim order, pending a decision on the application for a variance.

The addresses of the places of employment that will be affected by the application are all of the applicant's present and future construction projects in States under Federal jurisdiction where the erection, maintenance and modification of chimney liners and similar work occur.

The applicant certifies that it has notified the employees who would be affected that it has applied for a variance, by providing a copy to the authorized employees' representative and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition OSHA for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required under the terms of 29 CFR 1926.451(l)(5) and 29 CFR 1926.552(c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), (c)(14)(iii) and (c)(16).

The applicant is engaged in construction work, such as the erection, modification, and maintenance of steel chimney liners, which necessitates the hoisting of men and material to and from an elevated work platform. In constructing a chimney liner, a support consisting of steel beams is placed on top of the chimney. This support can sustain the liner down to the first permanent support. Hoisting beams are also placed on top of the chimney for the purpose of hoisting 40 to 90 foot long cans and other material.

The cans are constructed from rolled steel plates in circular sections, complete insulation and stiffners. They are assembled at ground level (maximum working height 12 feet) and hoisted to the top of the chimney. Employees are then hoisted to the working platform in a cage, which operates inside the chimney liner, to connect the can to the support or previously connected can. After the can is attached, the working platform is lowered to the ground. According to the applicant, this method of constructing chimney liners allows at least 90 percent of the work to be performed at ground level.

Section 1926.451(a)(13) requires that access to an elevated work platform shall be provided for the employees by an access ladder or an equivalent safe means. The applicant states that when the height of the construction rises above 400 feet, it becomes impractical, unsafe and sometimes impossible to use an access ladder. Therefore, the employer must provide some other safe means of access.

Section 1926.552(c) sets forth the requirements for personnel hoisting from one elevation to another. The purpose of the standard is to provide requirements so that employees are safely transported to and from the elevated work platform by mechanical means during the construction, alternation, repair, maintenance, or demolition of a structure, building, or other work. This standard, however, does not provide specific safety requirements for hoisting personnel to and from an elevated work platform that is constantly being moved to differnt elevations and which tapers to correspond to the diameter of a structure which tapers through-out its height. According to the applicant, the tapering diameter contributes essential stability to the structure. Consequently, the applicant contends that it is unable to comply with §§ 1926.552(c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), (c)(14)(iii) and (c)(16), insofar as they set requirements for constructing a hoist tower inside a structure, anchoring the hoist tower to the structure, hoistway doors or gates, emergency stop switches, and using a minimum of two wire ropes for drums type hoists, respectively.

The applicant contends that it is hazardous to erect and brace a hoist tower inside a structure because it interferes with the design and construction of proper scaffolding. The applicant also notes that, because the diameter of the structure decreases as it rises, there is insufficient space for a hoist tower either between the chimney liner and the chimney or inside the liner. Moreover, the bracing and guying necessary to support the tower would make ground level assembly and subsequent hoisting of the cans infeasible, so all assembly would be at elevated levels.

Accordingly, the applicant proposes to use a special workmen's hoist system to safely transport employees from the bottom landing to the elevated work platform. The special workmen's hoist system consists of a hoist drum hauling a rope suspended cage between ground level and one or more elevated work platforms. The cage will run on a pair of taut guide ropes designed to hold the cage in the hoistway during all stages of loading and vertical movement. The applicant will use the safety cage only to hoist workmen. The safety cage and safety cables are to be pulled aside on the foundation while the hoisting rope-connection is used to hoist material.

Safety features, such as limit switches to prevent overtravel of the cage, are incorporated in the controls to maintain the maximum level of worker protection. If the main hoist line failed, an independent, automatically activated emergency braking system attached to the tope of the cage (safety clamps) would be activated, gripping the two guide ropes to stop the falling cage.

The applicant also contends that it is infeasible to transport employees in the cage to and from elevated scaffolds, for construction of chimney linings of small diameter, or to the bracket scaffold on the interior of the chimney liners. The applicant states that it will raise and lower employees on a single-point suspension scaffold where space permits or in a boatswain's chair when it is not feasible to use the cage. Under the applicant's proposal, the material handling attachment will be temporarily disconnected from the hoisting cable and a single-point suspension scaffold or boatswain's chair will be securely attached to the cable. The employee's safety belt will be attached to a suitable lifeline securely attached to the rigging at the top and to a weight at the bottom, in order to further ensure the safety of the employees on the single-point suspension scaffold or in the boatswain's chair.

Under the terms of §1926.451(l)(5), employers are required to provide and enforce the use of a block and falls with a boatswain's chair. The primary purpose of the standard is to provide an employee who is suspended in a boatswain's chair with a safe method for controlling ascent, descent and stopping locations. The applicant contends that a block and falls are very difficult or impossible to operate on a structure over 200 feet. The applicant proposes to substitute a hoisting cable for the block and fall required by §1926.451(l)(5).

The applicant bases his variance application on its many years of successful experience using safe practices in chimney liner construction. Since 1960 the applicant has constructed approximately 690 liners in 209 chimneys. The applicant has also submitted detailed specifications and drawings, which describe the function of the components and safety devices in the special workmen's hoist system, to protect the safety of employees being transported in the cage.

A copy of the variance application will be made available for inspection and copying upon request at the OSHA Offices listed above. All interested persons, including employers and employees who believe they would be affected by the grant or denial of the variance application are invited to submit written data, views, and arguments relating to the application, no later than September 3, 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 September 3, 1985, in conformity with the requirement of 29 CFR 1905.15. Written comments and hearing requests should be submitted in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

II. Interim Order

It appears from the application and supporting data that this order is necessary to prevent undue hardship for the applicant and its employees. Theefore, it is ordered pursuant to the authority in Section 6(d) of the Occupational Safety and Health Act of 1970, the Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1905, that Union Boiler Company is hereby authorized to:

(1) Utilize a special workmen's hoist system to safely transport personnel between the bottom landing and elevated work platform during the construction of chimney liners and similiar work in lieu of complying with 29 CFR 1926.552 (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), (c)(14)(iii) and (c)(16). The system includes the hoist machine, cage, safety cables, and safety measures, such as limit switches to prevent overrun of the cage at the top and bottom landings and safety clamps that grip the safety cables, in the event the main hoist line fails.

(2) Use a single-point suspension scaffold to safely transport personnel to and from the elevated scaffold when constructing structures of small diameter or to safely transport employees to and from the bracket scaffold on the interior of chimney liner. The single point suspension scaffold shall be raised and lowered by the hoisting cable used for the cage instead of the power unit required by 29 CFR 1926.451(k).

(3) Use a boatswain's chair in situations where the cage or single-point suspension scaffold is infeasible. A hoisting cable may be used with the boatswain's chair where heights preclude the use of the block and falls required by 29 CFR 1926.451(l)(5).

All other applicable provisions of 29 CFR 1926.451(l) and (k), 1926.552(c) and ANSI A10.4–1963 are unaffected by this order and must be complied with in conjunction with the terms of the order.

The terms of the interim order are as follows:

1. Qualified Person

(a) A qualified person as defined in §§ 926.32(f) and (l) shall be responsible for the design, maintenance and inspection of the personnel hoisting system.

(b) A qualified person shall remain at ground level at all times whenever employees are being transported to and from the elevated work platform to assist in the event of an emergency.

2. Hoist Machine

(a) *Type of hoist.* The hoist machine shall be designated as a portable personnel hoist.

(b) *Power up and power down.* The hoist machine shall be a base-mounted multiple-drum hoist designed so that linespeed is controlled. Power up and power down requirements are as follows:

(i) Lowering by disengagement of the driving components (free-wheeling) shall not be permitted;

(ii) The drive system for the hoist shall be designed so that the system is continuously interconnected through a torque converter, mechanical coupling or equivalent coupling;

(iii) When a forward/reverse coupling or shifting transmission is used in the drive train, a braking mechanism as described in paragraph (f) of this section shall automatically apply when the transmission is in the neutral position; and

(iv) Belt drives shall not be permitted.

(c) *Source of power.* The hoist machine may be powered by any air, electric, hydraulic or internal combustion drive mechanism.

(d) *Constant pressure control switch.*

(i) The hoist shall be equipped with a hand or foot operated constant pressure control switch (deadman control switch) which shall stop the hoist immediately upon release; and

(ii) The switch shall be provided with appropriate protection to prevent it from activating in the event it is struck by falling or moving objects.

(e) *Line speed indicator.* The hoist shall be equipped with a line speed indicator maintained in good working order.

(f) *Braking systems.* The hoist shall be provided with two independent braking systems, (one automatic braking system and one manual), each capable of stopping and holding 150 percent of the maximum line-load for personnel hoisting.

(g) *Frame.* The hoist machine frame shall be self-supporting, rigid, welded steel structure with skid base. Holding brackets for anchor lines, as well as legs for anchor botls, shall be located at corners.

(h) *Location.* The hoist machine shall be located far enough from the footblock to obtain correct fleet angle for proper spooling of the cable on the drum.

(i) *Drum and flange diameters.*

(i) The hoist shall have a winding drum not less than 30 times the diameter of the rope used; and

(ii) The flange diameter shall be approximately 1½ times the rope drum diameter.

(j) *Spooling of the rope.* The rope shall not be spooled closer than 2 inches from the outer edge of the hoist drum flange.

(k) *Electrical system.* All electrical equipment shall be weatherproof.

(l) *Limit switches.* The hoisting system shall be equipped with limit switches and related equipment which will automatically prevent overtravel of the cage at the top of the supporting structure and at the base of the structure.

3. Operating Controls and Devices

(a) *Operator.* Only trained employees who are knowledgeable in the operation of the hoist system shall control the hoist machine.

(b) *Operating Procedures.* Procedures for operating the hoist shall be conspicuously pasted at the hoist operator's station.

(c) *Speed limitations.* The hoist shall not be operated at a speed in excess of:

(i) 100 ft./min when using the single-point suspension scaffold or boatswain's chair; and

(ii) 250 ft./min. for the cage when transporting employees.

(d) *Communication.*

(i) Communication between the hoist operator and employees on the working platforms, in the moving cage, on the single-point suspension scaffold or in the boatswain's chair, shall be maintained by a voice-type intercommunication system.

(ii) When communication stops, is interrupted or fails, the hoisting motion shall cease until communication is resumed.

4. Hoist Rope

(a) *Grade.* Hoist wire rope shall be extra improved plow steel or equivalent grade of nonrotating type or regular lay rope with proper swivel.

(b) *Factor of safety.* The hoist rope shall maintain a factor of safety not less than 8.90 throughout its use for hoisting personnel.

(c) *Size.* The hoist ropes shall be not less than one-half inch in diameter and shall be free of damage at all times.

(d) *Installation, removal and replacement.*

(i) Wire rope shall be thoroughly inspected before the start of each job or new setup; and

(ii) During use, wire rope shall be removed and replaced with new wire rope if any of the conditions described in § 1926.552(a)(3) for wire rope removal occur.

(e) *Attachments.* The rope shall be attached to the cage by a shackle or positive locking link.

(f) *Wire rope fastenings.* Where clip fastenings are used:

(i) They shall be used in conformance to § 1926.251(c) and Table H20;

(ii) There shall be at least three clips used at each fastening;

(iii) Clips shall be installed with the "U" of the clips on the deadend of rope; and

(iv) Spacing clip-to-clip shall be six times the diameter of the rope.

5. Footblocks

(a) *Types of block.* The footblocks shall be:

(i) Construciton-type or an equivalent block with roller bearings and a safety factor of four times the safe work load;

(ii) Designed for the applied loading, size and type of rope being used;

(iii) Designed with a guard to guarantee containment of the rope within the sheave groove;

(iv) Euipped with a slack rope switch to prevent further rotation of the hoist drum in slack rope condition;

(v) Rigidly bolted down; and

(vi) Serve to turn the moving rope to and from the horizontal or vertical for suitable change of direction of rope travel.

(b) *Directional change.* The change from the horizontal direction of the hoist rope at the footblock to the vertical direction shall be approximately 90°.

(c) *Diameter.* The line diameter of the footblock shall be not less than 20 times the rope diameter (Note: This diameter-to-diameter ratio for rope to sheave size is predicated on regular inspection of the rope and immediate discard from the system when any one of the conditions listed § 1926.552(a)(3) exists).

6. Cathead and Sheaves

(a) *Qualified person.* A qualified person shall be responsible for the design and maintenance of the cathead (overhead structure).

(b) *Support.* The overhead sheave support shall be securely bolted to prevent spreading.

(c) *Installation.* All sheaves shall be installed between the suppporting members and shall revolve on a fixed shaft which rotates on tapered roller block bearings. Bearings shall be securely mounted to maintain proper bearing position at all times.

(d) *Sheave safeguards.* Each sheave shall be provided with suitable rope guides to prevent the hoist rope from leaving the sheave grooves in case there is abnormal vibration or swing of the hoist rope.

(e) *Diameter.*

(i) The cathead sheaves shall have a minimum diameter equal to 20 times the diameter of the rope when the rope travels on the sheave at an angle of approximately 90° (see note to paragraph 5(c) of this order); and

(ii) When using ½-inch rope, the corresponding minimum sheave diameter shall be 12-inches.

7. Guide Ropes

(a) *Number of cables.* Two guide ropes (steel safety cables not less than one-half inch in diameter) shall be fixed by swivels to the cathead and shall be free of damage or defect at all times.

(b) *Cable fastening and alignment tension.* One end of each cable shall be securly and properly fastened to the overhead support, with appropriate tension applied at the foundation.

(c) *Safety clamps.* Safety clamps shall be properly designed and constructed to fit the guide ropes.

(d) *Application of tension.* The clamping device used for tension shall be of a type that will not damage the ropes.

(e) *Height.* The guide ropes shall run the height of the structure.

8. Cage

(a) *Construction.* The cage shall have a steel frame.

(b) *Floor.* The floor shall be securely fastened in place with a loading factor of 4.

(c) *Walls.* The cage walls shall be:

(i) made of aluminum expanded metal or the equivalent; and

(ii) permanently enclosed on all sides except the entrance, exit, and emergency exit.

(d) *Roof.* The roof shall:

(i) Cover the top of the cage to protect occupants in the cage from falling objects; and

(ii) Be constructed of ⅛ inch aluminum or equivalent sheet metal, with a declining slope of approximately 30 degrees to the horizontal, from the center to the outside edge of the cage.

(e) *Overhead weight.*

(i) An overhead weight, such as a headache ball, of sufficient weight shall be used to compensate for the weight of the hoist rope between the cathead and footblock, if required, to prevent line run.

(ii) Provisions shall be made to restrain the movement of the overhead weight.

(f) *Types of gates.*

(i) The gates shall guard the full height of the entrance openings.

(ii) The gates shall operate with a mechanical locking device.

(iii) The gates shall not open outwardly from the side of the cage.

(g) *Hand-holds.* The cage shall be equipped with hand-holds to accommodate each occupant.

(h) *Capacity.* The rated capacity of the cage shall conform to the following:

(i) The maximum load for the two-employee cage shall be 2 employees or 500 pounds, and for the four-employee cage it shall be 4 employees or 1000 pounds;

(ii) The weight of the cage and all auxilliary equipment attached to the cage shall be included in the maximum rated load for material hoisting; and

(iii) A sign stating the loading capacities and the drop tests results, shall be posted in the cage.

9. Safety Clamps

(a) *Attachment and operation.* Safety clamps shall be attached to the cage for gripping the guide ropes and shall operate on the broken rope principle.

(b) *Function.* The safety clamps shall be capable of stopping and holding the cage at the maximum allowable speed and load.

(c) *Spring compression force.* The clamping force required for each individual hoisting system shall be pre-determined and pre-set.

(d) *Maintenance.* The safety clamp assemblies shall be kept clean and functional at all times.

10. Emergency Escape

(a) *Location.* An emergency escape device shall be provided in the cage or at the bottom landing. The device shall conform to the following requirements:

(i) If the emergency escape device is stored in the cage it shall be long enough to reach the bottom landing from the highest escape point;

(ii) If the emergency escape device is stored at the bottom landing there shall be a means provided in the cage for raising the device to the highest escape point; and

(iii) Operating instructions shall be attached to the escape device.

(b) *Training.* All new and existing employees to be transported in the cage shall be instructed in the use of the hoisting and emergency escape system prior to being transported in the cage and every three months thereafter.

11. Single-Point Suspension Scaffolds and Boatswain's Chairs

(a) *Single-point suspension scaffold.*

(i) A single-point suspension scaffold with 42-inch high enclosure may be used to raise and lower employees whenever it is not technically feasible to use the cage.

(ii) The employer shall comply with the applicable scaffolding strength factor provisions in §§ 1926.451(a)(7) and (a)(19).

(iii) Not more than two employees shall occupy the single-point suspension scaffold at any one time.

(iv) No employees are allowed to be transported on the single-point suspension scaffold while hoisting material.

(b) *Boatswain's chairs.* A boatswain's chair shall only be used when the cage or single-point suspension scaffold is impracticable.

(c) *Hoisting cable.* A hoisting cable may be used where the distances involved in hoisting preclude the use of the block and falls required by § 1926.451(l)(5)

(d) *Safety belts and lifelines.*

(i) Each employee riding on the single-point suspension scaffold or in the boatswain's chair shall be equipped with a safety belt and lifeline in accordance with § 1926.104 and the applicable provisions of § 1926.451(l).

(ii) Each lifeline shall be suspended from a separate building support, reaching from the top of the structure to the ground.

12. Welding

All field welding shall be done by qualified welders in accordance with § 1926.556(b)(5).

Union Boiler Company shall notify affected employees of the terms of this interim order by the same means required to inform them of the variance application.

The Assistant Secretary may revoke this order at any time if the applicant does not comply with the requirements of the order or the relevant standards, or if other information indicates that revocation of the interim order is warranted. Unless revoked, the interim order will remain in effect until a decision is made on the variance application.

Effective Date: The interim order shall take effect as of August 2, 1985, and shall remain in effect until a decision is rendered on the variance application.

Signed at Washington, D.C., this 26th day of July 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 85-18442 Filed 8-1-85; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision. The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Commission coordination,

2. Publication in the Utah Bulletin, available for public review, and

3. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that states respond to the adoption of new or revised permanent federal standards by state promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted state standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated May 10, 1985, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the state submitted rules and regulations in response to federal OSHA's Power Lawnmowers; Amendments of General Industry Standards (29 CFR Part 1910: Power Lawnmowers; Amendments, 50 FR 4648-4649, February 1, 1985).

The above adoptions of federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63-46-1. In addition, the standards were published in the Utah Bulletin, available for public

review. No public comments were received, so no hearings were held.

State standards for 29 CFR Part 1910: Power Lawnmower; Amendments was adopted by the Industrial Commission of Utah, Archives File number 7834, and became effective on May 20, 1985 pursuant to Title 35–9–6, Utah Code annotated 1953. The State Standard on Power Lawnmowers; Amendments is identical to the federal standard action, with the only exception being paragraph numbering.

2. Decision

The above state standard has been reviewed and compared with the relevant federal standard, and OSHA has determined that the state standard is identical to the federal standard, and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N–3476, 200 Constitution Avenue NW, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of state law which permitted public comments, and further public participation would be repetitious.

This decision is effective August 2, 1985.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed in Denver, Colorado, this 30th day of May, 1985.

Byron R. Chadwick,

Regional Administrator.

[FR Doc. 85–18441 Filed 8–1–85; 8:45 am]

BILLING CODE 4510–26–M

Wage and Hour Division

Certificate Authorizing the Employment of Learners at Special Minimum Wages; Flushing Shirt Mfg. Co., Inc.

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949, 53 Comp., p. 1004), and Administrative Order No. 1–76 (41 FR 18949), the firm listed in this notice has been issued a special certificate authorizing the employment of learners at hourly wage rates lower than the minimum wage rate otherwise applicable under section 6 of the Act. The effective and expiration dates, number of learners and the principal product manufactured by the establishement are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the caption below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended).

Flushing Shirt Mfg. Co., Inc., Waynesboro, PA; 4–18–85 to 4–17–86; 10 learners for normal labor turnover purposes (Work Shirts).

The learners certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of this certificate may seek a review or reconsideration thereof on or before August 19, 1985.

Signed at Washington, DC, this 29th day of July 1985.

Arthur H. Korn,

Authorized Representative of the Administrator.

[FR Doc. 85–18449 Filed 8–1–85; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of the thirty-ninth meeting of the National Commission for Employment Policy at the Anchorage Holiday Inn, Anchorage, Alaska.

DATE: August 22, 1985: 8:30 a.m.–12:00 p.m.

Status: This meeting will be open to the public.

Matters to be discussed: The Commissioners will discuss job training and employment issues in Alaska's rural areas, hear updates on several Commission projects, including the impact of trade on jobs and job requirements, rural economic development, and special education programs.

In addition, officials from Alaska's private industry councils, State and local governments, and a statewide coalition of Alaskan natives will testify in informal hearings on the implementation of the Federal Job Training Partnership Act. During the afternoon of August 22, and on August 23, the Commission will tour job training programs in Anchorage and Seward.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia W. McNeil, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, D.C. 2005.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV of the Job Training Partnership Act (JPTA) of 1982, Pub. L. 97–300. The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. People wishing to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Director at least 5 days before the meeting and not more than 7 days after the meeting.

In addition, members of the general public may request to make oral presentations to the Commission, time permitting. Such statements must be applicable to the announced agenda and written application must be submitted to the director at least 5 days before the meeting. This application should

include: Name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral rather than written statement.

The Commission Chairman has the right to decide to what extent public oral presentations may be permitted at the meeting. Oral presentations will be limited to statements of fact and views and shall not include any questioning of the Commissioners or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, D.C. 20005.

Signed in Washington, D.C., this 26th day of July, 1985.

Patricia W. McNeil,

Director.

[FR Doc. 85-18439 Filed 8-1-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee (IES) of the National Security Telecommunications Advisory Committee (NSTAC) will be held on Thursday September 5, 1985. The meeting will be held at the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, VA 22102. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and Government activities.

Due the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, D.C. 20305-2010.

D.C. Brown,

Captain, USN, Chief, Joint Secretariat.

[FR Doc. 85-18336 Filed 8-1-85; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-315]

Indiana and Michigan 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 amendment to Facility Operating License No. DPR-58, issued to Indiana and Michigan Electric Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit No. 1 located on Berrien County, Michigan.

By letter dated July 30, 1985, the licensee submitted an application to amend the D.C. Cook Unit No. 1 Technical Specifications to reflect revised setpoints in the channels for overpower delta T, overtemperature delta T, and loss of flow trips and the reactor coolant temperature to protect against departure from nucleate boiling (DNB). The current Technical Specifications reflect setpoints and temperature readings which account for specific temperature sensor uncertainty limits. The licensee is replacing temperature sensors with sensors fully qualified for the expected environmental conditions. However, in reviewing the calibration procedures used by the vendor, it was discovered that a somewhat larger calibration band existed than for the replaced unqualified sensors. This somewhat larger calibration error band was discovered after purchase and the initiation of installation. Resetting the allowable values in the Technical Specifications to accommodate the somewhat larger calibration band assures that the same safety margins exist as before, and that the existing safety analyses for the D.C. Cook Unit No. 1 remain valid and unchanged. The licensee also proposes to modify the Technical Specifications to allow for a continued orderly startup after each refueling following the cross calibration of the new temperature sensors so that rod drop tests and hot zero power physics tests could be performed in mode 3 while awaiting the results of the cross calibration analysis. These changes to the Technical Specifications would revise the notes on the engineered safety features (ESF) actuations to require the channels for low-low-T_{avg} to be placed in the tripped condition until the corrected value for T_{avg} could be imposed for ESF actuations before proceeding to mode 2. With these channels in the tripped condition in mode 3 at the beginning of life for the core, the existing safety analysis remains valid.

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 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 proposal revision dated July 30, 1985 does not contain the specific revised set points values to be incorporated in the Technical Specifications. The technical staff of the licensee is presently determining the correct value and will submit the value for NRC review and approval before final action on this amendment is taken. The proposed revision in setpoints and allowable values due to the greater uncertainties with the new temperature sensors will be reflected in instrumentation corrections without any changes to previous accident analyses. These changes would represent a departure from current practices but recognize the inherent differences between the old and new temperature sensors. The change to allow rod drop tests and hot zero power physics tests in mode 3 with the low-low T_{avg} channels in the tripped position will insure that the existing safety analyses remain valid for the D.C. Cook Unit No. 1. The channels in the tripped condition are not expected to influence operation in mode 3 at startup because the protection to be afforded is to account for a main stream line break. In this mode at startup, there is little or no steam produced to be of concern. No other accidents should be created by the proposed changes and all safety levels are maintained and not reduced. The specific values for setpoints and temperatures will be provided by the licensee about August 8, 1985.

The Commission has determined that failure to act in a timely way would result in the licensee not starting up the plant on the now scheduled date of August 10, 1985 and reaching mode 3 on August 18, 1985.

Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commision decides in its final determination that the amendment does involve significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Steven A. Varga, Chief of Operating Reactors Branch No. 1, by collect call to 301–492–8035 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. All comments received by August 16, 1985, 4:30 p.m., will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and the Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland, this 31st day of July 1985.

For The Nuclear Regulatory Commission.

Joseph D. Neighors,

Acting Branch Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85–18537 Filed 8–1–85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Employee Organization Participation in the Federal Employees Health Benefits Program

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of deadlines.

SUMMARY: This notice advises Federal employee organizations of a new opportunity to apply to sponsor health plans in the Federal Employees Health Benefits Program (FEHB) pursuant to Pub. L. 99–53.

DATES: Formal applications for FEHBP must be submitted no later than September 15, 1985. Moreover, if FEHBP participation is desired in calendar year 1986, employee organizations submitting plan proposals after August 9, 1985, are advised that information on their health plan may have to appear as addenda to regular publications for the 1985 FEHBP Open Season for enrollment changes.

FOR FURTHER INFORMATION CONTACT: Ronny B. Lancaster, Chief, Fee-for-Service Plans Division, U.S. Office of Personnel Management, P.O. Box 707, Washington, D.C. 20044, (202) 632–5130.

SUPPLEMENTARY INFORMATION: Public Law 99–53, which was signed by the President on June 17, 1985, provides that Federal employee organizations which are not eligible to participate in the Federal Employees Health Benefits Program (FEHBP) solely because of the requirement that applications for approval be filed before January 1, 1980, shall have a limited opporutnity to apply for participation. The law provides that interested organizations may apply for Program participation during the 90-day period beginning on the date of enactment of the Public Law 99–53, that is, applications must be submitted to the U.S. Office of Personnel Management (OPM) on or before September 15, 1985. Notwithstanding current provisions in § 890.203(a)(2) of Title 5, Code of Federal Regulations (which OPM intends to conform, through a subsequent rulemaking, to the supervening commands of Pub. L. 99–53), OPM has determined that employee organizations which meet all of the eligibility requirements and submit acceptable rate and benefit proposals in accordance with deadlines specified in this notice may participate in the FEHBP for the 1986 contract year.

In order to properly prepare and publish Open Season materials in advance of the FEHBP contract year which begins each January 1, and to assure that the materials are distributed in a timely manner, OPM must conclude negotiations for benefits and rates during the preceding summer. Therefore, OPM has established the following deadlines for new employee organizations which are interested in FEHBP participation for the 1986 contract year:

Eligible employee organizations which apply for FEHBP participation and submit acceptable rate and benefit proposals by August 9, 1985, will be assured that information regarding their health benefit plan will be properly included with regular Open Season material in 1985.

Employee organizations which apply after August 9, 1985, and submit acceptable rate and benefit proposals by September 15, 1985, will be eligible for 1986 FEHBP participation. However, the Open Season material for those plans which apply after August 9, 1985, may have to appear as addenda to all publications.

U.S. Office of Personnel Management.

Loretta Cornelius

Acting Director.

[FR Doc. 85–8344 Filed 8–1–85; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Hot Air Popcorn Poppers; Domestic Production Determination; Withdrawal

ACTION: Withdrawal of notice of May 21, 1985 (50 FR 21006) regarding Presidential determination under section 504(d) of Title V of the Trade Act of 1974 with respect to imports of hot-air popcorn poppers.

SUMMARY: On May 21, 1985 (50 FR 21006), the United States Trade Representative published a notice stating that the President had determined on May 14, 1985 that hot air popcorn poppers are directly competitive with hot oil popcorn poppers produced in the United States on January 3, 1975 and that such imports were therefore ineligible for a waiver of the 50 percent competitive need limit pursuant to section 504(d) of Title V of the Trade Act of 1974. The United States Trade Representative has since learned that the President has not made that determination and is therefore withdrawing its earlier notice. The administrative review of hot air popcorn poppers conducted pursuant to the order of the Court of International Trade on July 13, 1984 entered in *West Bend Company, Division of Dart Industries Inc. v. United States*, 576 F.Supp. 734 (CIT 1983), is still pending. The United States Trade Representative will publish a notice in the **Federal Register** when a final determination has been made.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85–18394 Filed 8–1–85; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C 20549.

Extension

Rule 17a–5(c)
No. 270–199

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–5(c) (17 CFR 240.17a–5(c)) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which requires all broker-dealers who carry customer accounts to furnish certain financial statements to their customers. The potential affected persons are approximately 1,500 broker-dealers per year.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

July 23, 1985.

[FR Doc. 85–18433 Filed 8–1–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22273; File No. SR–CBOE–85–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change; Chicago Board Options Exchange, Inc.

The Chicago Board Options Exchange, Inc. ("CBOE") submitted on June 3, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend exchange rules relating to facilitation orders. Rule 6.53 as amended expands the definition of facilitation order so as to enable member organizations to facilitate large customer block orders by crossing them with orders for accounts other than a firm proprietary account. Presently, CBOE Rule 6.74(b) provides for the crossing of public customer orders with facilitation orders, which are defined in Rule 6.53 to include only orders for a member organization's proprietary account. The proposed amendments to rules 6.74 and 6.53 expand the provisions governing facilitation to allow for the crossing of a public customer order with a "facilitation" order solicited from another source (*e.g.* another customer of the member organization).

The proposed rule change further provides that any oirder transmitted to the CBOE floor for the purpose of facilitating a public customer order in a cross transaction be designated on its face a facilitation order. Under Rule 6.74 as amended, the procedures for accomplishing a facilitation-cross transaction remain unchanged.

The exchange indicates that the proposed rule amendments will, in pertinent part, benefit public customers by expanding the number of potential facilitations (and thus enable public customers to receive executions on orders which may not have been otherwise executable) and benefit member organizations, by allowing them to facilitate customer orders in crossing transactions without exposing their own capital to market risk.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 22142, June 13, 1985) and by publication in the **Federal Register** (50 FR 25506, June 19, 1985). No comments were received with respect to the proposed rule filing.

The exchange believes that the proposed rule amendments are consistent with the requirements of the Act, particularly section 6(b)(5) of the Act in that the proposed amendments protect investors and the public interest by providing for the facilitation of certain customer orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–18434 Filed 8–1–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22270; File No. SR–CBOE–85–16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated ("CBOE"); Filing of Amendment to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4,[2] thereunder, notice is hereby given that on July 11, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") filed Amendment No. 2 to a proposed rule change, as described below. The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons.[3]

Amendment No. 2 to the proposed rule change would establish a six month pilot program for a retail automatic execution system ("RAES") on certain classes of individual stock options. Under this amendment, CBOE would retain the discretion to select the individual stock options which are included in the pilot program. Amendment No. 2 also provides that market-makers may sign on and off the system for a class of options at terminals which will be located, at the trading post where selected options are located, or at such other locations as the Exchange may place terminals.[4]

As originally filed, the RAES pilot program included only individual stock options on OTC stocks.[5] The original proposal also provided that market-makers may sign on and off the system at the terminals located near the trading post(s) for OTC stock options.

Currently, CBOE is operating a RAES pilot program for certain S&P 100 stock index options ("OEX") orders. This pilot program commenced on February 1, 1985, and has been extended through August 2, 1985.[6] As discussed in the order approving the RAES pilot in OEX, the Commission has certain concerns about RAES. In particular, the Commission believes that the absence of a linkage between RAES and the public customer limit order book *(i.e.,* one which would permit filling through

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[1] It should be noted that the customer entering the "facilitation" order will be informed that its order is going to be marked on the floor as a facilitation order and that it will be subject to the the limitations and procedures imposed under CBOE rules on such orders.

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b–4 (1984).

[3] Amendment No. 1 to the proposed rule change revised the anticipated date of commencement of the RAES pilot program for options on over-the-counter ("OTC") stocks. The pilot originally was scheduled to begin when options on OTC stocks were approved for trading (June 3, 1985). Because the Commission's consideration of the proposed pilot program was expected to occur after June 3, the CBOE amended its proposal to provide for commencement of the pilot as soon as practicable after approval by the Commission. In addition, Amendment No. 1 modified the rule change to reflect that the usage of RAES for a particular option will be determined by the post director or his representative for that option, not the OEX post director.

Because of the technical nature of Amendment No. 1, it was not published separately for comment. *See* Amendment No. 1, dated June 7, 1985, to File SR–CBOE–85–16.

[4] In Amendment No. 2 CBOE included other technical word changes to conform the language of the proposal to the revised format of the pilot program. *See* Amendment No. 2, dated July 11, 1985, to File No. SR–CBOE–85–16.

[5] The Commission solicited comments on the original CBOE proposal in Securities Exchange Act Release No. 22050 (May 20, 1985), 50 FR 21531 (May 24, 1985) (File No. SR–CBOE–85–16).

RAES booked public limit orders at the same price as the best bid or offer), may be inappropriate because it may result in a loss of priority for certain public customer orders.[7]

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–CBOE–85–16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of CBOE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–18435 Filed 8–1–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22276; File No. SR–NSCC–85–7]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Proposed Rule Change

On July 9, 1985, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this Notice to solicit comments on the proposal.

The proposed rule change would establish the Automated Customer Account Transfer Service ("ACAT"), which would enable NSCC members to effect automated transfers of customer accounts among themselves. The proposed rule change is designed to complement a proposed rule change filed by the New York Stock Exchange, Inc. ("NYSE")[1] that requires NYSE members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

Under NSCC's proposed rule change, an NSCC member to whom a customer's securities account is to be transferred (the "Receiving Member") may initiate the account transfer process by filing with NSCC a Transfer Initiation Request ("TIR"). NSCC will review the TIR and, if it appears to be complete,[2] NSCC will retain a copy, make a stamped copy immediately available for the Receiving Member and make the original TIR available to the NSCC member who currently carries the customer account (the "Delivering Member"). Delivering Members must send messages to NSCC to pick up TIRs. If a TIR appears incomplete, NSCC will reject it and make it available for pick-up by the Receiving Member.

Under the proposal, NSCC will send reports to Receiving and Delivering Members indicating the customer account transfer requests received each day. Receiving and Delivering Members will be required to verify these reports and notify NSCC of any discrepancies or errors. NSCC will make any necessary adjustments where appropriate.

Within the time frame established by the appropriate Designated Examining Authority ("DEA"),[3] and pursuant to any reasons permitted by the Delivering Member's DEA, the Delivering Member must either accept or reject a customer account transfer request by sending the appropriate form to NSCC. Rejecting Delivering Members must indicate their reasons for rejection. Transfer requests that are not accepted or rejected within the required time frames will be deleted from the ACAT system and will by reported to the Receiving and Delivering Members.[4] NSCC also plans to report such failures to respond to the Delivering Member's DEA.

If the delivering member accepts the account transfer request and forwards the required customer account information to NSCC, NSCC will use its best efforts to check the information for edit errors and then forward the information to the Receiving Member.[5] Within two business days of receipt of this information, the Receiving Member must either accept, request an adjustment to, or reject the account transfer in accordance with the Receiving Member's DEA's rules. If the Receiving Member fails to act within this time period, NSCC will deem this inaction as acceptance of the account transfer.

During this two business day period, the delivering member can add, delete, or make other changes to any item by delivering information in appropriate form to NSCC. NSCC then will forward these changes to the Receiving Member, who would have two business days to review the changed account information.

When a Receiving Member accepts a customer account transfer, NSCC will cause all continuous net settlement ("CNS") eligible items in that account to enter NSCC's CNS accounting operations as of the third business date after trade date ("T + 3"), unless NSCC is notified by the Receiving Member that certain otherwise CNS eligible items will be withheld from CNS processing. For those withheld items and all non-CNS eligible items, NSCC will produce automated customer account transfer receive and deliver orders.[6] Those receive and deliver orders will contain specific information concerning the items in the customer account and will direct the appropriate NSCC members to settle the transaction. On settlement day (T + 5), NSCC will credit and debit the appropriate members' settlement accounts for the value of the items

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[7] The Commission is presently reviewing the RAES proposal in OEX as well as the data compiled by CBOE over the course of the pilot program. *See* letter, dated July 8, 1985, from Frederic Krieger, Assistant General Counsel, CBOE, to Eneida Rosa, Branch Chief, Options Branch, SEC. A rule proposal seeking to extend the RAES proposal in OEX for an additional three months was filed by the CBOE on July 23, 1985. *See* SR–CBOE–85–33.

[1] *See* File No. SR–NYSE–85–17.

[2] Under the proposal, NSCC disclaims any responsibility for the accuracy and completeness of TIR information. Moreover, NSCC will not verify that the TIR has been signed by the Receiving Member's customer. NSCC states that it is responsible only for making the TIR available to the appropriate Delivering Member or to return it the Receiving Member under the circumstances stated above.

[3] According to the proposed rule change filed by NYSE, the Delivering Member must either reject or accept the customer account transfer within 5 business days.

[4] Upon notification that its requested customer account transfer was rejected, the Receiving Member may resubmit the TIR and NSCC will process the TIR as though it had not previously been submitted for processing.

[5] NSCC, however, disclaims responsibility for the validation process.

[6] Receive and Deliver orders will be subject to the rule of the respective members' DEAs, including their close-out provisions, rather than NSCC's rules. For CNS processed items, however, NSCC's rules and procedures apply.

indicated on the deliver and receive orders. The Receiving and Delivering Members, however, are responsible for the actual delivery and money settlement relating to the NSCC debits and credits. Fails to deliver and receive will be reconciled according to the members' DEA's rules and not under NSCC's rules and procedures.

All money settlement between NSCC members arising out of account transfers will be made in accordance with NSCC Rule 12. Although NSCC guarantees CNS processed account transfers, no such guarantee is made for account transfers processed through receive and deliver orders.

You can submit written comment within 21 days after notice is published in the **Federal Register.** Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, with accompanying exhibits, and of all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing also will be available at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the proposal's file number and should be submitted by August 23, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

July 29, 1985.

[FR Doc. 85-18436 Filed 8-1-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q (See 14 CFR 302.1701 et seq.) Week Ended July 12, 1985

Correction

In FR Doc. 85-17195 appearing on page 29504 in the issue of Friday, July 19, 1985, make the following corrections: In the first column of the table, the second date, "July 8, 1985" should read "July 9, 1985".

Also; the following portion of the document was inadvertently omitted and should be added as follows:

Date filed	Docket No.	Description
7-11-85	43260	APA International Air, S. A., c/o James M. Burger, Esq., Burger & Kendall, 1726 M Street, N.W., Washington, D.C. 20036. Application of APA International Air, S.A. pursuant to the provisions of Section 402 of the Act and Part 211 of the DOT's Economic Regulations for amendment of its foreign air carrier permit, to authorize it to engage in scheduled foreign air transportation of persons, property and mail between Santo Domingo, Dominican Republic on the one hand and New York, New York, Miami, Florida and San Juan, Puerto Rico, on the other hand. APA further requests that this application be processed under Subpart Q of Part 302 of the DOT's Procedural Regulations by issuance of an order to Show Cause why the amended permit should not be issued. Answers may be filed by August 8, 1985.
7-12-85	43272	Continental Air Lines, Inc., c/o Emory N. Ellis, Esq., Fulbright & Jaworski, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of Continental Air Lines Inc. under Section 401 of the Act, and under Subpart Q of the DOT's Rules of Practice for a certificate of public convenience and necessity which will authorize it to engage in the air transportation of persons, property, and mail over the following route: "Between the terminal point Honolulu, Hawaii and the terminal point Vancouver, British Columbia, Canada." Conforming Applications, Motions to Modify Scope and Answers may be filed by August 9, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

BILLING CODE 1501-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended July 26, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
July 25, 1985	43301	Pan American World Airways, Inc., c/o David M. O'Connor, Suite 901, 1660 L Street, NW., Washington, D.C. 20036. Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests amendment of its certificates of public convenience and necessity for Routes 132 and 133 so as to permit the requested authority between the United States and Spain with beyond service to Italy. Conforming Applications, Motions to Modify Scope and Answers to be filed by August 22, 1985.
July 26, 1985	43304	Aero-Chago, S.A., c/o Philip Schleit, Suite 1000, 1660 L Street, NW., Washington, D.C. 20036. Application of Aero-Chago, S.A. request an amendment of its Foreign Air Carrier Permit, pursuant to Section 402 of the Act and Subpart Q of the Regulations, so as to add Boston, Massachusetts as a new terminal point. Answers may be filed by August 23, 1985.
Do	43306	Hawaiian Airlines, Inc., c/o Jonathan B. Hill, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Suite 500, Washington, D.C. 20037. Application of Hawaiian Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, for a certificate of public convenience and necessity to engage in the transportation of persons, property and mail between Honolulu, Hawaii and Vancouver, British Columbia, Canada. Conforming Applications, Motions to Modify Scope and Answers may be filed by August 23, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-18392 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Federal Aviation Advisory Committee; Termination

Notice is hereby given of the termination of the Federal Aviation Advisory Committee. This committee was sponsored by the Associate Administrator for Development and Logistics. The committee was established to provide the FAA with independent expert advice on the nature, scope, and direction of its technical planning efforts related to improved capabilities of the National Airspace System and the capacity and safety of the Nation's airports. This committee has been terminated, as its continuation is no longer in the public interest in connection with the performance of duties imposed on FAA by law.

Issued in Washington, D.C., on July 9, 1985.

A.P. Albrecht,

Associate Administrator for Development and Logistics.

[FR Doc. 85-18335 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Establishment of Commercial Motor Vehicle Safety Regulatory Review Panel

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA announces the establishment of the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) pursuant to section 209 of the Motor Carrier Safety Act of 1984, Pub. L. 98-554, title II, 98 Stat. 2929, 2938, and the first meeting of the Safety Panel to be held on September 5, 1985, at 9:00 a.m. in Room 2230 of the Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The purpose of the Safety Panel is to review and analyze all State laws and regulations pertaining to commercial motor vehicle safety. The Safety Panel is to determine whether State laws or regulations have the same effect as; are less stringent than; are in addition to or more stringent than commercial motor vehicle safety regulations promulgated by the Department of Transportation. For any law or regulation which the Safety Panel determines to be in addition to or more stringent than the Federal regulations, the Safety Panel shall also determine whether there is any safety benefit associated with such state law or regulation; whether such State law or regulation is incompatible with the Federal regulation; or whether enforcement of such State law or regulation would be an undue burden on interstate commerce. The Safety Panel will notify the Secretary of Transportation, through the Administrator of the Federal Highway Administration, of its determinations. The Secretary will give great weight to the recommendations of the Safety Panel in the course of the rulemaking required by section 208 of the Motor Carrier Safety Act of 1984 concerning possible preemption of certain State laws and regulations pertaining to commercial motor vehicle safety.

The Safety Panel will also conduct a study to evaluate the need, if any, for any additional Federal assistance to the States to enable the States to enforce the Federal safety regulations and to determine other methods of furthering the objectives of the Motor Carrier Safety Act of 1984.

The first meeting of the Safety Panel will be primarily an organizational meeting. The members will be sworn in and representatives of the agency will brief the members on the purpose of the Safety Panel and their responsibilities under the Motor Carrier Safety Act of 1984 and the Safety Panel's charter. The members will also be briefed on the agency's implementation of other provisions of the Motor Carrier Safety Act of 1984, such as sections 206 and 210, which will impact the work of the Safety Panel. Meetings of the Safety Panel are open to the public. Copies of the Safety Panel's charter are available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. David Lukens, Executive Director of the Safety Panel, (HOA-1), (202) 426-0390, or Mr. Thomas P. Holian, Attorney, Office of the Chief Counsel, (HCC-20), (202) 426-0346, both at 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

Issued on: July 26, 1985.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-18353 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; American Home Assurance Co., et al.

Treasury published its Circular 570, Surety Companies Acceptable on Federal Bonds, 1985 Revision, at 50 FR 27104-27139. The following Companies' authority as acceptable sureties has been renewed effective July 1, 1985. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1985 Revision, at pages 27107, 27120, and 27124 to reflect these additions:

American Home Assurance Company. Business Address: 70 Pine Street, New York, NY 10270. Underwriting Limitation [b]: *$12,118,000.* Surety Licenses [c]: All except PR. Incorporated in: New York. Federal Process Agents [d].

The Insurance Company of the State of Pennsylvania. Business Address: 70 Pine Street, New York, NY 10270. Underwriting Limitation [b]: *$2,943,000.* Surety Licenses [c]: All except GU, PR. Incorporated in: Pennsylvania. Federal Process Agents [d].

National Union Fire Insurance Company of Pittsburgh, PA. Business Address: 70 Pine Street, New York, NY 10270. Underwriting Limitation [b]: *$7,637,000.* Surety Licenses [c]: All. Incorporated in: New York. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223).

Copies of Circular 570 may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226.

Dated: July 26, 1985.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-18352 Filed 8-1-85; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of System Notice; New Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering adding a new routine use statement for the system of VA records entitled "Compensation, Pension, Education and Rehabilitation Records-VA" (58VA21/22/28) as set forth on page 372 of the **Federal Register** of January 5, 1982.

The VA Office of Inspector General under the authority of the Inspector General's Act (Pub. L. 95-452, section 4(a)) and the Department of Veterans Benefits under the authority of Title 38, United States Code, sections 210(c)(1) and 3006, plan to conduct a series of computer matches to validate entitlement to benefits granted under Title 38, United States Code and to prevent fraud and abuse. The matches will compare Federal, State, county and municipal records with VA compensation, pension, education and rehabilitation records to determine if the eligibility of the recipients to receive VA benefits has changed. The goal of the matches is to detect the unwarranted payment of benefits under title 38, United States Code.

Title 38, United States Code requires the VA to discontinue benefits when eligibility for such benefits no longer exists. To carry out this function, there must be a periodic reappraisal of a veteran's continued eligibility for VA benefits after the initial approval. Computer matches by the Department of Veterans Benefits and the Office of Inspector General are among the most cost-effective means of validating continued eligibility for VA benefits.

When a veteran is identified as a result of a match (or from information otherwise received) as employed or as having income, as having lost a dependent, or as having discontinued school attendance, changed schools or changed the number of credit hours, and the information would affect continuing entitlement to benefits but has not been reported to the VA, the information must be verified and the identity of the persons whose records were matched needs to be confirmed. The most practical approach, after initial screening of the identified or matched records to eliminate clearly mis-matched records is to verify the information and confirm the identities by contacting the employer, educational facility or other third parties who may have knowledge of the matter. These contacts will require the disclosure of identifying information to employers, education facilities or other third parties in order to obtain the necessary confirmation. The proposed new routine use No. 48 will permit the disclosure of identifying information to third parties when this is necessary to determine a veteran's continuing eligibility to receive VA benefits.

The VA has determined that release of information for the purpose of this computer match is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All relevant material received before September 3, 1985 will be considered. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until September 17, 1985.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective September 3, 1985.

Approved: July 29, 1985.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of System of Records

In the system identified as 58VA21/22/28, "Compensation, Pension, Education and Rehabilitation Records-VA," appearing at 47 FR 372, the following routine use is added to read as follows:

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

48. Identifying information, such as name, social security number, VA claim number, date and place of birth, etc., in this system may be disclosed to an employer or school having information relevant to a claim in order to obtain information from the employer or school to the extent necessary to determine that eligibility for VA compensation or pension benefits continues to exist or to verify that there has been an overpayment of VA compensation or pension benefits. Any information in this system also may be disclosed to any of the above-entitled individuals or entities as part of ongoing computer matching programs to accomplish these purposes.

* * * * *

[FR Doc. 85-18411 Filed 8-1-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 149
Friday, August 2, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 7, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request to lease space in a Federal Reserve Bank building.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 30, 1985.

James McAfee,

Associate Secretry of the Board.

[FR Doc. 84-18454 Filed 7-31-85; 8:51 am]

BILLING CODE 6210-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-32]

TIME AND DATE: Thursday, August 8, 1985 at 10:00 a.m.

PLACE: Room 117, 701 E Streets, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   (a) Certain touch control lighting switches (Docket number 1215).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-18485 Filed 7-31-85; 1:56 pm]

BILLING CODE 7020-02-M

Federal Register

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Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of the Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determinations

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC84–3009	Apr. 6, 1984.
Kansas: KS84–4053	Aug. 24, 1984.
KS85–4009	May 10, 1985.
New Jersey: NJ85–3032	July 19, 1985.
New York: NY83–3018	May 20, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

New Jersey: NJ84–3019 (NJ85–3031)	July 6, 1984.

Signed at Washington, D.C., this 26th day of July 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. DC84-3009-MOD. #19
(49 FR 13800-April 6, 1984)
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

ADD:

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS: Prob. Helpers	7.90	

DECISION NO. KS84-4053
MOD. NO. 6 -(49FR33784)
August 24, 1984

Leavenworth County, Kansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Carpenters	$16.35	$2.82
Piledrivermen & Millwrights	16.35	2.82

DECISION NO. KS85-4009-MOD NO. 3 -(50FR19853)
May 10, 1985

DOUGLAS, JEFFERSON, LEAVENWORTH MIAMI AND SHAWNEE COUNTIES, KANSAS

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Zone 2		
Carpenters	$16.35	$2.82
Zone 3		
Carpenters	14.875	2.82
Piledrivers	16.35	2.82

DECISION NO. NJ85-3032 - MOD. #1
(50 FR 29594 July 19, 1985)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, New Jersey

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS		
Zone 3	19.35	3.45+10%

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DECISION NO. NY83-3018 - MOD. #11
(48 FR 22870 - May 20, 1983)
DUTCHESS, ORANGE, SULLIVAN & ULSTER COUNTIES, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
ULSTER; SULLIVAN	17.10	2.36
BOILERMAKERS	21.75	10+38%
BRICKLAYERS; CEMENT MASONS; PLASTERERS; POINTERS; CAULKERS; CLEANERS; MARBLE MASONS; TILE & TERRAZZO WORKERS:		
DUTCHESS & ULSTER:		
Building	14.25	7.20
Heavy & Highway	14.75	7.20
BRICKLAYERS; STONE MASONS; CEMENT MASONS; PLASTERERS:		
Area 1:		
Building	14.25	7.20
Heavy & Highway	14.75	7.20+b
CARPENTERS:		
DUTCHESS (Wappinger Falls, New Hackensack, Pawling, Beacon):		
Building	16.87	4.51
Heavy & Highway	16.87	4.51+e
DOCKBUILDERS		
DUTCHESS; ORANGE (Remainder of County)	19.66	7.25
ELECTRICIANS		
Area 1	15.37	5.05+3.5%
Area 2	16.83	2.65+13.5%
Area 3	18.00	40%
Area 4	18.75	1.50+11.5%
Area 5	18.75	1.50+11.5%
ELEVATOR CONSTRUCTORS:		
DUTCHESS; ORANGE	18.47	3.29+f+g
ELEVATOR CONSTRUCTORS' HELPERS		
DUTCHESS; ORANGE	12.93	3.29+f+g
ELEVATOR CONSTRUCTORS HELPERS (PROBATIONARY)		
DUTCHESS; ORANGE	9.235	
GLAZIERS	19.30	7.35
IRONWORKERS	16.00	11.82

	Basic Hourly Rates	Fringe Benefits
LABORERS (BUILDING):		
ULSTER; ORANGE; SULLIVAN:		
Class 1	14.20	3.70
Class 2	14.45	3.70
Class 3	15.20	3.70
DUTCHESS:		
Class 1	14.77	3.50+h
Class 2	15.02	3.50+h
Class 3	15.17	3.50+h
LABORERS (HEAVY & HIGHWAY):		
ULSTER; ORANGE; SULLIVAN:		
Group 1	15.45	3.70+i
Group 2	15.70	3.70+i
Group 3	16.10	3.70+i
DUTCHESS:		
Group 1	14.36	3.25+j
Group 2	14.61	3.25+j
Group 3	14.96	3.25+j
LINE CONSTRUCTION: Substations and switching structures; Pipe type cable installation and maintenance jobs or projects: Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+p+6.25%
Cable splicer	19.525	4.35+p+6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+p+6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+p+6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+p+6.25%
Groundman	10.098	4.35+p+6.25%
Overhead transmission line work (where no other work is or has been involved); Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+p+6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+p+6.25%

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MODIFICATIONS P. 3

DECISION NO. NY83-3018 LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefits
Groundman truck driver (tractor trailer unit)	14.306	4.35+p +6.25%
Groundman mobile equipment operator; groundman truck driber; mechanic	13.464	4.35+p +6.25%
Groundman	10.098	4.35+p +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+p +6.25%
Groundman diggine machine operator; dynamite man	17.649	4.35+p +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+p +6.25%
Mobile equipment operator; groundman truck driver; mechanic	15.688	4.35+p +6.25%
Groundman	10.098	4.35+p +6.25%
PAINTERS:		
DUTCHESS; ULSTER; SULLIVAN:		
Brush	16.24	3.13
Structural Steel, Bridges, Towers, Fire Excapes, Smoke Stacks, Flagpoles, and other exposed areas 15' or more in height, Swing Stage, Window Jacks, Boatswain Chairs, Safety Belts and Spray Gun	16.54	3.13
ORANGE:		
Commercial	14.94	2.95
Spray, Sandblasting, Taping & paperhanging, epoxy & other toxic materials	15.94	2.95
Elevated work; Structural steel, power plants, Towers	15.94	2.95
Smoke stacks, Bridges	16.62	2.95
PLUMBERS & STEAMFITTERS:		
DUTCHESS; ULSTER (Remainder of County)	18.70	6.90

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
DUTCHESS (Poughkeepsie & South thereof):		
BUILDING:		
Group I-A	19.8525	1.20+ 18.25%+ 1
Group I-B	17.785	"
Group II	18.94	"
Group III-A	18.0475	"
Group III-B	16.7275	"
Group IV-A	17.765	"
Group IV-B	16.585	"
Group V-A	16.7625	"
Group V-B	15.4425	"
Group VI-A-1	21.22	"
Group VI-A-2	20.3675	"
Group VI-A-3	19.3675	"
Group VI-A-4	20.0825	"
Group VI-A-5	24.0825	"
Group VI-A-6	17.5125	"
Group VI-A-7	23.7975	"
Group VI-B-1	14.4625	"
Group VI-B-2	15.4275	"
Group VI-B-3	14.4775	"
Group VI-B-4	17.66	"
Group VII	19.855	"
HEAVY & HIGHWAY:		
Group I-A	19.75	1.20+ 17.75% +1
Group II	18.95	"
Group III	18.83	"
Group IV-A	17.70	"
Group IV-B	15.13	"
Group V-A-1	20.95	"
Group V-A-2	20.20	"
Group V-A-3	23.20	"
Group V-A-4	19.95	"
Group V-A-5	19.33	"
Group V-A-6	23.45	"
Group V-A-7	17.70	"
Group V-A-8	18.79	"
Group V-B-1	15.13	"
Group V-B-2	14.30	
POWER EQUIPMENT OPERATORS: DUTCHESS (Remainder of County):		
HEAVY & HIGHWAY		
Class I	17.12	4.00+m
Class II	16.55	4.00+m
Class III	14.94	4.00+m
Class IV	13.52	4.00+m
Class V	18.13	4.00+m

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MODIFICATIONS P. 4

DECISION NO. NY83-3018 LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefits
Groundman truck driver (tractor trailer unit)	14.306	4.35+p +6.25%
Groundman mobile equipment operator; groundman truck driber; mechanic	13.464	4.35+p +6.25%
Groundman	10.098	4.35+p +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+p +6.25%
Groundman diggine machine operator; dynamite man	17.649	4.35+p +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+p +6.25%
Mobile equipment operator; groundman truck driver; mechanic	15.688	4.35+p +6.25%
Groundman	10.098	4.35+p +6.25%
PAINTERS:		
DUTCHESS; ULSTER; SULLIVAN:		
Brush	16.24	3.13
Structural Steel, Bridges, Towers, Fire Excapes, Smoke Stacks, Flagpoles, and other exposed areas 15' or more in height, Swing Stage, Window Jacks, Boatswain Chairs, Safety Belts and Spray Gun	16.54	3.13
ORANGE:		
Commercial	14.94	2.95
Spray, Sandblasting, Taping & paperhanging, epoxy & other toxic materials	15.94	2.95
Elevated work; Structural steel, power plants, Towers	15.94	2.95
Smoke stacks, Bridges	16.62	2.95
PLUMBERS & STEAMFITTERS:		
DUTCHESS; ULSTER (Remainder of County)	18.70	6.90

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
DUTCHESS (Poughkeepsie & South thereof):		
BUILDING:		
Group I-A	19.8525	1.20+ 18.25%+ 1
Group I-B	17.785	"
Group II	18.94	"
Group III-A	18.0475	"
Group III-B	16.7275	"
Group IV-A	17.765	"
Group IV-B	16.585	"
Group V-A	16.7625	"
Group V-B	15.4425	"
Group VI-A-1	21.22	"
Group VI-A-2	20.3675	"
Group VI-A-3	19.3675	"
Group VI-A-4	20.0825	"
Group VI-A-5	24.0825	"
Group VI-A-6	17.5125	"
Group VI-A-7	23.7975	"
Group VI-B-1	14.4625	"
Group VI-B-2	15.4275	"
Group VI-B-3	14.4775	"
Group VI-B-4	17.66	"
Group VII	19.855	"
HEAVY & HIGHWAY:		
Group I-A	19.75	1.20+ 17.75% +1
Group II	18.95	"
Group III	18.83	"
Group IV-A	17.70	"
Group IV-B	15.13	"
Group V-A-1	20.95	"
Group V-A-2	20.20	"
Group V-A-3	23.20	"
Group V-A-4	19.95	"
Group V-A-5	19.33	"
Group V-A-6	23.45	"
Group V-A-7	17.70	"
Group V-A-8	18.79	"
Group V-B-1	15.13	"
Group V-B-2	14.30	
POWER EQUIPMENT OPERATORS: DUTCHESS (Remainder of County):		
HEAVY & HIGHWAY		
Class I	17.12	4.00+m
Class II	16.55	4.00+m
Class III	14.94	4.00+m
Class IV	13.52	4.00+m
Class V	18.13	4.00+m

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MODIFICATIONS P. 5

DECISION NO. NY83-3018

	Basic Hourly Rates	Fringe Benefits
ROOFERS	17.00	7.15+n
TRUCK DRIVERS		
Group 1	15.95	3.55+o
Group 2	15.85	3.55+o
Group 3	15.65	3.55+o
Group 4	15.55	3.55+o
Group 5	15.45	3.55+o

ADD:

FOOTNOTE:

p. Paid Holidays: A through F, plus Washington's Birthday, Good Friday, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

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Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: NEW JERSEY

COUNTIES: Bergen, Essex, Hudson (exclude Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren

DECISION NUMBER NJ85-3031 DATE: Date of Publication

SUPERSEDES DECISION NO. NJ84-3019 dated July 6, 1984 in 49 FR 27883.

DESCRIPTION OF WORK: Building (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits
AIR CONDITION and REFRIGERATION MECHANIC:		
Group 1	15.40	1.48+a
ASBESTOS WORKERS		
Zone 1	18.47	4.945
Zone 2	19.30	6.825
BOILERMAKERS	18.23	.29+ 38%
BRICKLAYERS, STONEMASONS, CEMENT MASONS and PLASTERERS:		
Zone 1	16.57	5.70
Zone 2	16.00	5.57
Zone 3	19.03	4.83
Zone 4:		
Bricklayers & Stonemasons	16.80	5.05
Cement Masons and Plasterers	18.15	3.82
Zone 5	17.00	5.18
Zone 6	17.07	3.69
Zone 7	20.50	2.42
Zone 8	17.42	5.21
Zone 9	16.64	5.64
Zone 10	17.08	3.79
Zone 11	18.53	3.74
Zone 12	16.53	5.24
Zone 13	17.45	3.32
CARPENTERS, INSULATORS and MILLWRIGHTS:		
Zone 1	18.35	5.38
Zone 2	17.81	5.94
Zone 3:		
Carpenters & Insulators	19.74	20.5%
Millwrights	20.24	20.5%
Zone 4:		
Carpenters & Insulators	19.26	23.5%
Millwrights	19.76	23.5%
Zone 5:		
Carpenters & Insulators	19.75	20.5%
Millwrights	20.75	20.5%
Zone 6:		
Carpenters & Insulators	16.51	20.5%
Millwrights	19.01	20.5%
DIVERS & DIVER TENDERS:		
Zone 1:		
Divers	20.87	6.83
Divers Tenders	16.27	6.83
DOCK BUILDERS and PILE-DRIVERMEN	17.66	6.75
DRYWALL TAPERS and FINISHERS	14.85	3.35
ELECTRICIANS & CABLE SPLICERS:		
Zone 1	19.40	39.25%
Zone 2	20.20	4.06+ 13.5%
Zone 3	20.11	2.53+ 10%
Zone 4	19.65	3.02+ 13.5%
Zone 5	20.62	28.5%+ 1.00
Zone 6:		
Wiremen	21.10	2.00+ 18%+ $250/yr.
Cable Splicers	22.60	2.00+ 18%+ $250/yr.
Zone 7	20.77	3.80+ 11%
Zone 8	20.77	2.52+ 10%
Zone 9	19.44	32.15%
Zone 10	20.05	2.53+ 10%
Zone 11	21.35	18%+2c
Zone 12	16.00	1.00+ 11%
Zone 13	14.25	1.20+ 11%

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	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Railroad Construction:		
Bergen & Hudson Cos.	21.20	26.5%
Commercial Telephone Installation:		
Bergen & Hudson Cos.	21.20	26.5%
ELEVATOR CONSTRUCTORS:		
Construction:		
Mechanics	18.80	3.69+ b+c+d
Helpers	14.40	3.69+ b+c+d
Probationary Helpers	9.40	
Modernization:		
Mechanics	15.94	3.69+ b+c+d
Helpers	11.95	3.69+ b+c+d
Probationary Helpers	9.40	
GLAZIERS:		
Zone 1	16.14	7.33
Zone 2	16.90	6.60
Zone 3	18.95	6.05
IRONWORKERS:		
Structural; Reinforcing; and Ornamental		
Zone 1	18.45	4.20
Zone 2	18.65	6.11
LATHERS	11.40	.57
MARBLE, TILE & TERRAZZO WORKERS & FINISHERS:		
Zone 1:		
Marble Setters:		
Cutters & Setters	13.93	4.19+e
Carvers	14.48	4.19+e
Polishers	14.89	2.90+e
Crane Op.; Derrickmen	12.91	4.34+e
Marble Finishers (Helpers)	12.91	2.19+e
Terrazzo Workers & Mosaic Finishers	15.48	2.71
Tile Setters	15.23	4.335

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Zone 1:		
Commercial & Industrial, Tapers (Commercial)	14.60	5.01
Steel (Outside), Spray and Paperhangers	16.60	5.01
Zone 2:		
Repaint Rate	14.00	4.12
Regular Rate	15.00	4.12
Premium & Spray	16.25	4.12
Paperhanging & Wall Covering	16.10	4.12
Zone 3:		
Group 1	13.80	2.55
Group 2	12.70	2.55
Group 3	13.30	2.55
Group 4	13.95	2.55
Group 5	12.85	2.55
Group 6	14.40	2.55
Group 7	14.30	2.55
Zone 4		
Group 1	14.65	4.83
Group 2	14.55	4.83
Group 3	15.05	4.83
Group 4	12.30	4.83
Group 5	12.65	4.83
PIPEFITTERS:		
Zone 1	18.25	6.93
Zone 2	18.12	7.05
Zone 3	18.62	5.06
PLUMBERS:		
Zone 1	19.33	5.85
Zone 2	18.58	6.55
Zone 3	18.62	5.06
ROOFERS:		
Zone 1		
Composition	18.05	4.59
Zone 2		
Shingle, Slate and Tile	14.15	2.42
Mechanic II for shingle, slate or tile work - handles and transports all materials, tools and equipment; clean-up debris	6.25	2.42
All other work	20.12	3.83+k
Mechanic II for all other work - handles and transports all materials, tools and equipment; clean-up debris	8.25	3.83+k

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS CONT'D		
Zone 3:		
Composition, Damp and Waterproofing, Slate and Tile	18.72	3.00
Zone 4:		
Slate and Tile	16.70	4.75
Slate & Tile Helpers	8.85	4.75
Zone 5:		
Composition, Damp and Waterproofing	18.00	3.50
Slate and Tile	18.125	3.50
Zone 6:		
Composition, Damp and Waterproofing	17.00	8.19
SHEET METAL WORKERS:		
Zone 1	18.63	5.10
Zone 2	14.20	1.63+ 16%
Zone 3	12.80	3.56
Zone 4	16.73	4.82
Zone 5	16.26	3.75
Zone 6	18.43	5.35
SOFT FLOOR LAYERS	17.22	1.50+ 13%
SPRINKLER FITTERS:		
Zone 1	18.28	5.37
Zone 2	16.67	3.23
LABORERS:		
Zone 1:		
Group 1	12.55	3.10
Zone 2:		
Group 1	13.40	4.25
Zone 3:		
Group 1	12.55	3.25
Group 2	12.80	3.25
Zone 4:		
Laborers	13.50	2.15
Zone 5:		
Laborers	12.25	3.40
Zone 6:		
Group 1	11.65	4.00
Zone 7:		
Laborers	11.85	3.80
Zone 8:		
Group 1	12.70	3.20
Group 2	12.95	3.20
Zone 9:		
Group 1	13.05	2.60
Group 2	13.30	2.60
Zone 10:		
Group 1	13.30	2.35
Zone 11:		
Group 1	12.55	3.60

	Basic Hourly Rates	Fringe Benefits
Zone 12:		
Group 1	13.25	2.40
Zone 13:		
Laborers	12.25	3.40
Zone 14:		
Laborers	13.10	2.40
Zone 15:		
Laborers	12.40	3.25
Zone 16:		
Group 1	12.25	3.40
Zone 17:		
Group 1	13.25	2.70
Group 2	13.75	2.70
Zone 18:		
(Heavy & Highway Construction):		
Group 1	13.20	2.50+f
Group 2	13.40	2.50+f
Group 3	13.70	2.50+f
Group 4	13.90	2.50+f
Group 5	14.15	2.50+f
Group 6	15.70	2.50+f
(Free Air Tunnel Jobs):		
Group 1	15.95	2.50+f
Group 2	14.25	2.50+f
Group 3	14.10	2.50+f
Group 4	13.60	2.50+f
(Asphalt Construction):		
Zone 1:		
Street:		
Head Raker	11.30	2.35+f
Rakers & Screen Men	11.15	2.35+f
Tampers, Smoothers, Kettlemen, Painters, Top Shovelers and Roller Boys	10.90	2.35+f
Plant:		
Scale Mixers and Burner Men	11.15	2.35+f
Feeders and Dust Men	10.90	2.35+f
Zone 2:		
Street:		
Head Rakers	11.65	2.60+f
Rakers & Screed Men	11.50	2.60+f
Tampers, Smoothers, Kettlemen, Painters, Shovelers & Rollers Boys	11.25	2.60+f
Plant:		
Scale Mixer and Burner Men	11.30	2.60+f
Feeders and Duct Man	11.05	2.60+f

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Zone 1:		
Linemen, Cable Splicers, Line Equipment Operators, Line Truck Operators, Groundman & Welders	19.40	39.75%
Zone 2:		
Linemen and Equipment Operators	21.10	2.00+ 17%
Cable Splicers	22.60	2.00+ 17%
Groundmen	14.77	2.00+ 17%
Zone 3		
Linemen, Cable Splicers, Equipment Operators & Groundmen	20.82	1.00+ 28%
Zone 4:		
Linemen, Cable Splicers, Line Equipment Operators	19.54	14.25%
Groundmen	19.05	14.25%
Zone 5:		
Linemen, Cable Splicers, Line Equipment Operators and Groundmen	20.77	2.54+ 10%
Zone 6:		
Linemen; Cable Splicers; Line equipment Operators and Groundmen	13.84	.80+ 10.75%
Zone 7:		
Linemen and Equipment Operators	20.77	3.55+ 11%
Groundman & Line Truck Operators	14.56	3.55+ 11%
Zone 8:		
Linemen and Equipment Operators	16.45	1.90+ 10.75
Groundmen	14.59	1.90+ 10.75%
Zone 9:		
Linemen and Equipment Operators	14.01	.80+ 10.75%
Groundmen	12.15	.80+ 10.75%
Zone 10:		
Linemen, Cable Splicers	19.44	32.75%
Groundmen & Winch Op.	19.44	32.75%
Zone 11:		
Linemen, Cable Splicers	16.41	2.25+ 10.75%
Groundmen	15.56	2.25+ 10.75%
Zone 12:		
Linemen, Equipment Operators and Cable splicers	21.35	26%
Groundmen Winch Op.	20.45	26%
Zone 13:		
Linemen, Line Truck Operators, Equipment Operators & Cable Splicers	13.50	1.00+ 11.75%
Groundmen	7.434	1.00+ 11.75%
Zone 14:		
Linemen, Line Truck Operators, Equipment Operators & Cable Splicers	16.00	1.20+ 11.75%
(Railroad Construction Only):		
Linemen	16.96	25%
Line Equipment Op.	16.20	25%
Groundmen Winch Operators, Truck Operator	13.67	25%
Groundmen	11.06	25%
Dynamite Man	14.20	25%
Street Light Mechanic	12.97	25%
Line Equipment Mechanic	12.90	25%
POWER EQUIPMENT OPERATORS:		
Building Construction Projects in which individual items of work are $200,000 or less (including clearing and grading, excavation for foundations, back filling, storm and sanitary sewers, sidewalks, street excavation & paving, curbing & landscaping, water and gas supply lines)	12.19	5.80+a
OTHER BUILDINGS CONSTRUCTION PROJECTS: HEAVY, HIGHWAY, ROAD, STREET & SEWER PROJECTS:		
Class A	21.92	5.80+a
Class B	20.33	5.80+a
Class C	18.42	5.80+a

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OP. CONT'D		
Class D	16.79	5.80+a
Class E	15.08	5.80+a
Class F	23.74	5.80+a
STEEL ERECTION:		
Class A	23.74	5.80+a
Class B	22.83	5.80+a
Class C	21.49	5.80+a
Class D	18.83	5.80+a
Class E	17.30	5.80+a
Class F	15.54	5.80+a
Class G	25.55	5.80+a
TANK ERECTION:		
Class A	24.41	5.80+a
Class B	23.57	5.80+a
Class C	25.55	5.80+a
Class D	21.48	5.80+a
Class E	16.27	5.80+a
OILOSTATIC MAINLINES & TRANSPORTATION PIPELINES:		
Class A	25.55	5.80+a
Class B	20.99	5.80+a
Class C	18.76	5.80+a
Class D	17.26	5.80+a
Class E	15.54	5.80+a
Class F	24.48	5.80+a
TRUCK DRIVERS:		
Zone 1:		
Group 1	7.27	1.43+ h+i
Group 2	7.50	1.43+ h+i
Group 3	7.55	1.43+ h+i
Group 4	7.65	1.43+ h+i
Group 5	7.76	1.43+ h+i
Zone 2:		
Group 1	14.97	2.00+ h+i+j
Group 2	15.20	2.00+ h+i+j
Group 3	15.25	2.00+ h+i+j
Group 4	15.35	2.00+ h+i+j
Group 5	15.45	2.00+ h+i+j
Zone 3:		
Group 1	14.97	2.855+ h+i
Group 2	15.20	2.855+ h+i
Group 3	15.25	2.855+ h+i
Group 4	15.35	2.855+ h+i
Group 5	15.45	2.855+ h+i

WELDERS - Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

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FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day.

a. Holidays: A through F, plus Washington's Birthday and Veterans Day.
b. Employer contributes $8.00 per day per employee to an Annuity Fund.
c. Holidays: A through F, plus Lincoln's Birthday, Washington's Birthday Columbus Day, Election Day, and Armistic Day.
d. Employees with 6 months of service but less than 5 years of service receive 2 weeks vacation; 5 or more years of service receive 3 weeks vacation.
e. Holiday: A half day's pay for Labor Day.
f. Holidays: A through F, plus Washington's Birthday, Veterans' Day and Presidential Election Day providing the employee works on 3 days for the same employer within a period of 10 working days, consisting of 5 working days before and 5 working days after the day upon which the holiday falls or is observed as such.
g. Holidays: A through F, plus Washington's Birthday, Presidential Election Day and Veterans' Day providing the employee works any of the 3 days in the 5 days preceeding the holiday and the first work day after the recognized holiday.
h. All Employees who are assigned to work on Sundays or the following holidays: New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, General Election Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any new holiday proclaimed by the Federal Government (not days of mourning), shall be paid two and one half times the rates listed for all hours worked which includes the holiday pay.
i. Employees working or receiving pay for 80 days within a year receive one week's vacation (48 hours); 125 days receive two weeks vacation (96 hours); 145 days receive 15 days (120 hours); 15 years seniority and 145 days receive 4 weeks vacation (160 hours)
j. Employer contribution of $170.00 per month per employee to Health and Welfare Funds.
k. Paid Holiday: Election Day.

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AREA, GROUP, and ZONE DESCRIPTIONS

AIR CONDITION and REFRIGERATION MECHANIC:
Group 1: Installation of refrigeration equipment for any type of building where the combined compressor tonage does not exceed 5 tons; Installation of water-cooled air conditioning that does not exceed 10 tons (includes the piping of component system and the erection of the water tower); Installation of air-cooled air conditioning that does not exceed 15 tons.

ASBESTOS WORKERS:
Zone 1: Hunterdon (Alexander, Bethlehem, Bloomsburry, Clinton, Delaware, East Armwell, Flemington, Franklin, Frenchtown, Glen Garden, Hampton, High Bridge, Holland, Kingwood, Lambertville, Labanon, Milford, Raritan, Readington, Stockton, Union, and West Armwell Townships); Middlesex (Cranbury, East Brunswick, Helmatta, Jamesburg, Milltown, Monroe, North Brunswick, Plainsboro, South Brunswick and Spotswood Townships); Somerset (Branchburg, Franklin, Hillsborough, Manville, Millstone, Montgomery and Rocky Hill Townships); and Warren (Franklin, Greenwich, Hamony, Lopatcong, Oxford, Phillipsburg, Pohotcong, Washington and White Townships) Counties.
Zone 2: Bergen, Essex, Hudson, Hunterdon (Remainder of County), Middlesex (Remainder of County), Morris, Passaic, Somerset (Remainder of County), Sussex, Union and Warren (Remainder of County) Counties.

BRICKLAYERS; STONEMASONS, CEMENT MASONS; and PLASTERERS:
Zone 1: Bergen (North Arlington, Lyndhurst - east of Ridge Road and north to Rutherford Avenue and Barry's Creek, west to the Hackensack River); Essex (except Millburn Township); Hudson that portion west of the Jackensack River.
Zone 2: Bergen (Wallington, part of East Patterson, Garfield, Lodi, North Arlington and part of Lyndhurst); Morris (Pompton Plains, Pequannock, Lincoln Park, Kinnelon, Butler and Riverdale); Passaic and Sussex (that portion north of a line along Route #521 from Dingmans Ferry to Tuttles Corner, along Route #206 to Lafayette, then along North Church Road to Route #23, then along Route #23 to Passaic County Line) Counties.
Zone 3: Bergen (Remainder of County).
Zone 4: Hudson (Remainder of County).
Zone 5: Middlesex (except Dunellen, South Plainfield, New Market, Middlesex and Oak Tree) and Somerset (Franklin Park only) Counties.
Zone 6: Essex (Millburn Township), Morris (Gillette and Sterling, Shore Hills Townships), Union (New Providence, Springfield and Union Townships).
Zone 7: Hunterdon (Califon, Oldwick, Annadalle, Lebanon, White House Station, Readington, Stantion and Three Bridges Townships) and Somerset (Remainder of County) Counties.
Zone 8: Hunterdon (Remainder of County), Morris (Stephensburg, Pleasant Grove, Middle Valley and Parker Townships), Sussex (Branchville, Flatbrookville, Swartswood, Halsey, Newton and Stillwater Townships) and Warren Counties.
Zone 9: Morris (Remainder of County) and Sussex (Remainder of County) Counties.

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AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

BRICKLAYERS, STONEMASONS, CEMENT MASONS, and PLASTERERS: (Cont'd)
Zone 10: (Parts of Somerset, Morris and Hunterdon Counties. At Old Mill Inn Route #202 follow Passaic River to the Dean River from thence to Sunset Lake at Pluckemin; follow Chambers Brook to Oldwick to Fairmount, Hunterdon County across the County Line to Long Valley in Morris County; thence across from Long Valley into Chester, 3 miles north of Chester to Muskrat, then back across into Ralston, Morris County, then follow Morris-Somerset County Line into Mendham Township; then we go across Morris County Line into Somerset, back to the Old Mill Inn in Bernardsville, Route #202, Somerset County).
Zone 11: Union (Plainfield, Scotch Plains).
Zone 12: Union (Remainder of County).
Zone 13: Morris (Morristown Twp.).

CARPENTERS, INSULATORS and MILLWRIGHTS:
Zone 1: Bergen County (east of the Hackensack River including but not limited to Cliffside, Fort Lee, Grant Wood, Palisades Park, Ridgefield, Edgewater, Fairview, Leonia and Coytesville) and that part of Hudson County east of the Hackensack River.
Zone 2: Hunterdon (starts at the south of the town of Frenchtown on the Delaware River, thence following the line in the center of the road to Baptistown to Croton to the City of Flemington to Flemington Junction to Three Bridges, thence following the Somerset County Line northward, all territory south of this line including the City of Flemington) and Somerset (all territory south of a line beginning at Armwell on the Coutny Line to Zion to Fairview to Dutchtown to Plainsville to Bell Mead to Griggstown to the Delaware and Raritan Canal) Counties.
Zone 3: All of Union, Middlesex, Morris and Sussex; also the Township of Millburn; County of Essex, the following municipalities in Somerset County (Greenbrook, North Plainfield, Watchung and all of the following communities east of King George's Road; Warren County (All Townships) Counties.
Zone 4: Essex County and that part of Hudson County west of the Hackensack River.
Zone 5: Bergen (Remainder of County).
Zone 6: Passaic County and the City of Garfield and Borough of Lodi and Wallington in Bergen County.

DIVERS and DIVER TENDERS:
Zone 1: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties.

ELECTRICIANS and CABLE SPLICERS:
Zone 1: Essex County.
Zone 2: Union County (that portion east and north of a line running in a southerly direction from Morris Avenue along Baltusrol Way, across Baltusrol County Club to Baltusrol Road, along Baltusrol Road and Summit Lane in Mountainside to and along New Providence Road, to and along the Mountainside Line, to and along Washington Valley Road, to and along Diamond Hill Road, to and along Park Avenue in Scotch Plains, and continuning along Martine Avenue, to and northeast along the Raritan Road, to and easterly along the Westfield-Scotch Plains Line, to the Lehigh Valley Railroad and southwest on the railroad to the County Line).

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AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

ELECTRICIANS and CABLE SPLICERS: (Cont'd)
Zone 3: Union County (that portion south and west of a line running east from Somerset County on Mountain Avenue, in New Providence Borough, to the Diamond Hill Road, south on that road to and along Park Avenue, in Scotch Plains and continuing along Martine Avenue, to and Northeast along the Raritan Road, to and easterly along the Westfield-Scotch Plains Line to the Lehigh Valley Railroad and southwest on the railroad to Middlesex County Line).
Zone 4: Union (Remainder of County).
Zone 5: Bergen and Hudson Counties.
Zone 6: Passaic County.
Zone 7: Morris and Sussex Counties.
Zone 8: Hunterdon and Somerset Counties.
Zone 9: Middlesex County (that portion south and west of a line extending east from the Raritan River along the Philadelphia and Reading Railroad to Stelton Road, south on Stelton Road to Lincoln Highway, along Lincoln Highway to Vineyard Road to Old Post Road, along Old Post Road to Mill Road, along Mill Road to the Raritan River along the Raritan River to the South River, along the South River to the southern boundary to the Borough of South River, along this boundary to the Cranbury South River Turnpike, along this road and continuing on the Washington Road and Maplewood Avenue in Cranbury to Scott Avenue, along Scott Avenue to Main Street, on Main Street and the Turnpike to the Millstone River).
Zone 10: Middlesex County (that portion north and west of a line following the Philadelphia and Reading Railroad east from the Raritan River to Dismal Road, northeast on Dismal Road to Park Avenue, north on Park Avenue to the Lehigh Valley Railroad, and northeast along that railroad to the Union County Line).
Zone 11: Middlesex (Remainder of County).
Zone 12: Warren County (from Pahaquarry, Blairstown, Knowlton, Hope, Liberty, White, Oxford, Washington, Hamony, Franklin, Lopatcong, Greenwich, Pohatcong Townships and that portion of Mainsfield Township west of Line following the Point Mt.-Port Murray Road to Independence Township).
Zone 13: Warren (Remainder of County).

GLAZIERS:
Zone 1: Bergen and Passaic Counties
Zone 2: Middlesex, Somerset (Bernardsville, Basking Ridge and Watchung) and Union (Carteret, Port Reading, Fords, and Woodbridge) Counties.
Zone 3: Essex, Hudson, Morris, Somerset (Remainder of County), Sussex, Union (Remainder of County) and Warren Counties.

IRONWORKERS:
Zone 1: Warren County.
Zone 2: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex and Union Counties.

AREA, GROUP and ZONE DESCRIPTIONS (Cont'd)

MARBLE, TILE AND TERRAZZO WORKERS AND FINISHERS:
Zone 1: Within a 50 mile radius of Columbus Circle, New York City, New York.

PAINTERS:
Zone 1: Bergen, Passaic and Sussex Counties.
Zone 2: Middlesex (Edison Township south of Metchen, Highland Park, New Brunswick, North Brunswick, East Brunswick and South Brunswick Townships and Monroe Township) and Somerset (Franklin Township) Counties.
Zone 3: Essex, Hudson (west half of County), Hunterdon, Middlesex (Remainder of County), Morris, Somerset (Remainder of County), Union and Warren Counties:

Group 1: Painters on New Construction and Major Alterations
Group 2: Painters on Repaint Work.
Group 3: Spraying or Application of hazardous or dangerous materials on Repaint Work.
Group 4: Exterior Work exceeding 3 stories in height for painting of Open Structural Steel and Tanks under 3 stories in height except Flat Tanks on the ground and on interior work which requires painting higher than 20' above the ground or floor (this shall not be applicable to Machinery or Equipment located therein).
Group 5: Repaint Work as described in Group 4.
Group 6: On Bridges, Television and Radio Towers, Structural Steel and Tanks above 3 stories in height (30' or over), Smoke Stacks, Water Towers, Sandblasting, Steam Cleaning, Spraying or application of Hazardous materials.
Group 7: Paperhanging.

Zone 4: Hudson (Remainder of County):
Group 1: Interior industrial and commercial work and interior of apartment houses; Paperhangers.
Group 2: All extension ladder work 36 feet high and over on all scaffold work except one and two family homes and all boatswains chair work; Structural steel, Tanks, Bridges, Towers, Smokestacks, Radio towers, Television towers, Flag poles (steel or wood construction, Fire escapes from top to bottom, Cable work, Hazardous work.
Group 3: Sandblasting; Spraying.

AREA, GROUP and ZONE DESCRIPTIONS (Cont'd)

PAINTERS: (Cont'd)
Zone 4: (Cont'd)
Group 4: Repainting high rises and old warehouses with Scaffold or extension Ladders.
Group 5: Rehab. Work - all closets below street level, basements, sub-basements, Boiler Rooms and Stairways, may be sprayed.

PIPEFITTERS:
Zone 1: Bergen, Hudson, Morris (Remainder of County), Passaic, Sussex, and Warren (excluding area given in Zone 2 for the same County) Counties.
Zone 2: Essex, Hunterdon (Alexandria, Alexandria Township, Alexauken, Allens Corner, Allertown, Amsterdam, Annandale, Anthony, Baptistown, Bellewood, Bethlehem Townships; Bissell, Bloomsbury, Bunnvale, Buttonwood Corners, Centerville, Charlestown, Cherryville, Clinton, Cokebury, Coles Mills, Croton, Delaware Townships, Dilts Corner, East Amwell Township, Evittstown, Fairmount, Farmersville, Franklin Township, Frenchtown, Glen Gardner, Grandin, Hamden, Hampton, Higginsville, High Bridge, Hoffmans, Holland Township, Hughesville, Johnsons, Jutland, King, Kingwood Townsnip, Klinesville, Landsdowne, Lebanon, Lebanon Township, Little Brooke, Little Neck, Little York, Ludlow, McPherson, Milford, Mountainville, Mount Joy, Mount Pleasant, Mount Salem, Muirshead, New Germantown, New Hampton, Newport, Norton, Oak Grove, Oldwick, Palmyra, Palmyra Corners, Pattenburg, Perryville, Pittstown, Pleasent Run, Polktown, Potterstown, Quakertown, Raritan Township, Readington Townships) Warren County (Phillipsburg Township) Counties).
Zone 3: Hunterdon (excluding area given in Zone 2 for the same County), Mercer (excluding Hopewell and Hopewell Township), Middlesex (excluding Dunellen Borough, East Bound Brook, Middlesex, New Market, Oak Tree, Piscataway Township, and South Plainfield), and Somerset (excluding area given in Zone 2 for same County) County.

PLUMBERS:
Zone 1: Hudson County (Bayonne, Guttenberg, Hoboken, Jersey City, North Bergen, Secaucus, Union City, Weehawken, West New York, Bergen County, Passaic County, Sussex County, Warren County (northern half), and Morris County (from Mount Olive straight across Randolph, down to the Essex Border).

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AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

PLUMBERS: (Cont'd)
Zone 2: Essex, Hudson (East Newark, Harrison and Kearney only), Hunterdon (Alexandria, Alexandria Township, Alexauken, Allens Corner, Allertown, Amsterdam, Annandale, Anthony, Baptistown, Bellewood, Bethlehem Township, Bissell, Bloomsbury, Bunnvale, Buttonwood Corners, Centerville, Charlestown, Cherryville, Clinton, Clinton Townships, Cokebury, Coles Mills, Croton, Delaware Township, Dilts Corner, East Amwell Township, Everittstown, Fairmount, Farmersville, Franklin Townships, Frenchtown, Glen Gardner, Grandin, Hamden, Hampton, Higginsville, High Bridge, Hoffmans, Holland Township, Hughesville, Johnsons, Jutland, King, Kingwood Township, Klinesville, Landsdowne, Lebanon, Lebanon Township, Little Brook, Little Neck, Little York, Ludlow, McPherson, Milford, Mountainville, Mt. Joy, Mt. Pleasent, Mt. Salem, Muirshead, New Germantown, New Hampton, Newport, Norton, Oak Grove, Oldwick, Palmyra, Palmyra Corners, Pattenburg, Perryville, Pittstown, Pleasent Run, Polktown, Potterstown, Quakertown, Raritan Township, Readington, Readington Township, Reaville, Rileyville, Riverside, Rockafellows, Rowland Mills Sidney, Snydertown, Spring Mills, Stanton, Stanton Station, Sunnyside, Sutton, Tewksbury, Tewksbury Township, The Point, Three Bridges, Treasure Island, Tumble, Union, Union Township, Unionville, Van Syckle, Warren Paper Mills, Wertsville, West End, West Portal, Whitehouse, Whitehouse Station, Woodglen), Mercer (Hopewell and Hopewell Township only), Middlesex (Dunellen Borough, East Bound Brook, Middlesex, New Market, Oak Tree, Piscataway Township, and South Plainfield only), Morris (Bartley, Bershire Valley, Bertland Island, Brookside, Chatham, Chatham Township, Chester, Chester Township, Cooks Bridge, Crestmoore, Gillette, Harding Township, Ironia, Logansville, Long Valley, Malapardis, Mendham, Mendham Township, Middle Valley, Millington, Milltown, Milton, Mt. Freedom, Mt. Oliver Township, Mt. Paul, Myerstown, Naughright, New Vernon, Parker, Passaic Township, Pleasent Grove, Ralston, Schooleys, Mt. Stanley, Stephensburg, Stirling, and Washington Township), Somerset (Amwell, Basking Ridge, Bedminister, Bedminister Township, Bernards Township, Bernardsville, Blaziers Corner, Bound Brook, Bradley Gardens, Branchburg Township, Bridgewater Township, Burnt Mill, Centerville, Chimney Rock, Claver Hill, Dutchtown, Far Hills Borough, Finderne, Flagtown, Frank Fort, Franklin Park, Franklin Township, Gallia, Gladstone, Greater Cross Roads, Hamilton, Harmony, Harmony Colony, Higgins Mills, Hillsborough Township, Lamington, Lanes Crossing, Liberty Corners, Lyons, Madisonville, Manville, Manville Borough, Martinsville, Mettler, Millstone, Mine Brook, Montgomery, Montgomery Township, Mt. Bethel, Mt. Horeb, Neshanic, Neshanic Station, North Branch, North Branch Depot, North Plainfield, Peapack, Peapack-Gladstone, Plainville, Pluckemin, Pottersville, Raritan, Ravine Lake, Rock Mill, Round Top, Roycefield, Royce Valley, Seeley Mills, Smalleytown, Somerset, Somerville, Stone House, Sunset Lake, Union Village, Vliettown, Watchung, West Millington, Weston, White Bridge, Woodfern, Zarepath, and Zion), Union and Warren (Anderson, Asbury, Beattystown, Brainards, Brass Castle, Broadway, Buttzville, Carpentersville, Changewater, Cornish, Finesville, Foul Rift, Franklin Township, Greenwich Township, Harmony, Harmony Station, Harmony Township, Hazen, Hope Township, Hutchinson, Karrville, Kennedy, Lapatcong, Lopatcong Township, Lower Harmony, Mansfield Township, Montana, New Village, Oxford, Oxford Township, Pequest, Pleasent Valley, Port Colden, Port Murray, Riegelsville, Rockport, Rocksbury, Roxburgh, Springtown, Stewartsville, Still Valley, Vulcanite, Warren Glen, Washington, Washington Township and White Top) Warren (Phillipsburg Township) Counties.

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AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

PLUMBERS: (Cont'd)
Zone 3: Hunterdon (excluding area given in Zone 2 for the same County), Mercer (excluding Hopewell and Hopewell Township), Middlesex (excluding Dunellen Borough, East Bound Brook, Middlesex, New Market, Oak Tree, Piscataway Township, and South Plainfield) and Somerset (excluding area given in Zone 2 for the same County) Counties.

ROOFERS:
Zone 1: Bergen and Passaic Counties.
Zone 2: Hunterdon and Somerset (Rocky Hill, Harlingen, Belle Meade, Neshanic, Clover Hill, Montgomery, Zion, Skillman, Stoutsburg, Blawenburg, Centerville and Kingston) Counties.
Zone 3: Essex, Hudson (west of the Hackensack River), Morris, Somerset (Pottersville, Peapack, Gladstone, Bernardsville, Basking Ridge, Bedminister, Far Hills, Mine Brook, Lyons, Liberty Corner, Pluckamin, Mt. Bethel and Watchung), Sussex, Union (remainder of County) and Warren Counties.
Zone 4: Bergen, Passaic and Sussex Counties.
Zone 5: Middlesex, Somerset (Remainder of County) and Union (Scotch Plains, Planfield, Clark, and Rahway) Counties.
Zone 6: Hudson (Remainder of County).

SHEET METAL WORKERS:
Zone 1: Middlesex and Somerset Counties.
Zone 2: Essex and Passaic Counties.
Zone 3: Bergen and Hudson Counties.
Zone 4: Warren County.
Zone 5: Morris, Sussex, and Union Counties.
Zone 6: Hunterdon County.

SPRINKLER FITTERS:
Zone 1: Bergen, Essex, Hodson, Middlesex (New Brunswick, Milltown, Old Bridge, Browntown and North thereof), Morris, Passaic, Somerset (Bernardsville, Basking Ridge, Mine Brook, Far Hills, Lyons, Mt. Bethel, Watchung, North Plainfield, Martinville and Somerville) and Union Counties.
Zone 2: Hunterdon, Middlesex (Remainder of County), Somerset (Remainder of County), Sussex and Warren Counties.

LINE CONSTRUCTION:
Zone 1: Essex County.
Zone 2: Passaic County.
Zone 3: Bergen and Hudson Counties.
Zone 4: Union (that portion east and north of a line running in a southerly direction from Morris Avenue along Baltusrol Way, across Baltusrol County Club to Baltusrol Road, along Baltusrol Road and Summit Lane in Mountainside to and along New Providence Road to and along the Mountainside Line, to and along Washington Valley Road, to and along Diamond Hill Road, to and along Park Avenue in Scott Plains, and continuing along Martine Avenue, to and northeast along the Raritan Road, to and easterly along the Westfield-Scotch Plains Line, to the Lehigh Valley Railroad and southwest on the railroad to the County Line) County.

AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

LINE CONSTRUCTION: (Cont'd)

Zone 5: Union County (that portion south and west of a line running east from Somerset County on Mountain Avenue in New Providence Borough to the Diamond Hill Road south on that road to and along Park Avenue in Scotch Plains and continuing along Martine Avenue, to and northeast along the Raritan Road, to and easterly along the Westfield-Scotch Plains Line to the Lehigh Valley Railroad and Southwest on the railroad to the Middlesex County Line).

Zone 6: Remainder of Union County.

Zone 7: Morris and Sussex Counties.

Zone 8: Hunterdon (except Tewksbury Township and Califon Borough) and Somerset (that portion south of a line following Mountain Avenue, from the Union County Line west to Hillcrest Avenue in Union Village, north on Hillcrest Avenue to and west on the Passaic River, west on the Dead River, west on Allen Road, north on Somerville Road, west on Howell Road, southwest on Mt. Prospect Road, west on Martinsville-Pluckemin Road, west on Klines Mill Road, north on John Kane Road to Hunterdon County Line, and also that portion of Montgomery Township west and south of a line following U. S. Highway #206 north from Mercer County to the Harlingen Road, west along that road the Dutchtown - Zion Road to Hillsboro Township Line) Counties.

Zone 9: Hunterson (Remainder of County) and Somerset (Remainder of County).

Zone 10: Middlesex County (that portion south and west of a line extending east from the Raritan River along the Philadelphia and Reading Railroad to Stelton Road, south on Stelton Road to Lincoln Highway to Vinyard Road to Old Post Road, along Old Post Road to Mill Road, along Mill Road to the Raritan River, along the Raritan River to the South River, along the South River to the southern boundary of the Borough of South River, along this boundary to the Cranbury South River Turnpike, along this road and continuing on to the Washington Road and Maplewood Avenue in Cranbury to Scott Avenue, along Scott Avenue to Main Street, on Main Street and the Turnpike to the Millstone River).

Zone 11: Middlesex County (that portion north and west of a line following the Philadelphia and Reading Railroad east from the Raritan River to Dismal Road, northeast on Dismal Road to Park Avenue, north on Park Avenue, to the Lehigh Valley Railroad, and northeast along that Railroad to the Union County Line)

Zone 12: Remainder of Middlesex County.

Zone 13: Warren County (from Pahaquarry, Blairstown, Knowlton, Hope, Liberty, White, Oxford, Washington, Harmony, Franklin, Lopatcong, Greenwich, Pohatoong Townships and that portion of Mansfield Township west of line following the Point Mt. - Port Murray Road to Independence Township).

Zone 14: Remainder of Warren County.

ZONE and GROUP DESCRIPTIONS (Cont'd)

LABORERS
BUILDING CONSTRUCTION

Zone 1: Passaic County (Townships of Boroughs Passaic, Garfield, Lodi, Wallington, Delawanna, Allwood, Athenia and Clifton to Piaget Avenue; Paterson, and the Boroughs and Townships of Albion Place, Little Fall, Totowa Borough, West Paterson, Wayne, Hawthorne, Pompton, Haledon, Clifton to Piaget Avenue, West Milford, Ringwood, Bloomingdale, New Jersey and East Paterson to the Garfield boundary Line):

Group 1: Laborers; Air Tool Operators (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); and Plasterer Tenders.

Zone 2: Bergen County (Cliffside: Borough of Cliffside Park: Borough of Fort Lee, south of Central Boulevard; Borough of Palisades Park, south of Central Boulevard; Borough of Ridgefield; Borough of Edgewater, and Borough of Fairview; Hackensack: City of Hackensack; Hasbrouck Heights; Little Ferry; South Hackensack; Ridgefield Park; Bogota; Teaneck Township, west of Teaneck Road and South of Fort Lee Road; Maywood; Saddle Brook Township; Borough of Paramus, east of Sprout Brook; and the Borough of River Edge; New Milford; Teterboro; Bendix; and Rochell Park; Englewood: City of Englewood; Borough of Dumont; Borough of Bergenfield; Borough of Palisades Park, north of Central Boulevard to Edgewater; Fort Lee, to the Hudson River; Borough of Fort Lee, north of Central Boulevard; Township of Teaneck, east of Teaneck Road and north of Fort Lee Road; Borough of Leonia; Borough of Englewood Cliffs; Borough of Tenafly; Borough of Cresskill; Borough of Demarest; Borough of Closter; Borough of Oradell; Borough of Montvale; Borough of Woodcliff Lake; Borough of Park Ridge; Borough of Hillsdale; Township of Wahsington; Borough of Westwood; Borough of Emerson; Borough of Haworth; Borough of Alpine; Borough of Rockleigh; Borough of Norwood; Borough of Harrington Park; Borough of Old Tappan; Borough of Northvale; and Township of Rivervale; Lyndhurst: Rutherford; East Rutherford; Wood-Ridge; Carlton; Carlstadt; North Arlington and Moonachie; Ridgewood: Village of Ridgewood; Borough of Fair Lawn; Borough of Glen Rock; Borough of HoHoKus; Borough of Saddle River; Borough of Upper Saddle River; Borugh of Allendale; Borough of Ramsey; Borough of Waldwick; Borough of Midland Park; Borough of Oakland; Borough of Franklin Lakes; Township of Wykoof; Township of HoHoKus; and Borough of Paramus with the exception of portion of Paramus, east of Sprout Brook and Borough of Mahwah):

Group 1: Laborers; Air Tool Operator (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); Plasterer Tenders; Wrecking and Excavation.

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ZONE and GROUP DESCRIPTIONS (Cont'd)

LABORERS - BUILDING CONSTRUCTION (Cont'd)

Zone 3: Essex County (City of East Orange, Townships of South Orange and Maplewood):

Group 1: Laborers
Group 2: Mortar Mixers; Scaffold Men; Pneumatic Hammer Operators; Bell Men and Carpenter Tenders

Zone 4: Essex County (Orange and Montclair).
Zone 5: Essex (Millburn) and Union (Springfield and Union Townships) Counties.
Zone 6: Essex (Remainder of County) and Hudson (Kearny, East Newark and Harrison) Counties:

Group 1: Laborers; Air Tool Operators; Mason Tenders; Mortar Mixers and Pipelayers (concrete and clay).

Zone 7: Remainder of Hudson County.
Zone 8: Middlesex County (Perth Amboy, Carteret, Woodbridge and Metuchen Townships):

Group 1: Laborers
Group 2: Vibrator Handler; Power Hammer Handler; Tamper; Fork Lift Operator

Zone 9: Middlesex (Remainder of County) and Somerset (East Millstone and Franklin Townships) Counties:

Group 1: Laborers
Group 2: Vibrator Handler; Power Hammer; Tamper Handler; Fork Lift Operator

Zone 10: Morris (Boonton, Boonton Township, Montville, Lincoln Park Borough, Butler, Kinnelon Borough, Pin Brook, Towaco, Danville, Mountain Lakes, Pequannock, Pompton Plains and Riverdale Borough) County:

Group 1: Laborers, Wrecking, Demolition; Concrete Mixers without Hoppers; Drill Runners; Jackhammers; Mason Tenders; Mortar Mixers; Excavation and Foundations; Scaffold Builders; Carpenter Tenders and Grading for Concrete.

Zone 11: Morris (Jefferson, Rockaway, Mt. Arlington, Rockaway Borough, Wharton, Mine Hill, Dover, Netcong, Roxbury, Mt. Oliver and Randolph Townships) and Sussex Counties:

Group 1: Laborers; Air Tool Operators (Jackhammer, Vibrator); Mason Tenders; Mortar Mixers Plasterer Tenders; Pipelayers, Wreckers and Excavation.

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ZONE and GROUP DESCRIPTIONS (Cont'd)
LABORERS - BUILDING CONSTRUCTION (Cont'd)

Zone 12: Morris County (Morristown, Morris Township, Morris Plains, Mendham, Ralston, Chester, Brookside, Flanders, Ironia, Mt. Freedom, Mt. Tabor, Parsippany, Troy Hills, Pine Brook, Ced Knools, Whippany, Hanover Township and Long Valley):

Group 1: Laborer; Tenders; Scaffolds; Excavation, Bituminous Concrete and Aggregates; Pipelayers; Underpinning; Lagging; Bracing and Wrecking.

Zone 13: Remainder of Morris County.
Zone 14: Somerset County (Townships of Bernardsville, Peapack, Gladstone, Far Hills, Bernards, and Bedminster).
Zone 15: Somerset County (Townships of Bridgewater, Branchburg, Raritan, Bound Brook, Somerville, Manville, Hillsboro, Millstone, Montgomery and Rocky Hill).
Zone 16: Somerset (Remainder of County) and Union (Remainder of County):

Group 1: Laborers; Air Tool Operators; Mason Tenders; Plasterer Tenders and Mortar Mixers

Zone 17: Hunterdon and Warren Counties:

Group 1: Laborers; Hod Carriers; Power Tool Operators and Plasterer Tenders
Group 2: Forklift
Zone 18: Middlesex County (South River, Say Reville, South Amboy, Madison, East Brunswick, Spotwood, Jamesburg, Helmetta, Cranbury, and Monroe).

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Common Laborers; Landscape Laborers; Railroad Track Laborers; Pitmen and Dumpmen; Waterproofing; Rakers and Tampers on Cold Patch work and Wrapping and Coating all Pipe.

Group 2: Wagon Drill Operator Helpers; Drill Master Helpers; Powder Carriers and Magazine Tenders; Signalman.

Group 3: Sewer Pipe; Laser Men; Conduit and Duct Line Layers; Jackhammer; Chipping Hammers; Pavement Breakers; Power Buggies; Concrete Cutters, Asphalt Cutters; Sheet Hammer and Tree Cutter Operators; Sandblasting, Cutting, Burning, and such other Power Tools used to perform work usually done manually by Laborers.

Group 4: Wagon Drill Operator; Timberman; Drill Master.

Group 5: Finisher; Form Setter; Rammer; Paver; Gunite Nozzle Man and Stone Cutter.

Group 6: Blaster.

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LABORERS (Cont'd)
FREE AIR TUNNEL JOBS

Group 1: Blasters.

Group 2: Skilled Men (including Miners; Drill Runners; Iron Men; Maintenance Men; Conveyor Men; Safety Miners; Riggers; Block Layers; Cement Finishers; Rodmen; Caulkers; Powder Carriers; all other skilled men).

Group 3: Semi-skilled Men (including Miner's Helpers; Chuck Tenders; Trackmen; Nippers; Brakemen; Derail Men; Cable Men; Hose Men; Grout Men; Gravel Men; Form Men; Bell or Signal Men (top or bottom); Form Workers and Movers; Concrete Workers; Shaft Men; Tunnel Laborers; Caulkers' Helpers, all other Semi-skilled Men).

Group 4: All other (including Power Watchmen; Changehouse Attendents; Top Laborers).

ZONE DESCRIPTIONS

LABORERS - Asphalt Construction:
Zone 1: Bergen, Essex, Hudson, Hunterdon, Middlesex (northern half of County), Morris, Passaic, Somerset, Sussex, Union and Warren Counties.
Zone 2: Remainder of Middlesex County.

POWER EQUIPMENT OPERATORS

Class A: Autograde - Combination Subgrader; Base Metal Spreader and Base Trimmer (CMI and similar types); Autograde Placer, Trimmer, Spreader Combination (CMI and similar types); Autograde Slipform Paver (CMI and similar types); Backhoe; Central Power Plants (all types); Concrete Paving Machines; Cranes (all types, including Overhead and Straddle Travelling type); Cranes; Gantry; Derricks (Land or Floating); Drillmaster, Quarrymaster (down the Hole Drill) Rotary Drill; Self Propelled Hydraulic Drill; Self-powered Drill; Dragline; Elevator Graders; Front End Loaders (5 yds. and over); Gradalls; Grader; Raygo; Locomotive (large); Mucking Machines; Pavement and Concrete Breaker, i.e.; Superhammer and Hoe Ram; Pile Driver; Length of Boom including Length of Leads, shall determine premium rate applicable; Roadway Surface Grinder; Scooper (Loader and Shovel); Shovels; Tree Chopper with Boom; Trench Machines.

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POWER EQUIPMENT OPERATORS (Cont'd)

Class B: "A" Frame; Backhoe (combination); Boom Attachment on Loaders (rate based on size of Bucket) not applicable to Pipehook, Boring and Drilling Machines; Brush Chopper; Shredder and Tree Shredder; Tree shearer; Cableways; Carryalls; Concrete Pump; Concrete Pumping System; Pumpcrete and similar types; Conveyors, 125 ft. and over; Drill Doctor including Dust Collector, Maintenance); Front End Loaders (2 yds. but less than 5 yds.); Graders (Finisher); Groove Cutting Machine (ride on type); Header Planer; Hoists: (all types hoists, shall also include Steam, Gas, Diesel, Electric, Air Hydraulic, Single and Double Drum, Concrete Brick Shaft Caisson, Snorkel Roof, and/or any other similar type Hoisting Machines, portable or stationary, except Chicago Boom type); Hoists (Chicago Boom type); Hydraulic Cranes, 10 tons and under; Hydro-axle; Jacks Screw Air Hydraulic power operated unit or Console type (not Hand Jack or Pile Load Test type); Log Skidder; Pans; Pavers (all Concrete; Pumpcrete Machines; Squeezecrete and Concrete Pumping (regardless of size); Scrapers; Side Booms; Straddle Carrier; Boss and similar types; Winch Truck (hoisting).

Class C: Asphalt Curbing Machine; Asphalt Plant Engineer; Asphalt Spreader; Autograde Tube Finisher and Texturing Machine (CMI and similar types); Autograde Curercrete Machine (CMI and similar types); Autograde Curb Trimmer and Sidewalk; Shoulder; Slipform (CMI and similar types); Bar Bending Machines (power); Batchers; Batching Plant and Crusher on Site; Belt Conveyor Systems; Boom type Skimmer Machines, Bridge Deck Finisher; Bulldozers (all); Car Dumpers (railroad); Compressor and Blower type units (used independently or mounted on Dual Purposes Trucks, on job site or in conjuction with job site, in loading and unloading of Concrete, Cement, Fly Ash, Instancrete, or similar type materials); Compressor (2 or 3)(Battery); Concrete Finishing Machines; Concrete Saws and Cutters (ride on type); Concrete Spreaders; Hetzel; Rexomatic and similar types; Concrete Vibrators; Conveyors; under 125 ft.; Crushing Machines; Ditching Machine; Small (Ditchwitch or similar type); Dope Pots (Mechanical with or without Pump); Dumpsters; Elevator; Fireman; Fork Lifts (Boonomobile; Lull and similar types of equipment); Front End Loaders (1 yd. and over but less than 2 yds.); Generators (2 or 3) in Battery; Giraffe Grinders; Graders and Motor Patrols; Gunnite Machines (excluding Nozzle); Hammer Vibratory (in conjunction with Generator); Hoist (Roof, Tugger, Aerial Platform Hoist and House Cars); Hoppers; Hopper Doors (power operated); Ladders (motorized); Laddervator; Locomotive; Dinky type; Maintenance; Utility Man; Mechanics; Mixers (except Paving Mixers); Motor Patrols and Graders; Pavement Breakers, small; Self-propelled Ride on type (also maintaining Compressor or Hydraulic unit); Pavement Breaker; Truck mounted; Pipe Bending Machine (power); Pitch Pump; Plaster Pump (regardless of size); Post Hole Digger (Post Pounder and Auger); Rod Bending Machines (power); Roller; Black Top; Scales; Power; Seaman Pulverizing Mixer; Shoulder Widener; Silos; Skimmer Machines (boom type); Steel Cutting Machine; Services and Maintaning; Tractors; Tug Captain; Vibrating Plants (used in conjunction with unloading); Welder and Repair Mechanics.

POWER EQUIPMENT OPERATORS (Cont'd)

Class D: Brooms and Sweepers, Chippers, Compressor (single), Concrete Spreaders (small type), Conveyor Loaders (not including Elevator Graders), Engines, Large Diesel (1620 H.P.) and Staging Pump, Farm Tractors; Fertilizing Equipment (operation and maintenance) Fine Grade Machine (small type); Form Line Graders (small type); Front Loader (under 1 yd.); Generator (single); Grease, Gas, Fuel and Oil Supply Trucks; Heaters (Nelson or other type including Propane, Natural Gas or Flow-type units); Lights; Portable Generating Light Plants; Mixers; Concrete small; Mulching Equipment (operation and maintenance) Pumps (4 inch suction and over including Sumbersible Pumps); Pumps (2 or less than 4" suction and over including submersible pumps); Pumps (Diesel engine and Hydraulic) immaterial of power Road Finishing Machines (small type); Rollers; Grade; Fill or Stone Base; Seeding Equipment (operation and maintenance of); Sprinkler and Water Pump Trucks Steam Jennies and Boilers, Stone Spreader; Tamping Machines Vibrating Ride-on; Temporary Heating Plant (Nelson or other type, including Propane, Natrual Gas or Flow type units); Water and Sprinkler Trucks; Welding Machines (gas, diesel, and/or electric Converters of any type, single; two or three in a Battery); Welding System, Multiple (Rectifier Transformer type); Wellpoint Systems.

Class E: Oiler.

Class F: Helicopter Pilot.

STEEL ERECTION

Class A: Cranes (all cranes, land or floating with booms including jib, 140 ft. and over, above ground); Derricks (all Derricks, land or floating with booms including jib, 140 ft. and over, above ground)

Class B: Cranes (all Cranes, land or floating with booms including jib, less than 140 ft. above ground); Derricks (all Derricks, land or floating with booms including jib, less than 140 ft. above ground).

Class C: "A" Frame; Cherry Pickers 10 tons and under; Hoists: all type Hoists shall also include Steam, Gas, Diesel, Electric, Air Hydraulic, single and double drum, Concrete, Brick Shaft Caisson, or any other similar type Hoisting Machines, Portable or stationary, except Chicago Boom type, Jacks - Screw Air Hydraulic power operated unit or console type (not Hand Jack or Pile Load test type) and Side Booms.

POWER EQUIPMENT OPERATORS (Cont'd)

Class D: Aerial Platform used as Hoist, Compressors, 2 or 3 in Battery, Elevators or House Cars; Conveyors and Tugger Hoists; Fireman; Forklift; Generators; 2 or 3; Maintenance, Utility Man; Rod Bending Machine (power); Welding Machines (gas or electric, 2 or 3 in Battery, including Diesels); Captain, Power Boats; Tug Master, power boats

Class E: Compressor, single; Welding Machines, single gas, electric Converters of any type diesel; Welding System Multiple (Rectifier Transformer type) and Generator, single.

Class F: Straddle Carrier.

Class G: Helicopter Pilot.

TANK ERECTION

Class A: Operating Engineers on all Cranes, Derricks, etc. with Booms including jib, 140 ft. or more above the ground.

Class B: Operating Engineers on all equipment including Cranes, Derricks, etc. with Booms including jib, less than 140 ft. above the ground

Class C: Helicopter Pilot.

Class D: Air Compressors; Welding Machines and Generators (Gas, Diesel or Electric driven equipment and sources of power from a permanent plant, i.e.; Steam, Compressed air; Hydraulic or other power, for the operating of any machine or automatic tools used in the erection, alteration, repair and dismantleing of tanks and any and all "dual purpose" Trucks used on the construction job site.

Class E: Oiler.

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Oilostatic Mainlines and Transportation Pipe Lines

Class A: Backhoe; Cranes (all types); Draglines; Front-end Loaders (5 yds. and over); Gradalls; Scooper (Loader and Shovel); Koehring and Trench Machines.

Class B: "A" Frame; Backhoe (combination Hoe Loader); Boring and Drilling Machines; Ditching Machine, small; Ditchwitch or similar type; Fork Lifts; Front End Loaders (2 yds. and over but less than 5 yds.); Graders, finish (fine); Hydraulic Cranes, 10 tons and under (over 10 tons - Crane rate applies); Side Booms; and Winch Trucks (hoisting).

Class C: Backfiller; Brooms and Sweepers; Bulldozers; Compressors (2 or 3 in battery); Front-end Loaders (under 2 yds.); Generators; Giraffe Grinders; Graders and Motor Patrols; Mechanic; Pipe Bending Machine (power); Tractors; Water and Sprinkler Trucks, Welder and Repair Mechanic

Class D: Compressor (single); Dope Pots (Mechanical with or without pump); Dust Collectors; Farm Tractors; Pumps (4 in. suction and over); Pumps (2 or less than 4 in. suction); Pumps; Diesel Engine and Hydraulic (Immaterial or power); Welding Machines; Gas or Electric Converters of any type, single; Welding Machines, gas or electric converters of any type, 2 or 3 in Battery multiple Welders; Wellpoint Systems (including installation and maintenance).

Class E: Oiler, Grease, gas, fuel and Supply Trucks and Tire Repair and Maintenance.

Class F: Helicopter Pilot.

TRUCK DRIVERS ZONES DESCRIPTIONS

Zone 1: Bergen, Hudson, Passaic Counties.

Zone 2: Essex, Morris, Sussex, and Union (Remainder of County) Counties.

Zone 3: Hunterdon, Middlesex, Somerset, Union (up to Wood Avenue South of Cranford), and Warren Counties.

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TRUCK DRIVERS

Group 1: Mechanic Helper.

Group 2: Drivers on the following type vehicles: Straight Dumps, Flats, Floats, Pickups, Container Haulers, Fuel, Water Sprinkler, road Oil, Stringer, Bead, Hot Pass, Bus Dumpcrete, Transit Mixers, Agitator Mixer, Half Truck, Winch Truck, Side-O-Matic, Dymamite, Powder, X-ray, Welding, Skid, Jeep, Station Wagon, Stringer, A-frame, All Dual Purpose Trucks, Trucks with mechanical tailgates, Asphalt Distributor, Batch Trucks, Seeding, Mulching, Fertilizer, Air Compressor Trucks (intransit), Parts Chaser, Escort, Scissor, Hi-lift, Telescope, Concrete Breaker, Gin Pole, Stone, Sand, Asphalt Distributor and Spreader, Nipper, Fuel Trucks (drivers on Fuel Trucks including handling of hose and nozzle-entire unit), Team Drivers, Vacuum or Vac-all Trucks (entire unit), Skid Truck (debris container - entire unit), Concrete Mobile Trucks (entire unit), Expediter (parts chaser), Beltcrete Trucks, Pumpcrete Trucks, Line Truck, Reel Truck, Wreckers, Utility Trucks, Tack Trucks, Warehousemen, Warehouse Parts-men, Yardmen, Lift Truck in Warehouse, Helper when required on Lift Truck in Warehouse, Warehouse Clerk, Parts Man, Material Checker, Receivers, Shippers, Binning Men (materials), Cardex Man, Helper when required on Broyhill Coal Tar Epoxy Truck and Asphalt and Bituminous Distributor Truck, Drivers on the following type vehicles: Broyhill Coal Tar Epoxy Trucks, Little Ford Bituminous Distributor, Slurry Seal Truck or vehicle, Thiokol Track Master Pickup (Swamp Cat Pickup); Bucket Loader Dump Truck and any rubbertired Tractor used in pulling and towing Farm Wagons and Trailers of any discription, similar type vehicles, Off-site and On-site Repair Shop.

Group 3: Drivers on straight 3-axle materials: Trucks and Floats.

Group 4: Drivers on all Euclid type vehicles: Euclids, International Harvesters, Wabcos, Caterpillar, Koehring, Tractors and Wagons, Dumpsters, Straight, Bottom, Rear and Side Dumps, Carry-alls and Scarpers (not self loading, loading over the top); Water Sprinkler Trailers; Water Pulls and similar types of vehicles; Drivers on Tractors and Trailer type vehicles: Flat, Floats, I-Beams, Low Beds, Water Sprinkler, Bituminous Transit Mix, Road Oil, Fuel, Bottom Dump Hopper, Rear Dump, Office, Shanty, Epoxy, Asphalt, Agitator Mixer, Mulching, Stringer, Seeding, Fertilizing Pole, Spread, Bituminous Distributor, Water Pulls (entire unit)(Tractor Trailer), Reel Trailer, and similar types of vehicles

Group 5: Winch Trailers Drivers.

federal register

Friday
August 2, 1985

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-2 and 85-AWA-3]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at 22 locations. Each location is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would reduce the risk of midair collision and promote the efficient control of air traffic in terminal areas. The proposed locations are set forth under "Docket Number and Comment Closing Date for Proposed ARSA Locations" below.

DATES: Comments must be received on or before November 1, 1985, for Airspace Docket No. 85-AWA-2, and on or before December 1, 1985, for Airspace Docket No. 85-AWA-3.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. (specific number), 800 Independence Avenue, SW., Washington, D.C. 20591.

Official dockets may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Informal dockets may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul C. Smith, 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) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves 22 locations organized into two groups. Each group is assigned a separate docket number and comment period. The locations included in each docket are listed alphabetically under "Docket Number and Comment Closing Date For Proposed Area Locations" below. The closing dates of the comment periods have been spaced at intervals of 30 days. This phasing of the comment periods limits the number of locations subject to a comment closing data at any given time and thereby provides a greater opportunity for public comment, especially for those commenters with an interest in more than one proposed location. 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 for supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the specific airspace docket reference and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. (specific number.)" The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing dates for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the appropriate docket.

Availability of NPRM's

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

Docket Number and Comment Closing Date for Proposed ARSA Locations

Airspace Docket No. 85-AWA-2—Comments for this docket must be received on or before November 1, 1985.

Burbank-Glendale-Pasadena Airport, CA
El Toro Marine Corps Air Station, Santa Ana, CA
Greensboro-High Point-Winston-Salem Regional Airport, NC
James M. Cox Dayton International Airport, OH
Lubbock International Airport, TX
March Air Force Base, CA
Norton Air Force Base, CA
Ontario International Airport, CA
Portland International Airport, OR
Tinker Air Force Base, OK
Will Rogers World Airport, Oklahoma City, OK

Airspace Docket No. 85-AWA-3—Comments for this docket must be received on or before December 1, 1985.

Daytona Beach Regional Airport, FL
Des Moines Municipal Airport, IA
El Paso International Airport, TX
Eppley Airfield, Omaha, NE
Fort Lauderdale-Hollywood International Airport, FL
Jacksonville International Airport, FL
Norfolk International Airport, VA
Offutt Air Force Base, NE
Orlando International Airport, FL
Palm Beach International Airport, FL
Richard Evelyn Byrd International Airport, Richmond, VA

Meeting Procedures

In addition to seeking written comments on these proposals, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposals. The schedule of times and places of the hearings is listed in Appendix A. In some instances, meetings on adjacent ARSA locations are combined in one proceeding for the convenience of the public. Also, an effort has been made not to schedule meetings at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed in Appendix A. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for futher distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airort, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Related Rulemaking

This notice proposes ARSA designations at 22 of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Fourteen candidates were previously proposed in Airspace Docket No. 85–AWA–1 (50 FR 27528). Other candidate locations will be proposed in future notices published in the **Federal Register.**

The Current Situation at the Proposed ARSA Location

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organzations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR Section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport within the airport traffic area of the primary airport are excluded from the two-way radio communications requirement of Section 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposals

The FAA is considering amendments to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at 22 locations. Each location is a public or military airport at which a nonregulatory TRSA is currently in effect. The proposed locations are set forth under "Docket Number and Comment Closing Date for Proposed Area Locations," above, and depicted on charts in Appendix B to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the

deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501 and Part 91, §§ 91.1 and 91.88.

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

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed ARSA implementation program which is included in the regulatory docket. The methodology and major findings of that evaluation are presented below.

a. *Costs.* Costs which potentially may result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

Each of these cost factors is discussed further below:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

For the sites proposed in this notice the FAA does not expect to incur any additional air traffic controller staffing costs, controller training costs, or facility equipment costs. FAA believes that the additional traffic which will participate in radar services at ARSA's can be accommodated at current authorized staffing levels. Participation in TRSA's is already quite high, and the greater flexibility afforded controllers through the reduced separation standards will enable them to handle the additional traffic without requiring additional personnel beyond present authorizations. FAA expects to train its controller force in ARSA procedures during regularly scheduled briefing sessions. Airports where TRSA's are currently in operation already have automated terminal radar systems installed. Therefore, FAA does not expect to incur any additional training or equipment procurement costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner which will make more efficient use of existing resources, and consequently does not expect to incur any appreciable implementation costs.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

Chart revisions of the type required to depict an ARSA are made routinely during charting cycles, and are considered an ordinary cost of doing business. Therefore, the FAA does not expect to incur any additional charting costs as a result of the ARSA program. Further, pilots will obtain charts depicting ARSA's as they are published during these charting cycles. Because pilots are required to use current charts, they also will not incur any additional costs.

Much of the need to provide public notification and pilot education about ARSA procedures will be met as a part of this rulemaking proceeding during the informal public meetings which will be held for each proposed ARSA location. However, once the decision has been made to establish an ARSA through a final rule issued in this proceeding, the FAA will distribute a Letter to Airmen to all pilots residing in the vicinity of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular explaining ARSA's. The total one-time cost of distributing Letters to Airmen and the Advisory Circular is estimated to be approximately $50,000 for the entire ARSA program. The prorated one-time cost for those airports being considered in this rulemaking is approximately $8,000.

(3) Additional operating costs for circumnavigating or overflying an ARSA.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services will choose to avoid the mandatory participation airspace of an ARSA rather than participate. Delay costs will be incurred by these pilots equal to the additional aircraft variable operating cost and the value of lost crew and passenger time resulting from the deviation. Many pilots will elect to overfly the ARSA, and although this will not result in any appreciable delay, an additional fuel burn will result from the need to temporarily climb above the 4,000 feet AGL ceiling of the ARSA (which will be offset somewhat by the descent).

The unit delay costs used throughout this regulatory evaluation to develop total annual costs are presented in Table A. For those aircraft expected to overfly the ARSA rather than deviate around it, FAA estimates that a single-engine piston airplane will burn about an additional half gallon of fuel, a multi-engine piston airplane will burn about one additional gallon, and that the price of aviation gasoline is approximately $2.00 per gallon.

TABLE 1.—AVERAGE AIRCRAFT VARIABLE OPERATING COSTS AND VALUE OF PASSENGER TIME USED TO ESTIMATE ANNUAL DELAY COSTS[1]

(1984 dollars)

Aircraft type (abbreviation)	Aircraft hourly variable operating cost[2]	Average number of passengers (pax)/total hourly value of time[3]	Total hourly delay costs
Single-engine piston (SEP)	$39.22	2 pax/$44.42	$83.64
Multi-engine piston (MEP)	118.07	3 pax/$66.63	184.70
Multi-engine turboprop (METP)	354.32	3 pax/$66.63	420.95
Executive Jet (EXJ)	1,036.64	4 pax/$88.84	1,125.48
Air Carrier (AC)	2,588.77	90 pax/$1998.90	4,587.67
Helicopter (HELI)	138.27	3 pax/$66.63	204.90
Military Jet (MILJ)	1,853.67		1,853.67
Military Helicopter (MILH)	195.14		195.14

TABLE 1.—AVERAGE AIRCRAFT VARIABLE OPERATING COSTS AND VALUE OF PASSENGER TIME USED TO ESTIMATE ANNUAL DELAY COSTS[1]—Continued

[1984 dollars]

Aircraft type (abbreviation)	Aircraft hourly variable operating cost[2]	Average number of passengers (pax)/total hourly value of time[3]	Total hourly delay costs
Military Transport (MILTRP)[4].	1,994.79	.....	1,994.79

[1] One minute average delay per day = 6.083 hours delay per year. Delay time estimates for aircraft which alter flight paths to avoid the ARSA are based upon average cruising speeds of 120 KTS for single-engine piston, 190 KTS for multi-engine piston, 225 KTS for executive jets, and 110 KTS for helicopters.

[2] Aircraft variable operating costs include crew salaries for all aircraft except single and multi-engine piston.

[3] Based upon $22.21 per hour average value of passenger time.

[4] Variable operating cost of air carrier 4-engine turboprop transport used as proxy for military transport.

Source: *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*, FAA Office of Aviation Policy and Plans, September 1981 (Report #FAA-APO-81-3 and revision #APO-84-3). Values have been adjusted for inflation and are expressed in 1984 dollars.

The Office of Aviation Policy and Plans (APO) requested ATC personnel at each of the proposed ARSA sites to estimate, based upon their familiarity with local traffic patterns, the number of daily flights which might circumnavigate or overfly the ARSA. Air Traffic Operations Service personnel also provided input on these estimates. The estimated number of daily flights affected, extent of deviation, and type of aircraft, are presented for each site in Tables 2A and 2B, which follow at the end of this section and summarize the various potential impacts of establishing an ARSA for each site. FAA estimates that the total annual circumnavigation and overflight costs for the candidate ARSA sites proposed in this notice will be approximately $420 thousand.

(4) Delay costs resulting from operations within an ARSA rather than a TRSA.

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA because of the additional traffic which the radar facilities will be handling. However, FAA believes that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and resources to take fullest advantage of the efficiencies which an ARSA will permit. Followup studies of the Austin and Columbus lead sites, completed by the FAA Office of Aviation Policy and Plans (APO) and by Engineering & Economics Research Inc. (EER), both indicated that delay was not a significant problem (the clearance delivery delay attributable to the ARSA at Austin was later alleviated through procedural changes and a redistribution of personnel).[1] Nevertheless, the FAA has attempted to estimate delay costs which might temporarily result from establishing ARSA's at the airports being considered in this proposal. These delay estimates should be regarded as the worst case situation which might follow the initial establishment of an ARSA. ATC personnel at each of the proposed sites, as well as Air Traffic Operations Service personnel, provided estimates of three categories of delay, *in comparison to the existing TRSA*, which might result from the ARSA: clearance delivery and/or departure delay for aircraft departures, sequencing delay during peak periods for arriving aircraft, and delay in establishing radar contact before entering the ARSA which might result from frequency congestion, controller overload, or greater participation of nontransponder equipped aircraft.

The estimated number of daily flights affected, duration of delay, and type of aircraft, are presented for each site in Tables 2A and 2B. FAA estimates that the total annual delay costs for the candidate ARSA sites proposed in this notice will be approximately $960 thousand.

(5) The need for some operators to purchase communications avionics. Because of the requirement that radio communications be maintained in the mandatory participation airspace of the ARSA, some operators who previously could operate without radios from satellite airports located within that portion of the proposed ARSA which will extend down to the surface will find it necessary to install two-way radios. FAA expects that the costs resulting from these aircraft will be minimal because in most instances the proposed ARSA provides airspace exclusions and cutouts for satellite airports within 5 nautical miles of the ARSA center. However, in a few instances, operators of nonradio equipped (NORDO) aircraft will need to install radios. FAA estimates that the average total cost of equipping a NORDO aircraft with an inexpensive 720 channel transceiver, including installation, is approximately $2,300. The annual expense to an aircraft operator who financed the cost over a four-year period at a 15 percent interest rate would be $751. NORDO aircraft are shown in the "Miscellaneous" column of Tables 2A and 2B for those proposed sites where ATC personnel have identified locally based aircraft which might be affected. FAA estimates that the total annual radio installation costs for affected aircraft at the candidate ARSA sites will be approximately $4,500.

(6) Miscellaneous costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. The exclusions in most cases will alleviate adverse impacts on local-fixed based operators and airport operators, but ATC personnel at the proposed ARSA sites have attempted to identify where such potential problems may exist. For example, at some locations replacing a TRSA with an ARSA may necessitate relocating a student practice area further away from the flight school airport, and additional operating costs will be incurred traveling the greater distance to and from the practice area. Other miscellaneous operations which might be affected include glider and ultralight operations.

These impacts would be indicated in the "Miscellaneous" column of Tables 2A and 2B for sites where they have been identified. However, no such impacts are anticipated at any of the candidate ARSA sites proposed in this notice. Respondents are requested to comment upon any special local operations which might be affected by an ARSA either during the public meetings or through written comments submitted to the docket.

[1] *Analysis of the Impact of the Airport Radar Service Area (ARSA)*, FAA Office of Aviation Policy and Plans, November 1984 (Report #FAA-APO-85-1); and *National Airspace Review—Airport Radar Service Area Operational Confirmation Report*, Engineering & Economics Research, Inc. (EER), Report No. DOT/FAA/AT-84/2, October 1984.

TABLE 2A.—ESTIMATED AVERAGE DAILY FLIGHT DEVIATIONS, OVERFLIGHTS, DELAY AND MISCELLANEOUS IMPACTS FOR PROPOSED ARSA SITES

[Docket 85-AWA-2]

Site name	Daily flight deviations (NM) or overflights (OV)	Daily clearance delivery and/or departure delay	Daily arrival sequencing delay	Daily radar contact delay	Miscellaneous
Burbank	38 SEP/10 MEP/2 EXJ—1 min. (2 to 4 NM).	0	0	7 SEP/2 MEP/1 EXJ—1 min. (60 times per year).	0
El Toro Marine Corps Air Station.	50 SEP—5 NM	0	25 SEP—7 min	3 SEP—0.5 min	0
Greensboro	3 SEP—10 NM	0	0	0	0
James M. Cox (Dayton)	20 SEP—11 NM	4 SEP/1 MEP/5 AC—1 min.	4 SEP/1 MEP—2 min	6 SEP/2 MEP—2 min	0
Lubbock	0	0	0	0	0
March Air Force Base	0	Primary: 0; Satellite: 3 SEP—3 min.	0	0	0
Norton Air Force Base	0	0	0	0	0
Ontario	0	Primary: 2 SEP/3 MEP/1 AC—0.25 min.; Satellite: 25 SEP—3 min.	6 SEP/10 MEP/1 EXJ/3 AC—0.4 min.	Primary: 5 SEP/3 MEP—2 min.; Satellite: 18 SEP/12 MEP—2 min.	0
Portland (Oregon)	0	0	0	0	0
Tinker Air Force Base	3 SEP—4 NM	0	1 MILTRP/3 MILJ—3 min	0	0
Will Rogers (Oklahoma City)	3 SEP/2 MEP—3 NM	0	0	0	0

NOTE.—Aircraft abbreviations from Table 1.

TABLE 2B.—ESTIMATED AVERAGE DAILY FLIGHT DEVIATIONS, OVERFLIGHTS, DELAY AND MISCELLANEOUS IMPACTS FOR PROPOSED ARSA SITES

[Docket 85-AWA-3]

Site name	Daily flight deviations (NM) or overflights (OV)	Daily clearance delivery and/or departure delay	Daily arrival sequencing delay	Daily radar contact delay	Miscellaneous
Daytona Beach	15 SEP/5 MEP—8.5 NM	0	0	20 SEP/10 MEP—2 min	0
Des Moines	0	0	0	0	0
El Paso	0	0	0	0	0
Eppley Airfield (Omaha)	10 SEP/5 MEP—3 NM	0	15 SEP/5 MEP/5 EXJ—1.5 min.	15 SEP/5 MEP/5 EXJ—1.5 min.	0
Fort Lauderdale	10 SEP/5 MEP—10 NM	0	0	0	0
Jacksonville	15 SEP/5 MEP—12.5 NM	0	0	10 SEP/5 MEP—4 min	6 NORDO
Norfolk	4 SEP/4 MEP—OV	4 SEP/4 MEP—2.5 min	0	20 SEP/20 MEP—3 min	0
	4 SEP/3 MEP—5 NM				
Offutt Air Force Base	0	0	0	0	0
Orlando	0	0	0	10 SEP/5 MEP—7.5 min	0
Palm Beach	20 SEP/11 MEP—5 NM	0	0	0	0
Richard Evelyn Byrd International (Richmond)	6 SEP—5 NM	0	0	0	Relocation of New Kent County (W96) VFR practice area required. However, alternative locations are closer than present area to W96. No cost.

NOTE.—Aircraft abbreviations from Table 1.

Overall total annual costs, by cost category, of establishing ARSA's at the airports proposed in this notice are summarized in Table 3 below. The maximum total annual cost of establishing ARSA's at these sites, if an ARSA is established at each site proposed, is estimated to be approximately $1.4 million. However, this maximum is expected to diminish significantly as controllers and pilots gain experience in ARSA operations. Delay will be reduced, and in many cases, traffic will ultimately flow more smoothly and expeditiously than in existing TRSA's.

Table 3.—Maximum Annual Costs of Establishing ARSA's at Proposed Sites (1984 Dollars)

1. FAA controller and equipment costs	$0
2. Chart revision, pilot education (one time)	6,000
3. Circumnavigation and overflight	420,000
4. Departure, sequencing, and radar contact delay	959,500
5. Radio transceivers/miscellaneous	4,500
Total costs	1,392,000

b. *Benefits.* Much of the benefit which will result from the ARSA program is nonquantifiable, and will result from simplifying and standardizing ARSA configurations and operating procedures. The standardization and simplicity of the ARSA concept is expected to alleviate many of the problems identified by the NAR task group. In addition, once experience has been gained in ARSA operations, traffic is expected to move more efficiently and expeditiously than it currently does within a TRSA.

Although many of the benefits of the ARSA program are nonquantifiable, FAA has attempted to make some preliminary estimates of the savings in time and money which might be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. These estimated savings may or may not offset the delay which some sites anticipate after the initial establishment of an ARSA, but are expected to eventually provide overall time savings which exceed delay as controllers gain experience with ARSA operating procedures. ATC personnel at Columbus, OH, and Austin, TX, where ARSA's have been in operation for approximately a year and a half, report that this has been their experience.

To develop these estimates of savings, FAA used procedures similar to those discussed in the previous section for estimating delay costs. Local ATC personnel, together with the Air Traffic Operations Service, estimated for each candidate ARSA site the number of daily operations and the types of aircraft involved which might save time *in comparison to operations within a*

TRSA, as a result of the reduced separation standards of the ARSA.

FAA estimates that the total annual value of time savings for the candidate ARSA sites proposed in this notice will be approximately $332 thousand. (The unit costs used to estimate the value of time savings are the same as those used to estimate delay costs presented in Table 1.)

Some of the benefits of the ARSA program cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. Establishment of ARSA's at the sites proposed in this notice will contribute to these overall improvements.

ARSA's have the potential for reducing the number of near midair collisions (NMAC's). In its 1984 study of midair and near midair collison data, the Office of Aviation Safety found that approximately 15 percent of reported NMAC's occurred in TRSA airspace.[2] The study found that about half of all NMAC's occurred at altitudes between 1,000 and 5,000 feet, that over 85 percent of NMAC's occurred when visibility was 5 miles or greater, and that the largest number of NMAC reports are associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. Further, the majority of reported NMAC's occurring within or in the near vicinity of TRSA's involve either an air carrier or military aircraft as one of the aircraft (which partially reflects the practice of air carrier and military pilots to report NMAC incidents, when they do occur, more frequently than general aviation pilots). The mandatory participation requirements of the ARSA may help alleviate such conflicts where they currently are occurring in TRSA airspace. Further, the EER and APO studies of the ARSA confirmation sites (see note 1) indicate that NMAC's may be reduced by approximately 35 to 40 percent.

Although no quantifiable benefits can be attributed to a reduction in near midair collisions, near midair and actual midair collisions result from similar causal factors, and a reduction in near midair collisions suggests that a reduction in actual midair collisions, which can involve substantial losses, may also be expected as a result of the ARSA program.

The APO study of the ARSA confirmation sites (note 1) included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at the Columbus confirmation site, where recorded radar data were available, and focused on conditions of fairly heavy VFR activity because the ARSA will affect procedures used to handle VFR traffic in the terminal radar area. The analysis determined that there was no compression of traffic in the airspace immediately around, under, and over the ARSA, and in the absence of compression, the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk. Further, even under the pessimistic assumption that the changes in separation standards would completely eliminate the effectiveness of controller-initiated avoidance maneuvers, and the pilot would only have the benefit of radar traffic advisories, the study found that the mandatory pilot participation required in the ARSA still provided a 63 percent reduction in midair collision risk in comparison to the TRSA.

FAA has examined National Transportation Safety Board midair collision accident records for the period between January 1978 and October 1984. This review indicated that approximately one to two midair collisions occurred per year throughout the United States which either could have been prevented, or the probability of their occurrence would have been greatly reduced, had an ARSA, rather than a TRSA, been in effect where these accidents occurred. Because the circumstances observed at the Columbus confirmation site may not necessarily be found at other TRSA locations, the 75 percent reduction in midair collision risk measured at Columbus may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that implementation of the ARSA program nationally may result in an average reduction in midair collision risk of only 50 percent at TRSA locations that are replaced with ARSA's.

Reducing by 50 percent the one to two midair collisions per year where an ARSA could have made a difference would result in the prevention of one midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $100 thousand, resulting from the prevention of a minor accident between general aviation aircraft, to quantifiable benefits of as much as $100 million to $300 million, resulting from the prevention of a midair collision involving an air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to this improvement in safety.

c. *Comparison of Costs and Benefits.* A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the proposal are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period. Both the Austin and Columbus confirmation sites went through initial adjustment periods, but not experience almost no delay as a result of ARSA procedures. Baltimore-Washington is currently progressing along a similar learning curve.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of candidate ARSA sites proposed in this notice typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits will be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

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[2] *Selected Statistics Concerning Near Midair and Midair Collisions.* FAA Office of Aviation Safety—Safety Analysis Division (ASF-200). August 31, 1984. The data base used in this study is currently under revision to correct problems in reporting procedures which have recently been identified. Although the total numbers of reported NMAC's have been revised upward, the relative distribution of incidents which occur in various operating environments has not changed significantly.

For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports which establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program.

Further, because the FAA expects that any delay problems which may initially develop following implementation of an ARSA will be transitory, and because the airports which will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type which use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

ICAO Considerations

As part of these proposals relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airport radar service areas, Airspace, Navigation (air).

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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.

Airspace Docket No. 85-AWA-2

2. Section 71.501 is amended as follows:

Burbank-Glendale-Pasadena Airport, CA—[New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Burbank-Glendale-Pasadena Airport (lat. 34°12'02" N., long. 118°21'27" W.) excluding a 1.5-mile radius around Whiteman Airport (lat. 34°15'35" N., long. 118°24'45" W.) and that airspace within a 10-mile radius of the Burbank-Glendale-Pasadena Airport extending upward from 3,000 feet MSL to and including 4,800 feet MSL, but excluding that airspace from the 345°T(331°M) bearing from the Burbank-Glendale-Pasadena Airport clockwise to the 055° T (041° M) bearing from the Burbank-Glendale-Pasadena Airport, and that airspace that overlies the Los Angeles, CA, Terminal Control Area.

El Toro MCAS, Santa Ana, CA—[New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the El Toro Marine Corps Airport (lat. 33°40'18" N., long. 117°43'30" W.) excluding that airspace west of a line extending from a point on the 255°T(241°M) bearing from the airport on the 5-mile arc to a point on the 335°T(321°M) bearing from the airport on the 5-mile arc, excluding the west/northwest arc from the 213°T(227°M) bearing from the airport clockwise to the 303°T(317°M) bearing from the airport and that airspace extending upward 2,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the El Toro Marine Corps Airport from the 076°T(090°M) bearing from the airport clockwise to the 134°T(148°M) bearing from the airport and that airspace extending upward from 1,900 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the El Toro Marine Corps Airport from the 134°T(148°M) bearing from the airport clockwise to the 158°T(172°M) bearing from the airport and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL from the 158°T(172°) bearing from the airport clockwise to the 336°T(350°M) bearing from the airport and that airspace which overlies the Tustin Marine Corps Airport from 2,500 feet MSL to

and including 4,400 feet MSL west of a line drawn from the 213°T(227°M) bearing from the airport to the 303°T(317°M) bearing from the airport where the line bisects the 5-mile radius.

Greensboro-High Point-Winston-Salem Regional Airport, NC—[New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Greensboro-High Point-Winston-Salem Regional Airport (lat. 36°05'47" N., long. 79°56'21" W.), and that airspace extending upward from 2,100 feet MSL to 5,000 feet MSL within a 10-mile radius of the Greensboro-High Point-Winston-Salem Regional Airport.

James M. Cox Dayton International Airport, OH—[New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the James M. Cox Dayton International Airport (lat. 39°54'04" N., long. 84°13'12" W.), and that airspace extending upward from 2,100 feet MSL to and including 5,000 feet MSL within a 10-mile radius from the James M. Cox Dayton International Airport from the 062°T(066°M) bearing from the airport clockwise to the 147°T(151°M) bearing from the airport and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the James M. Cox Dayton International Airport from the 147°T(151°M) bearing from the airport clockwise to the 062°T(066°M) bearing from the airport.

Lubbock International Airport, TX—[New]

That airspace extending upward from the surface to and including 7,300 feet MSL within a 5-mile radius of Lubbock International Airport (lat. 33°39'49" N., long. 101°49'20" W.), and that airspace extending upward from 4,500 feet MSL to 7,300 feet MSL within a 10-mile radius of the airport.

March AFB, CA—[New]

That airspace extending upward from the surface to and including 5,500 feet MSL within a 5-mile radius of March AFB (lat. 33°52'51" N., long. 117°15'31" W.), and that airspace within a 10-mile radius of March AFB extending upward from 3,900 feet MSL to and including 5,500 feet MSL to the points where the 10-mile arc from March AFB meets a 10-mile arc from Norton AFB, CA, Airport Radar Service Area (lat. 34°05'43" N., long. 117°9'55" W.).

Norton AFB, CA—[New]

That airspace extending upward from the surface to and including 5,500 feet MSL within a 5-mile radius of Norton AFB (lat. 33°52'51" N., long. 117°15'31" W.) excluding that airspace within a 1.5-mile radius of Redlands Airport (lat. 34°05'00" N., long. 117°09'55" W.), and that airspace extending upward from 4,500 feet MSL to 5,500 feet MSL within a 10-mile radius of Norton AFB from the 101°T(087°M) bearing from the airport clockwise to the 196°T(182°M) bearing from the airport to the points where the 10-mile arc from the airport joins a 10-mile arc from March AFB, CA, (lat. 33°52'51" N., long. 117°15'31" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 2,700 feet MSL to and including 5,500 feet MSL from the 196°T(182°M) bearing from the airport to Foothill Boulevard, and to the point where the 10-mile arc from Norton AFB joins a 10-mile arc from the Ontario International Airport, CA, ARSA (lat. 34°03'26" N., long. 117°36'29" W.).

Ontario International Airport, CA—[New]

That airspace extending upward from the surface to and including 5,500 feet MSL within a 5-mile radius of Ontario International Airport (lat. 34°03'26" N., long. 117°36'29" W.) excluding that airspace within a 1.5-mile radius of Cable Airport (lat. 34°06'50" N., long. 117°41'20" W.), and that airspace within a 2.5-mile radius of the Chino Airport (lat. 33°58'30" N., long. 117°38'00" W.), and that airspace within a 10-mile radius of the Ontario International Airport extending upward from 2,700 feet MSL to and including 5,500 feet MSL to the point where the 10-mile arc from Ontario joins a 10-mile arc from Norton AFB, CA, Airport Radar Service Area (lat. 34°05'43" N., long. 117°09'55" W.), excluding that airspace north of Foothill Boulevard.

Portland International Airport, OR—[New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of Portland International Airport (lat. 45°35'20" N., long. 122°35'47" W.) excluding that airspace within a 1-mile radius of the Evergreen Airport (lat. 45°37'20" N., long. 122°31'15" W.), and that airspace from the 003°T(344°M) bearing from Evergreen Airport clockwise to the 105°T(084°M) bearing from Evergreen Airport, and excluding that airspace within a .5-mile radius of the Pearson Airpark (lat. 45°37'17" N., long. 122°39'22" W.), and that airspace from the 351°T(332°M) bearing from the Pearson Airport clockwise to the 028°T(009°M) bearing from the Pearson Airport below 1,100 feet MSL, and that airspace extending upward from 2,000 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Portland International Airport from the 004°T(345°M) bearing from the airport clockwise to the 093°T(074°M) bearing from the airport, and that airspace extending upward from 1,700 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 093 093°T(074°M) bearing from the airport clockwise to the 196°T(177°M) bearing from the airport, and that airspace extending upward from 2,300 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport from the 196°T(177°M) bearing from the airport, clockwise to the 268°T(249°M) bearing from the airport, and that airspace extending upward from 1,800 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport from the 268°T(249°M) bearing from the airport clockwise to the 004°T(345°M) bearing from the airport.

Tinker AFB, OK—[New]

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Tinker AFB (lat. 35°25'06" N., long. 97°23'18" W.), and that airspace extending upward from 2,500 feet MSL to and including 5,300 feet MSL within a 10-mile radius of the Tinker AFB, excluding the airspace designated as the Will Rogers World Airport, OK, Airport Radar Service Area.

Will Rogers World Airport, Oklahoma City, OK—[New]

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Will Rogers World Airport (lat. 35°23'35" N., long. 97°36'02" W.) excluding the airspace within a 1-mile radius of Downtown Airpark (lat. 35°26'57" N., long. 97°31'58" W.) and that airspace extending upward from 2,500 feet MSL to 5,300 feet MSL within a 10-mile radius of the Will Rogers World Airport, excluding that airspace designated as the Tinker AFB, OK, Airport Radar Service Area.

Airspace Docket No. 85-AWA-3

Daytona Beach Regional Airport, FL—[New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Daytona Beach Regional Airport (lat. 29°10'51" N., long. 81°03'22" W.), and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of Daytona Beach Regional Airport.

Des Moines Muncipal Airport, IA—[New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Des Moines Municipal Airport (lat. 41°32'06" N., long. 93°39'38" W.), and that airspace extending upward from 2,200 feet MSL to 5,000 feet MSL within a 10-mile radius of the Des Moines Municipal Airport.

El Paso International Airport, TX—[New]

That airspace extending upward from the surface to and including 8,000 feet MSL within a 5-mile radius of the El Paso International Airport (lat. 31°48'24" N., long. 106°22'38" W.) excluding that airspace west of long. 106°27'00" W., and that airspace within Mexico, and that airspace extending upward from 5,200 feet MSL to 8,000 feet MSL within a 10-mile radius of El Paso International Airport, excluding that airspace west of long. 106°27'00" W., and that airspace within Mexico. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times established will thereafter be continuously published in the Airport/Facility Directory.

Eppley Airfield, Omaha, NE—[New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Omaha Eppley Airfield (lat. 41°18'04" N., long. 95°53'36" W.); and that airspace extending upward from 2,500 feet MSL to 5,00 feet MSL within a 10-mile radius of the Eppley Airfield, excluding that portion which overlies the Offutt AFB, NE, Airport Radar Service Area.

Fort Lauderdale-Hollywood International Airport, FL—[New]

That airspace extending upward from the surface to and including 4,000 feet MSL

within a 5-mile radius of the Fort Lauderdale-Hollywood International Airport (lat. 26°04'19" N., long. 80°09'13" W.) from a point where it joins the Miami, FL, Terminal Control Area (TCA) to the southwest, clockwise to a point where it joins the Miami, FL, TCA to the southeast and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the Fort Lauderdale-Hollywood International Airport from a point where it joins the Miami, FL, TCA to the southwest clockwise to a point where it joins the Miami, FL, TCA to the southeast.

Jacksonville International Airport, FL—[New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Jacksonville International Airport (lat. 30°29'33" N., long. 81°41'24" W.), and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the Jacksonville International Airport.

Norfolk International Airport, VA—[New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Norfolk International Airport (lat. 36°53'40" N., long. 76°12'06" W.) excluding that airspace within the Norfolk NAS, VA, Control Zone below 2,000 feet MSL, and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL from a line extending from lat. 36°49'00" N., long. 76°09'00" W.); to lat. 36°43'00" N., long. 76°12'00" W.; clockwise to a line extending from lat. 36°56'00" N., long. 76°00'00" W.; to lat. 36°49'00" N., long. 76°09'00" W., excluding that airspace within the Norfolk NAS Control Zone below 2,000 feet MSL and that airspace within the Hampton Roads, VA, Control Zone below 2,500 feet MSL.

Offutt AFB, NE—[New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Offutt AFB (lat. 41°07'06" N., long. 95°54'42" W.) excluding a 1-mile radius of the South Omaha (Papillion) Airport (41°09'30" N., long. 96°00'30" W.) and that airspace extending upward from 2,500 feet MSL to 5,000 feet MSL within a 10-mile radius of the Offutt AFB excluding that portion which overlies the Eppley Airfield, Omaha, NE, Airport Radar Service Area.

Orlando International Airport, FL—[New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Orlando International Airport (lat. 28°25'54" N., long. 81°19'29" W.), and that airspace extending upward from 1,300 feet MSL to 4,100 feet MSL within a 10-mile radius of the Orlando International Airport.

Palm Beach International Airport, FL—[New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Palm Beach International Airport (lat. 26°40'58" N., long. 80°05'45" W.) excluding that airspace within a 1-mile radius north of the Palm Beach County Airport (lat. 26°35'36" N., long. 80°05'09" W.), and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the Palm Beach International Airport.

Richard Evelyn Byrd International Airport, Richmond, VA—[New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Richard Evelyn Byrd International Airport (lat. 37°30'18" N., long. 77°19'12" W.), and that airspace extending upward from 1,400 feet MSL to 4,200 feet MSL within a 10-mile radius of Richard Evelyn Byrd International Airport.

Issued in Washington, D.C., on July 25, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

Appendix 1—Public Meeting Schedule

The schedule for the informal airspace meetings is as follows:

Airspace Docket No. 85-AWA-2

Burbank-Glendale-Pasadena Airport, CA, ARSA
Date: September 25, 1985
Time: 7:00 p.m.
Location: The Van Nuys Air National Guard Theatre, 8030 Balboa Boulevard, Van Nuys, CA
El Toro MCAS, Santa Ana, CA, ARSA
Date: September 18, 1985
Time: 7:00 p.m.
Location: Ramada Inn, 1331 E. Katella Avenue, Anaheim, CA
Greensboro-High Point-Winston-Salem Regional Airport, NC, ARSA
Date: October 23, 1985
Time: 7:00 p.m.
Location: Guilford Technical Community College, Williams Health Careers Building, Jamestown, NC
James M. Cox Dayton International Airport, OH, ARSA
Date: September 25, 1985
Time: 7:00 p.m.
Location: Wright State University, Old Man Hall, Room 109, Dayton, OH
Lubbock International Airport, TX, ARSA
Date: October 10, 1986
Time: 7:30 p.m.
Location: New Terminal Building Conference Room Lubbock International Airport, 6000 North Quirt, Lubbock, TX
March AFB, CA, ARSA
Date: September 11, 1985
Time: 7:00 p.m.
Location: Upland High School Auditorium, 565 W. 11th Street, Upland, CA
Norton AFB, CA, ARSA
Date: September 11, 1985
Time: 7:00 p.m.
Location: Upland High School Auditorium, 565 W. 11th Street, Upland, CA
Ontario International Airport, CA, ARSA
Date: September 11, 1985
Time: 7:00 p.m.
Location: Upland High School Auditorium, 565 W. 11th Street, Upland CA
Portland International Airport, OR, ARSA
Date: September 9, 1985
Time: 6:30 p.m.
Location: Clark County College, Portland, OR
Tinker AFB, OK, ARSA
Date: October 1, 1985
Time: 7:00 p.m.
Location: The Center, 5901 North May Avenue, Oklahoma City, OK
Will Rogers World Airport, Oklahoma City, OK, ARSA
Date: October 1, 1985
Time: 7:00 p.m.
Location: The Center, 5901 North May Avenue, Oklahoma City, OK

Airspace Docket No. 85-AWA-3

Daytona Beach Regional Airport, FL, ARSA
Date: September 25, 1985
Time: 7:00 p.m.
Location: Daytona Beach Community College Conference Center, Building 16
Des Moines Municipal Airport, IA, ARSA
Date: October 2, 1985
Time: 7:00 p.m.
Location: Best Western Airport Inn, 1810 Army Post Road, Des Moines, IA
El Paso International Airport, TX, ARSA
Date: October 2, 1985
Time: 7:00 p.m.
Location: Holiday Inn—Airport, The Fountain Room, 6655 Gateway West, El Paso, TX
Eppley Airfield, Omaha, NE, ARSA
Date: October 9, 1985
Time: 7:00 p.m.
Location: Eppley Airfield Conference Center, Platte Ballroom, 3rd Level Skywalk, Eppley Airfield, Omaha, NE
Fort Lauderdale-Hollywood International Airport, FL, ARSA
Date: September 9, 1985
Time: 7:30 p.m.
Location: State Department of Transportation Building, 780 SW 24th Street, Fort Lauderdale, FL
Jacksonville International Airport, FL, ARSA
Date: September 26, 1985
Time: 7:30 p.m.
Location: Army National Guard Armory, Craig Airport, Jacksonville, FL
Norfolk International Airport, VA, ARSA
Date: October 10, 1985
Time: 7:00 p.m.
Location: Piedmont Aviation Conference Room, General Aviation Terminal Building, Norfolk International Airport, VA
Offutt AFB, NE, ARSA
Date: October 9, 1985
Time: 7:00 p.m.
Location: Eppley Airfield Conference Center, Platte Ballroom, 3rd Level Skywalk, Eppley Airfield, Omaha, NE
Orlando International Airport, FL, ARSA
Date: September 24, 1985
Time: 7:00 p.m.
Location: Valencia Community College, West Campus, Building 4, Room 120, 1800 South Kirkman Road, Orlando, FL
Palm Beach International Airport, FL, ARSA
Date: September 10, 1985
Time: 7:00 p.m.
Location: West Palm Beach Junior College Auditorium, 4200 Congress Avenue, Lake Worth, FL
Richard Evelyn Byrd International Airport, Richmond, VA, ARSA
Date: October 16, 1985
Time: 7:30 p.m.
Location: Holiday Inn—Airport, 5203 Williamsburg Road, Richmond, VA

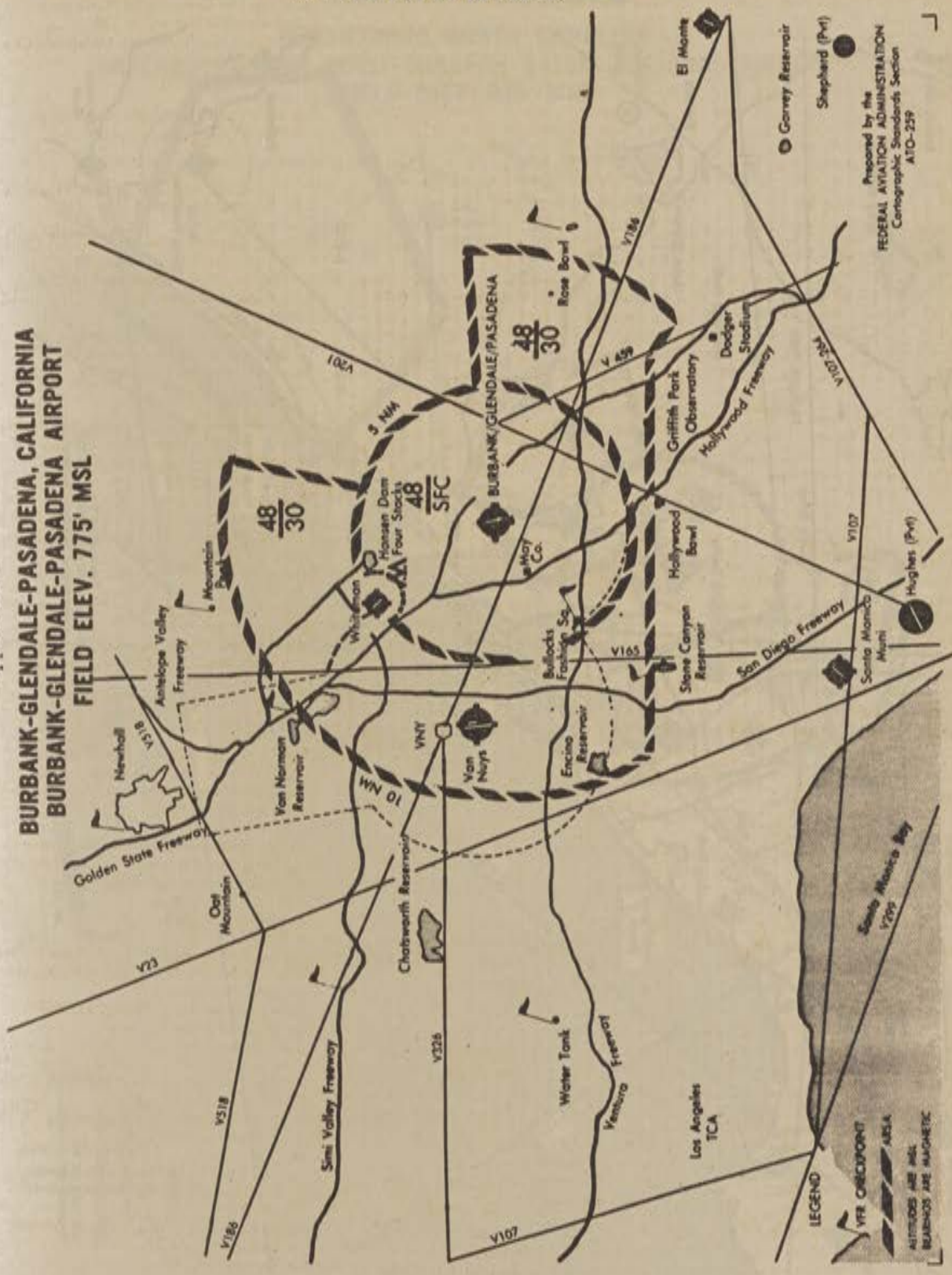
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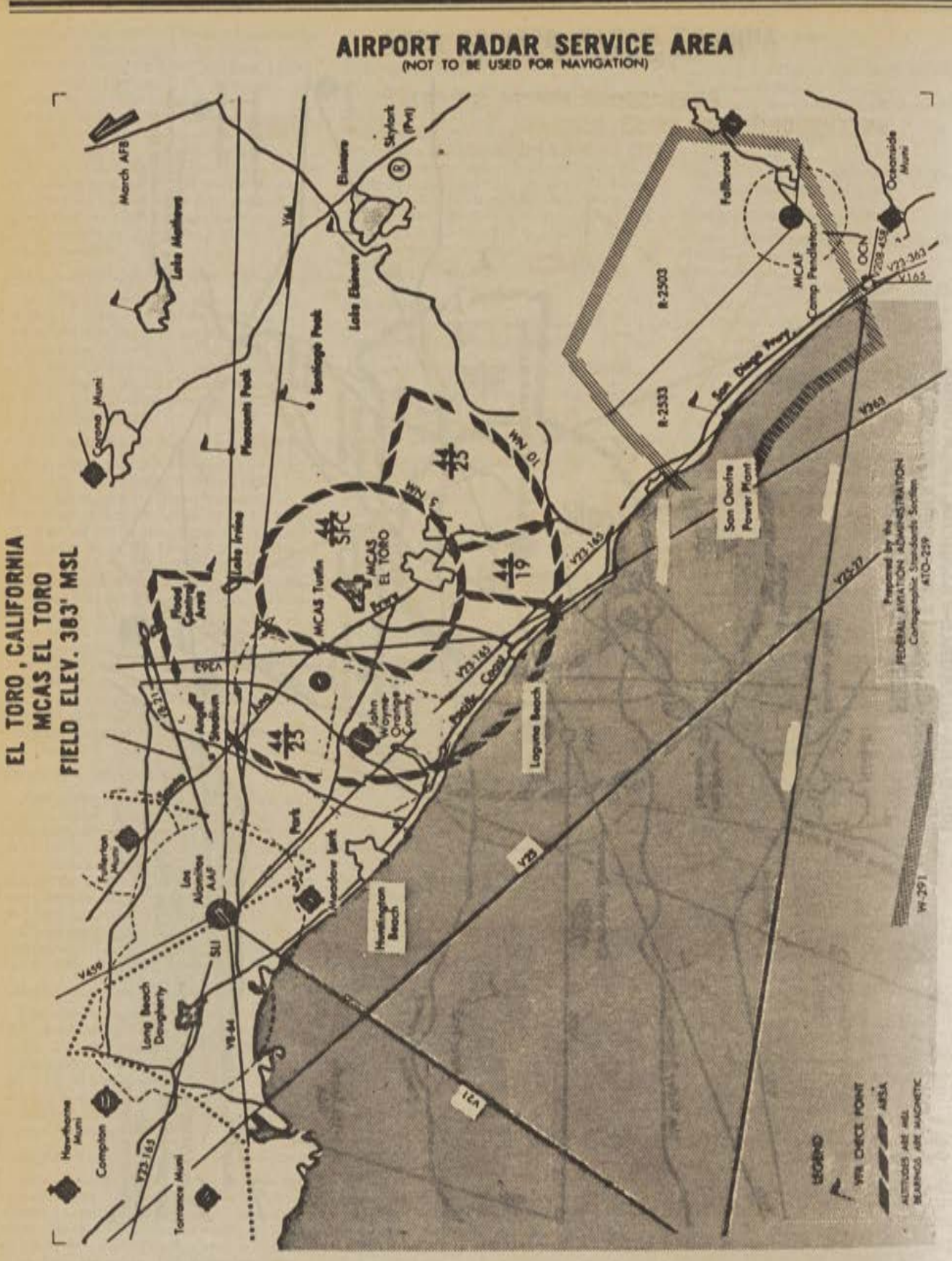
Appendix 2

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

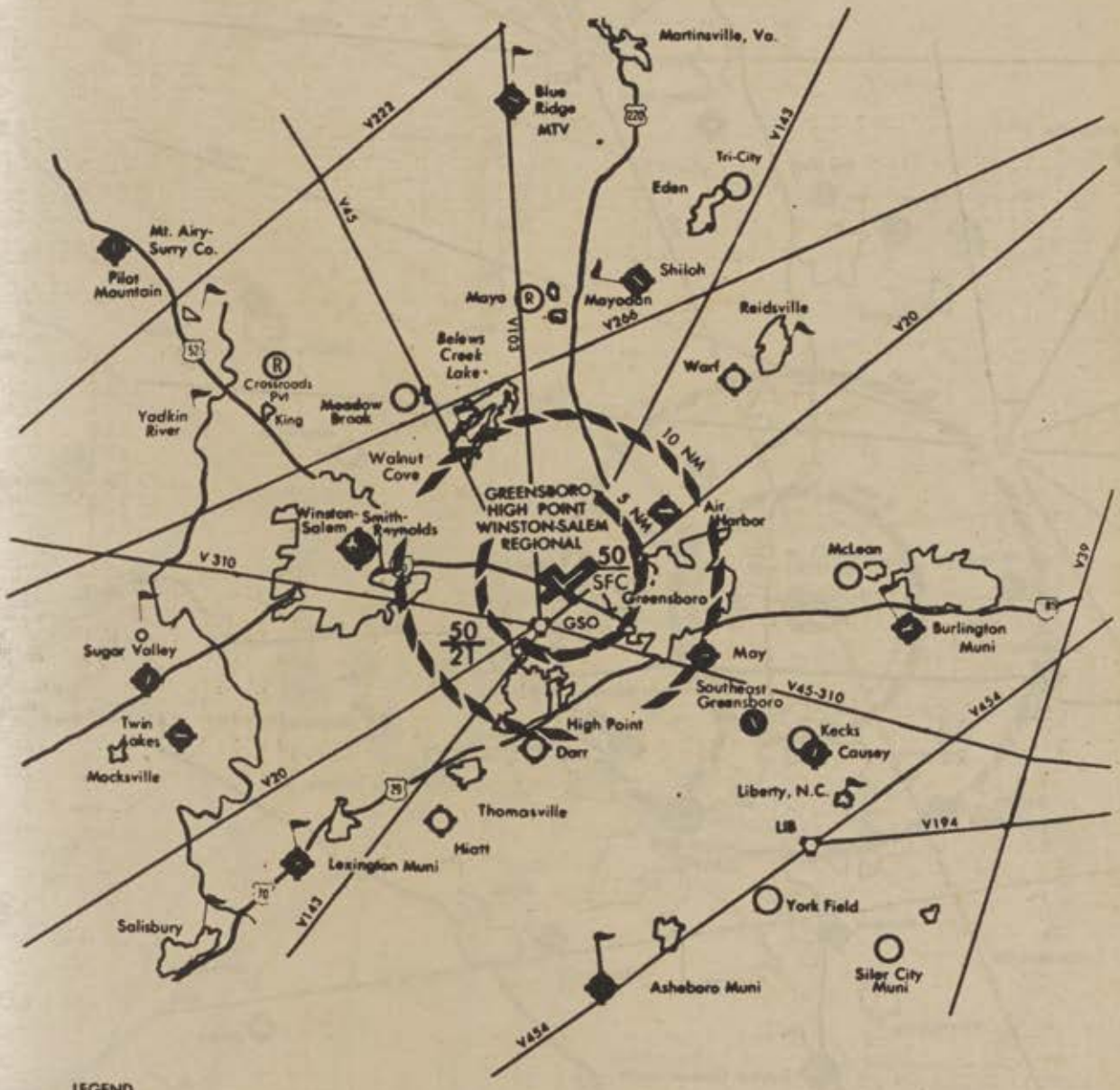
BURBANK-GLENDALE-PASADENA, CALIFORNIA
BURBANK-GLENDALE-PASADENA AIRPORT
FIELD ELEV. 775' MSL




AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
EL TORO, CALIFORNIA
MCAS EL TORO
FIELD ELEV. 383' MSL
March AFB
Lake Mathews
Skylark (PVT)
Elsinore
Lake Elsinore
Corona Muni
Prado Flood Control Area
Lake Irvine
Santiago Peak
MCAS Tustin
MCAS EL TORO
SFC
Angel Stadium
John Wayne Orange County
Pacific Coast Hwy
Laguna Beach
Fullerton Muni
Los Alamitos AAF
Meadow Park
Huntington Beach
Long Beach Daugherty
Hawthorne Muni
Compton
Torrance Muni
SLI
V456
V23
V23-165
V-84
V-394
V-291
R-2503
R-2533
Fallbrook
MCAF Camp Pendleton
Oceanside Muni
OCN
V23-363
V165
V369
San Onofre Power Plant
V25-27
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LEGEND
VFR CHECK POINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

GREENSBORO, NORTH CAROLINA
GREENSBORO-HIGH POINT-WINSTON SALEM REGIONAL AIRPORT
FIELD ELEV. 926' MSL



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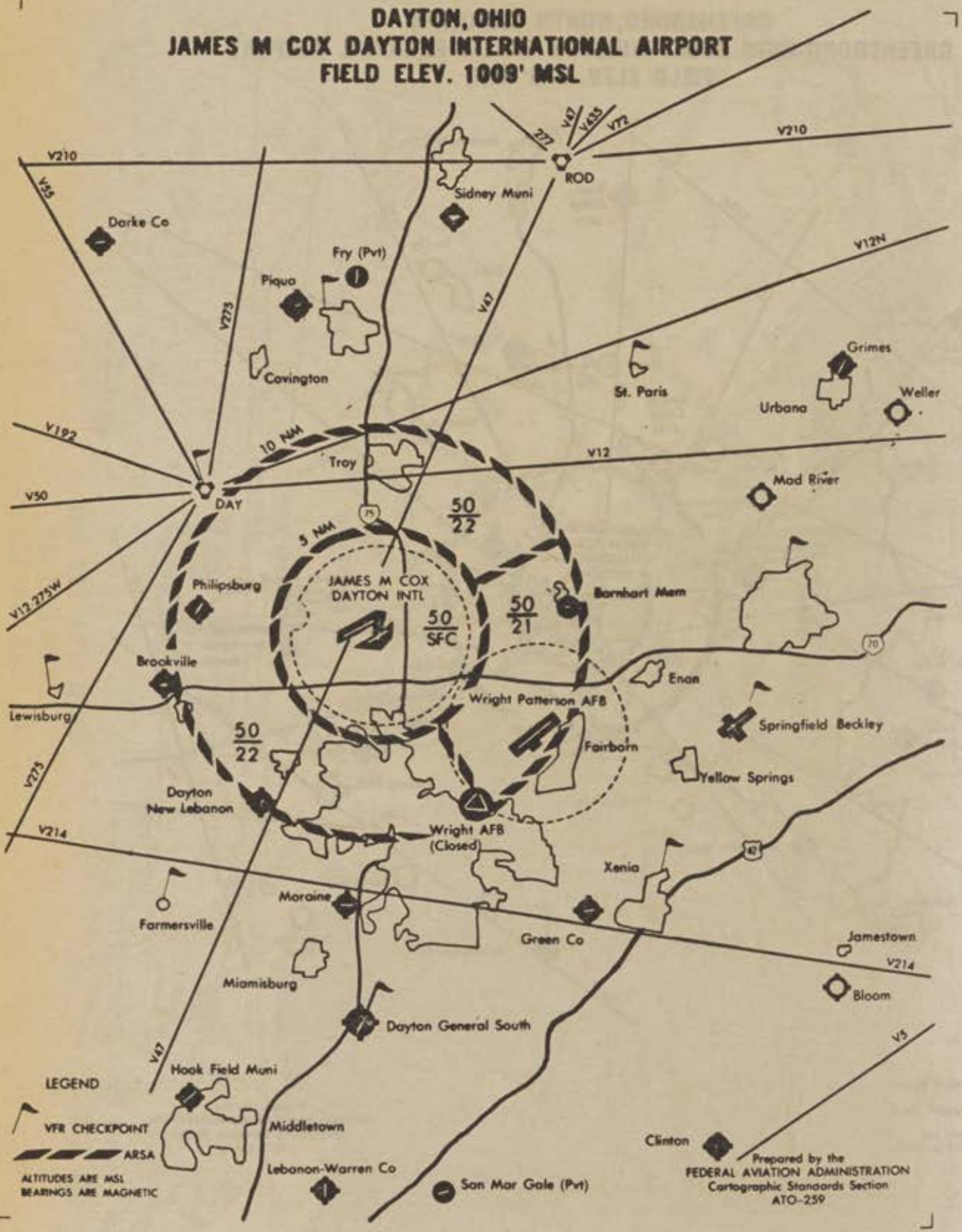
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Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

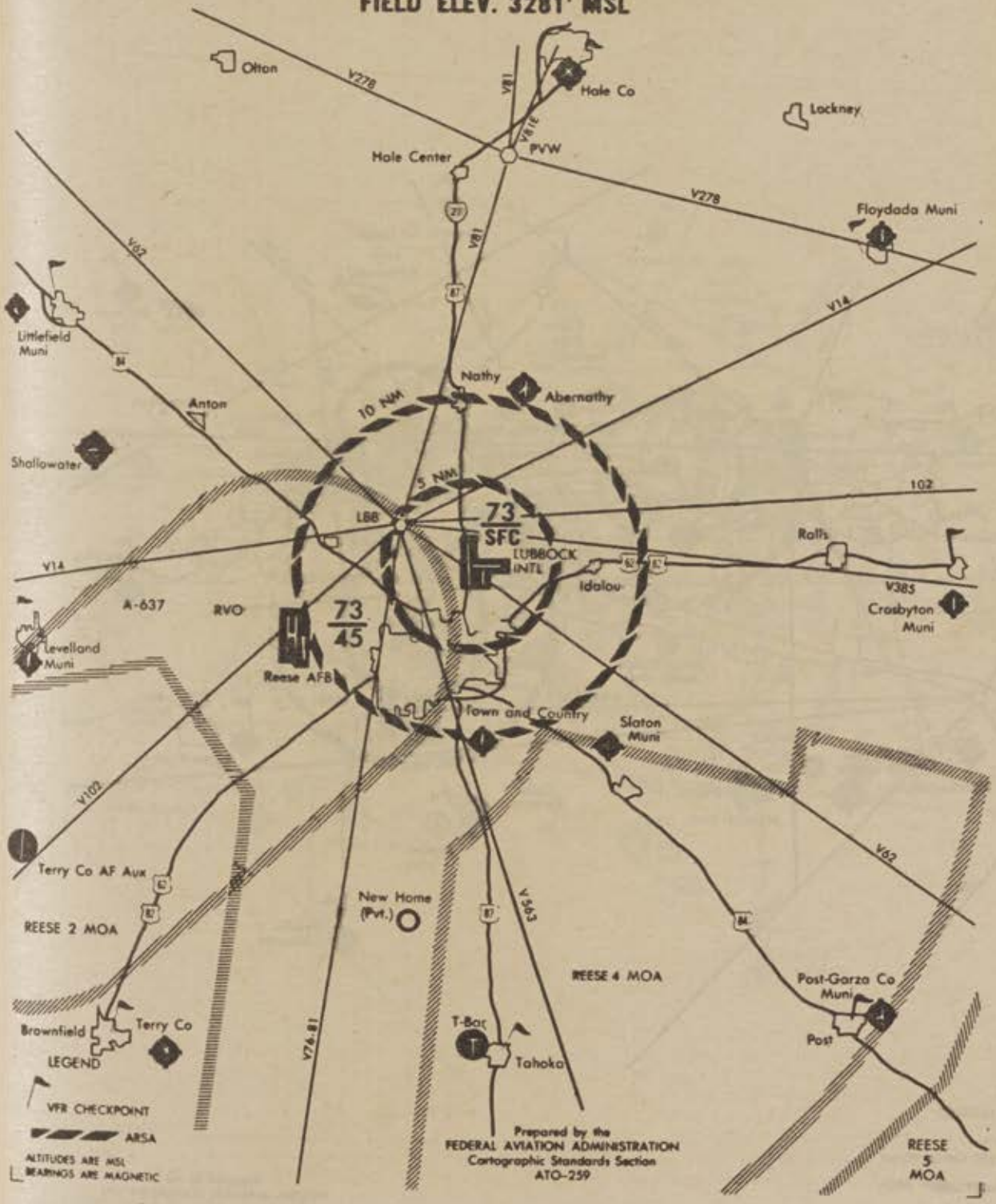
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AIRPORT RADAR SERVICE AREA

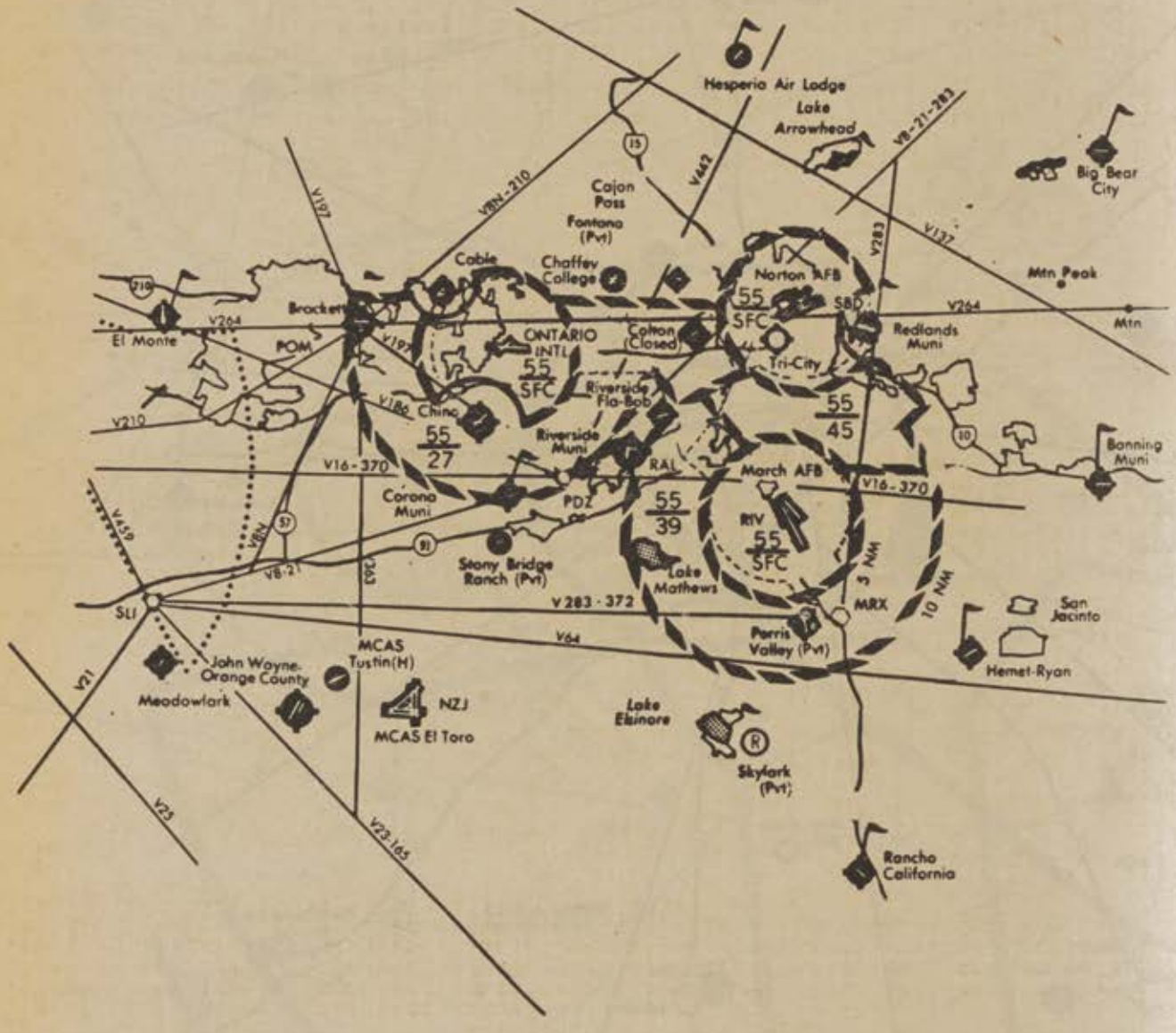
(NOT TO BE USED FOR NAVIGATION)

LUBBOCK, TEXAS
LUBBOCK INTERNATIONAL AIRPORT
FIELD ELEV. 3281' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

MARCH AFB, CALIFORNIA
FIELD ELEV. 1538' MSL



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ARSA

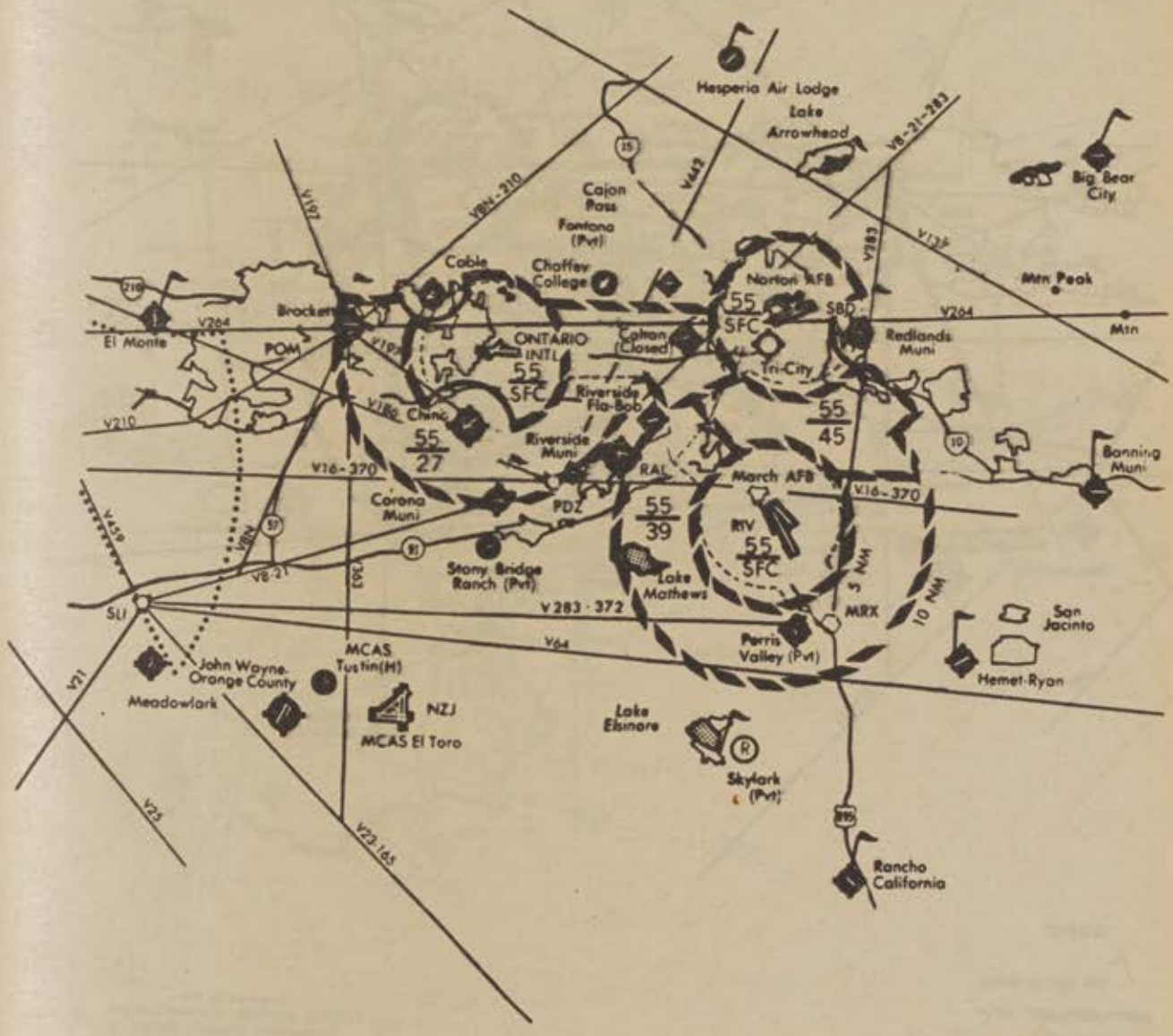
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

NORTON AFB, CALIFORNIA
FIELD ELEV. 1157' MSL



LEGEND

VFR CHECK POINT

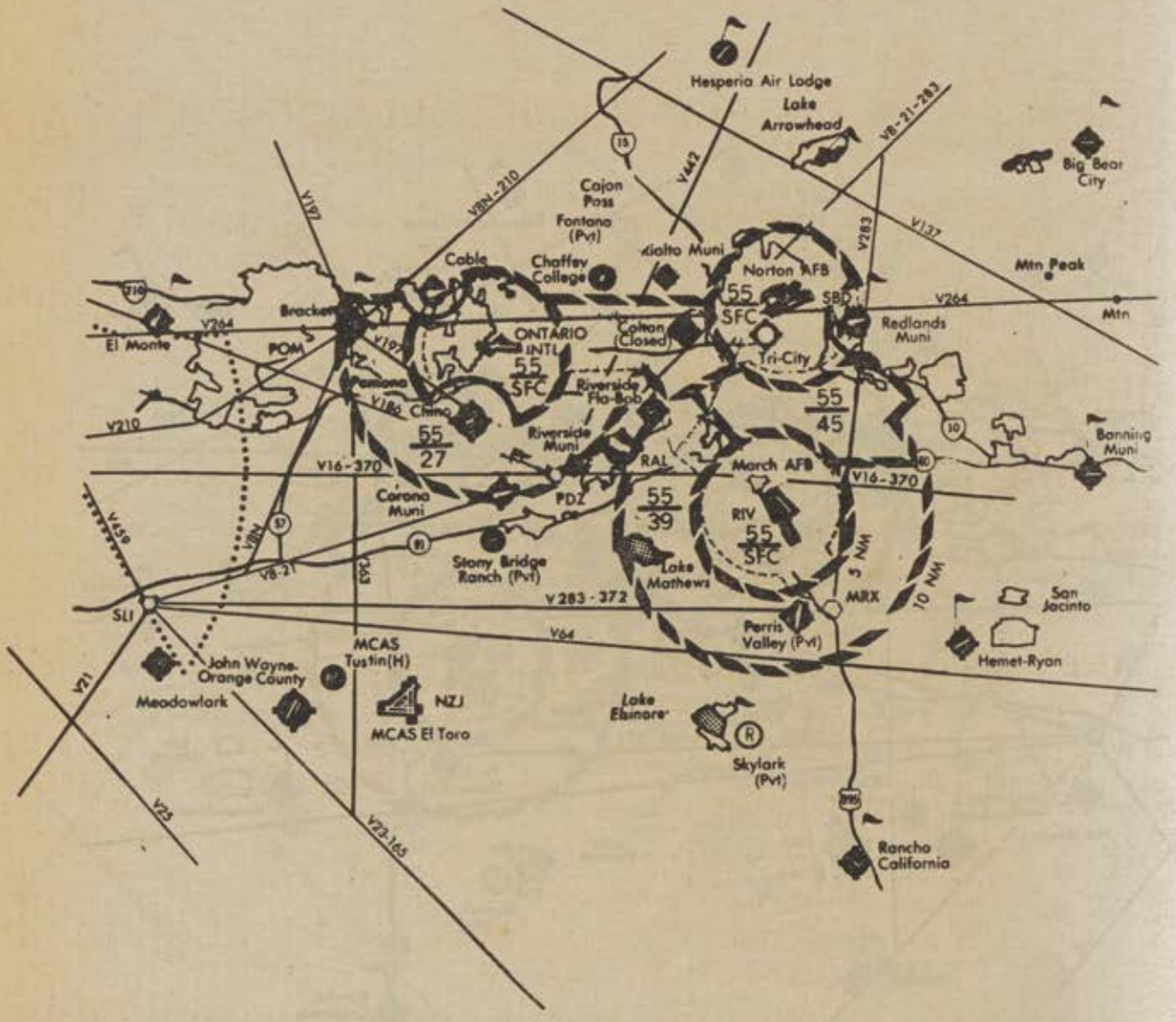
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ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

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AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

ONTARIO, CALIFORNIA
ONTARIO INTERNATIONAL AIRPORT
FIELD ELEV. 952' MSL



LEGEND

VFR CHECK POINT

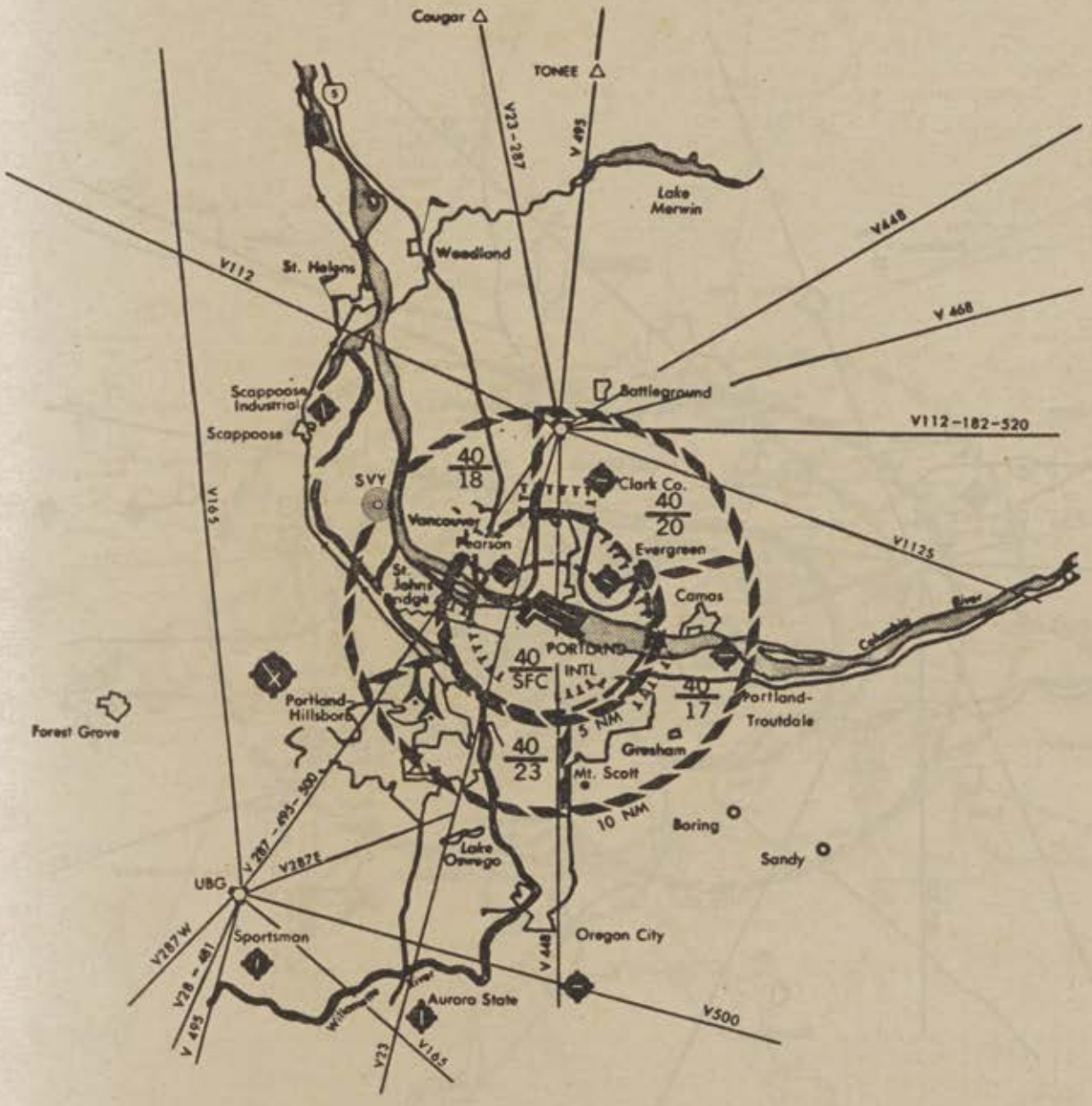
ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

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FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

PORTLAND, OREGON
PORTLAND INTERNATIONAL AIRPORT
FIELD ELEV. 26' MSL



LEGEND

VFR CHECKPOINT

ARSA

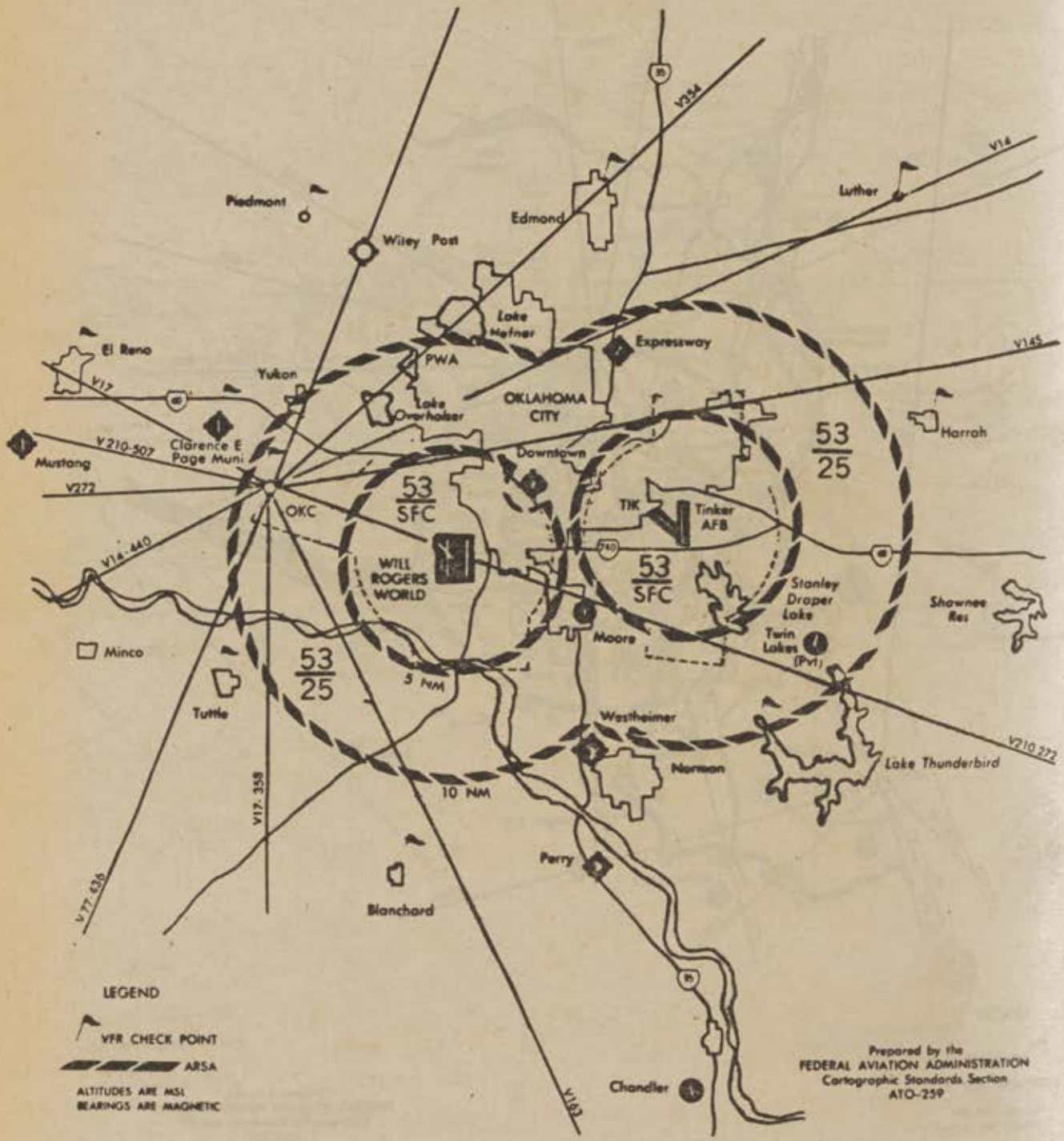
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

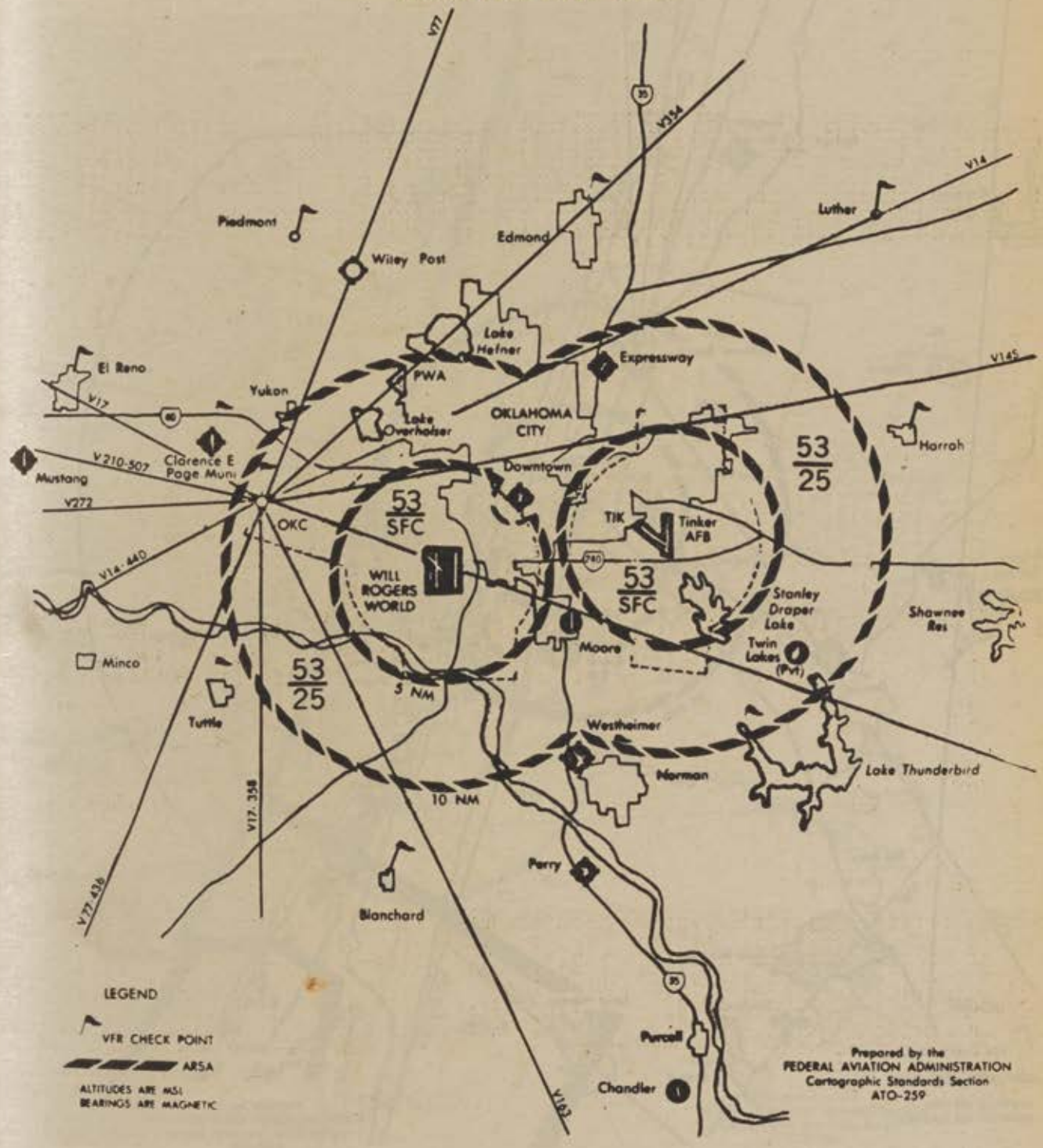
TINKER AFB, OKLAHOMA
FIELD ELEV. 1291' MSL



AIRPORT RADAR SERVICE AREA

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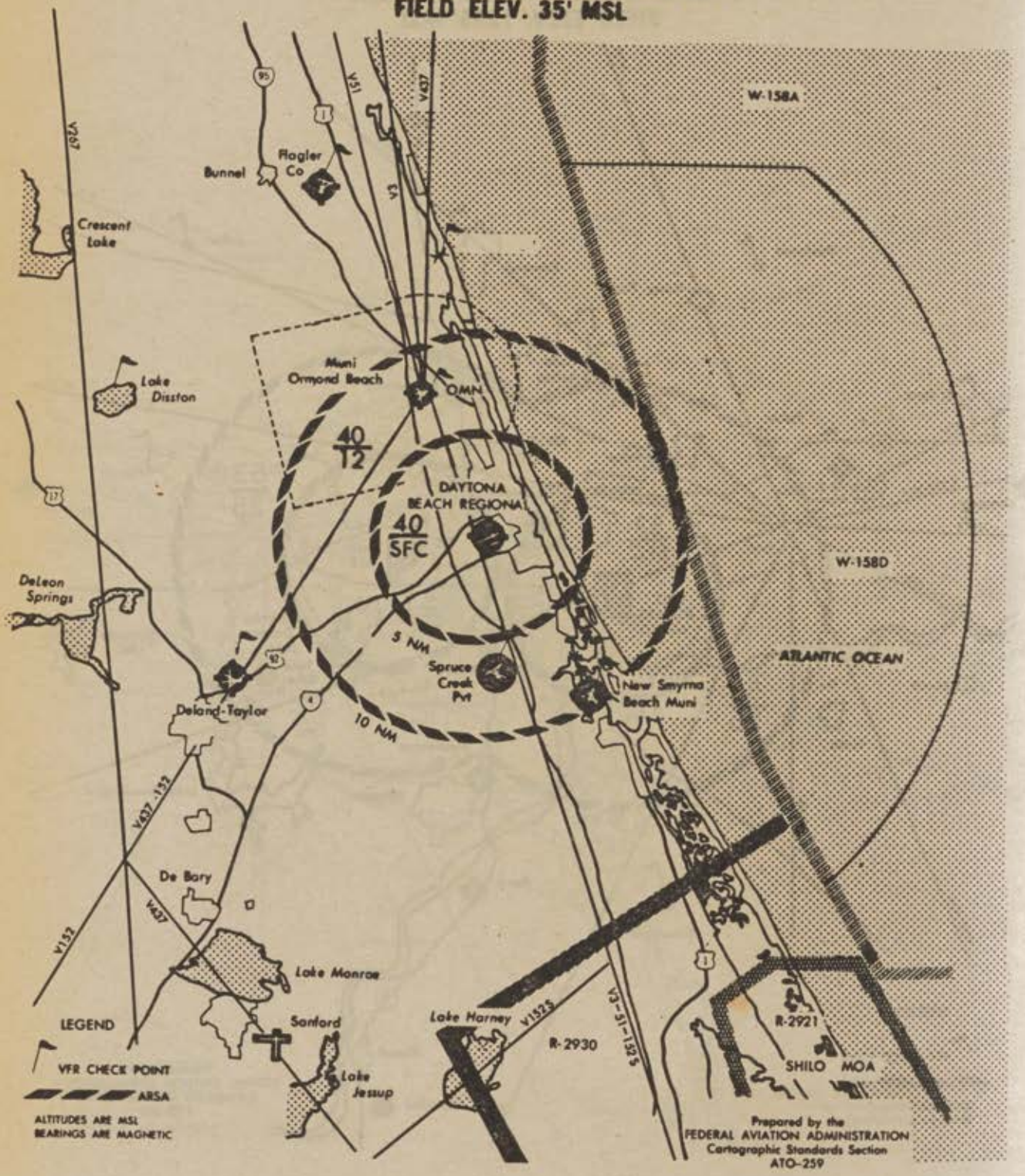
OKLAHOMA CITY, OKLAHOMA
WILL ROGERS WORLD AIRPORT
FIELD ELEV. 1295' MSL



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

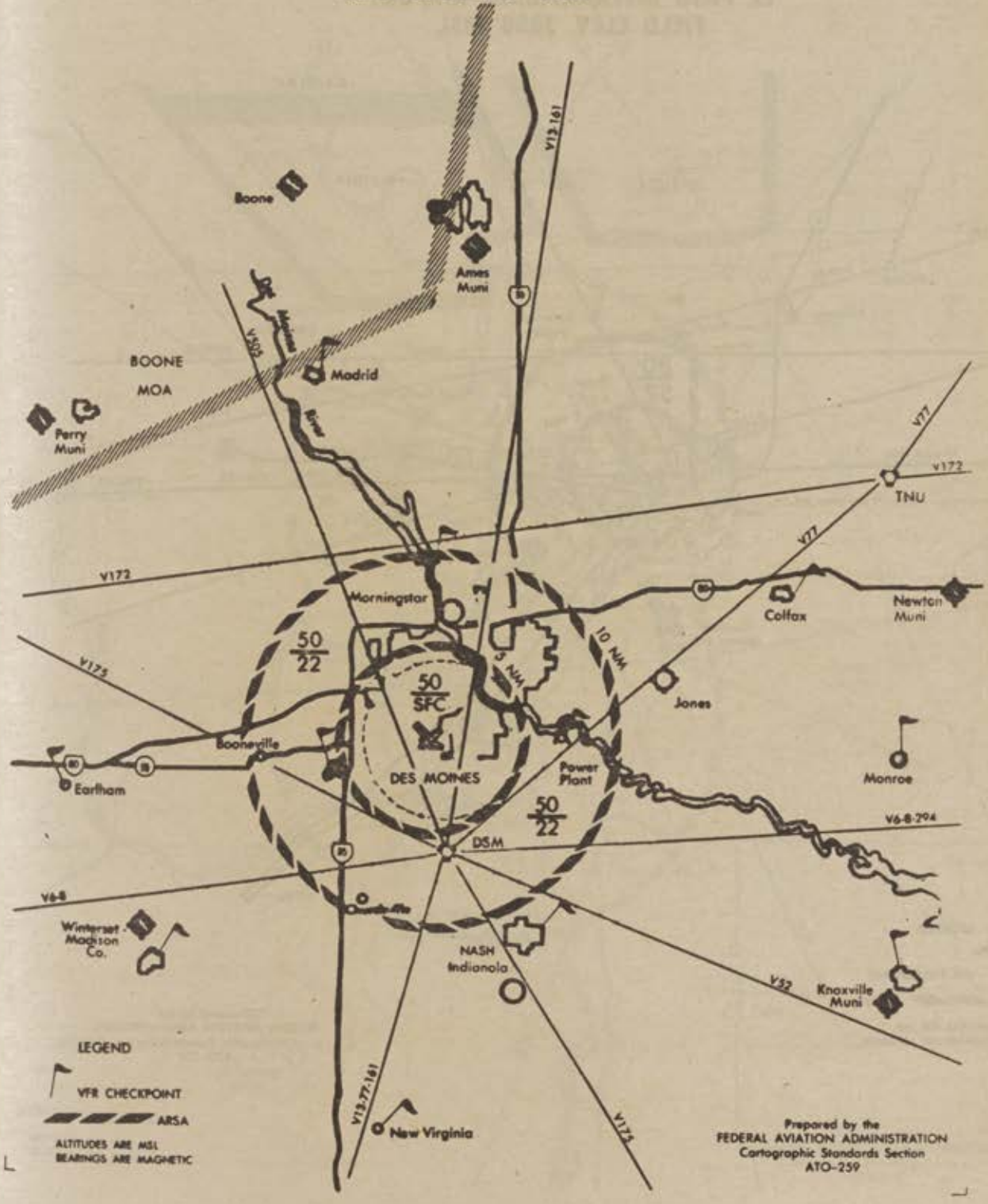
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DAYTONA BEACH REGIONAL AIRPORT
FIELD ELEV. 35' MSL



AIRPORT RADAR SERVICE AREA

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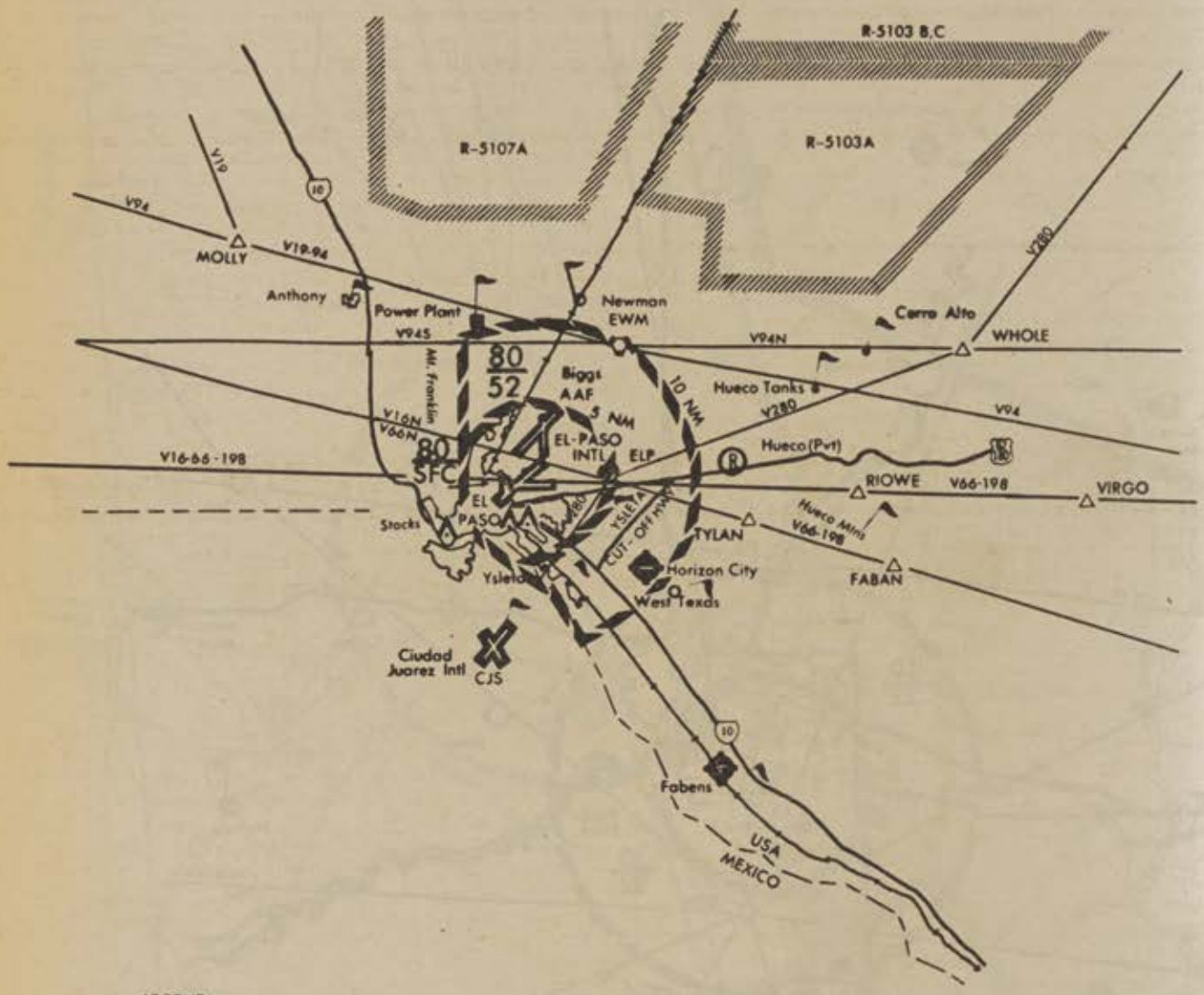
DES MOINES, IOWA
DES MOINES MUNI AIRPORT
FIELD ELEV. 957' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

EL PASO, TEXAS
EL PASO INTERNATIONAL AIRPORT
FIELD ELEV. 3956' MSL



LEGEND

VFR CHECKPOINT

ARSA

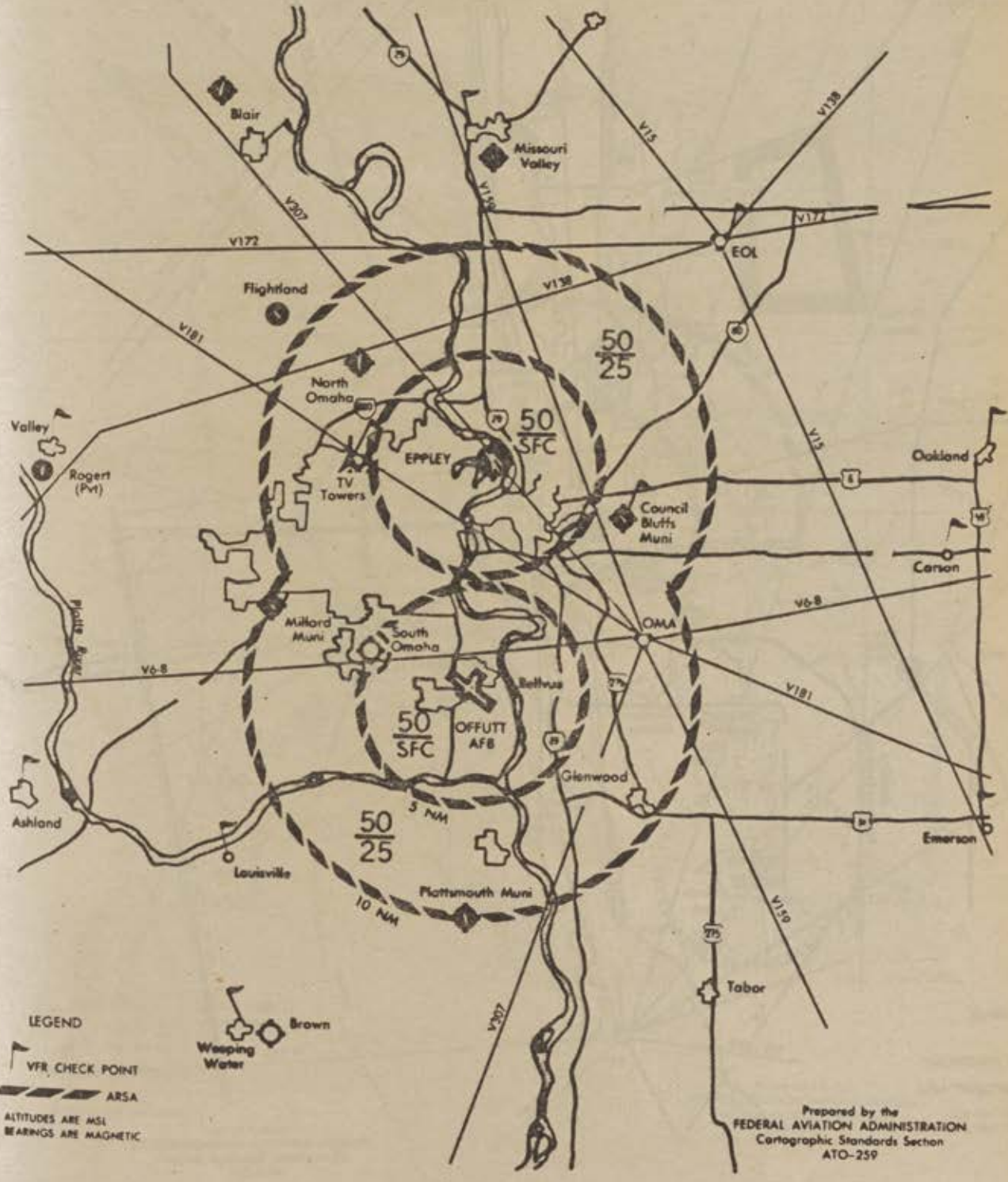
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BEARINGS ARE MAGNETIC

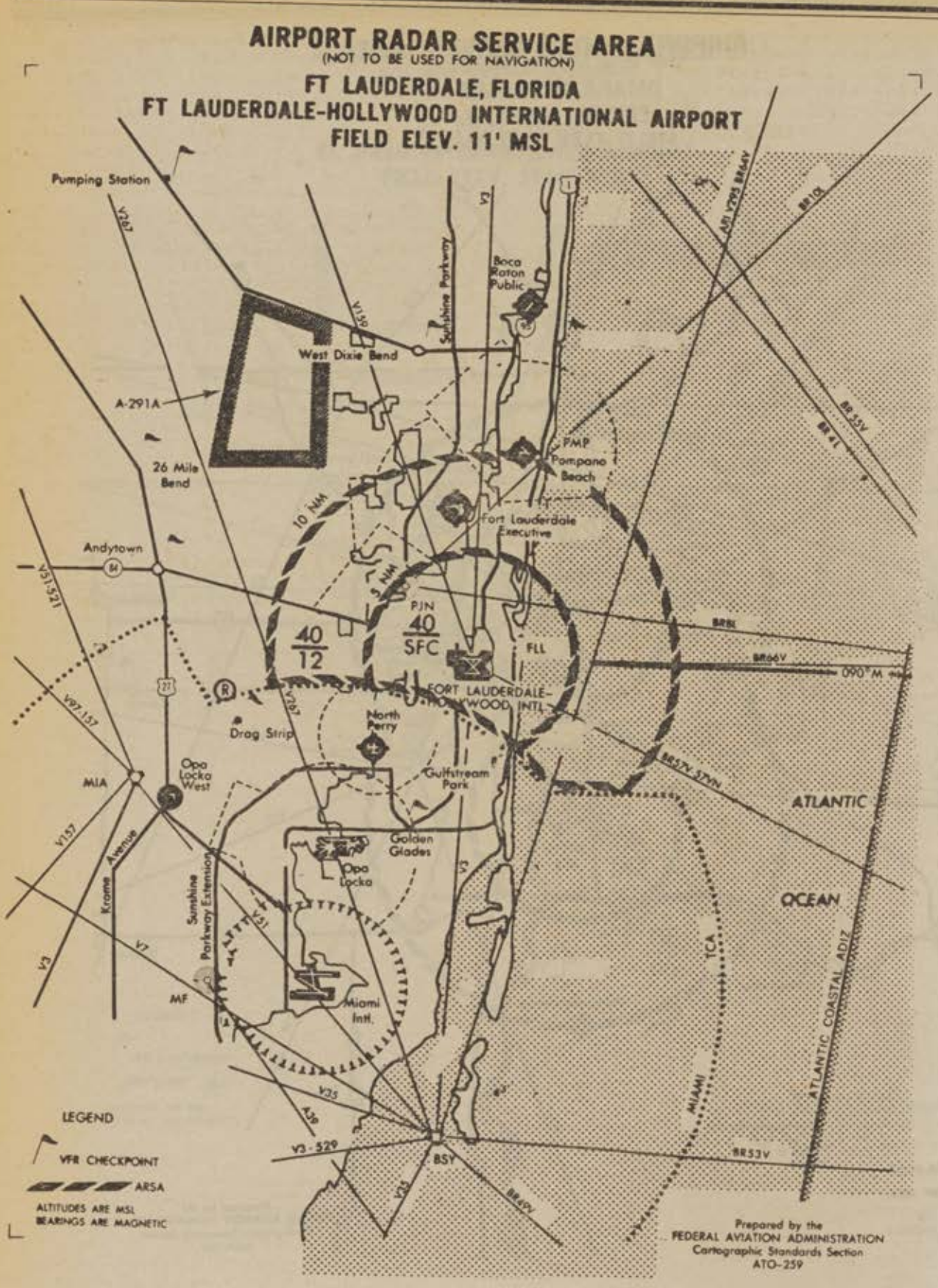
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ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

OMAHA, NEBRASKA
EPPLEY AIRFIELD
FIELD ELEV. 983' MSL

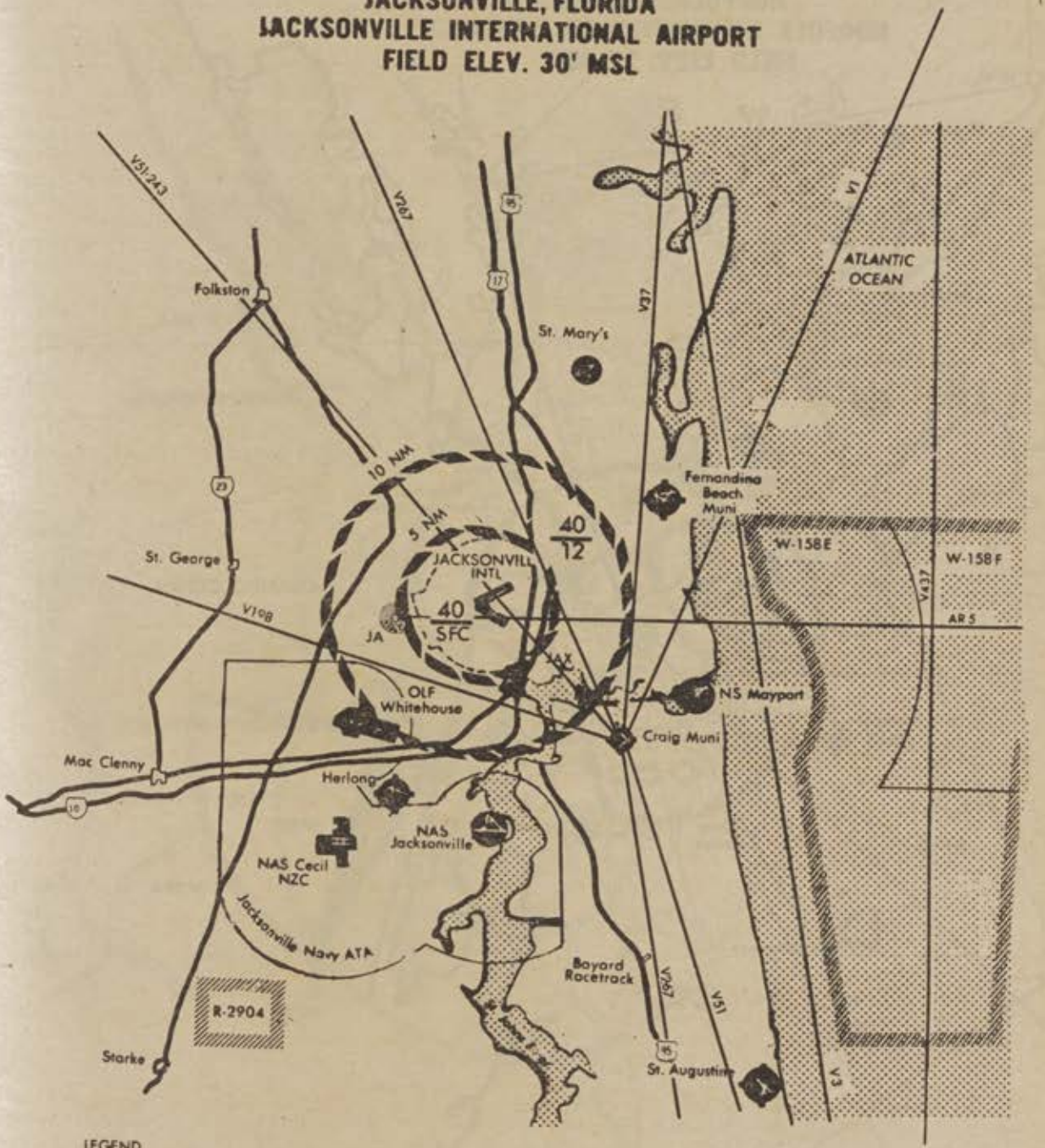



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
FT LAUDERDALE, FLORIDA
FT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT
FIELD ELEV. 11' MSL
Pumping Station
V262
V3
Sunshine Parkway
Boca Raton Public
V156
West Dixie Bend
A-291A
26 Mile Bend
10 NM
5 NM
PMP
Pompano Beach
Fort Lauderdale Executive
Andytown
V3 V521
PJN
40
SFC
40
12
FLL
FORT LAUDERDALE-HOLLYWOOD INTL
BR86V
090° M
BR8L
V97 V157
Drag Strip
North Perry
MIA
Opa Locka West
Gulfstream Park
BR57V 57VN
ATLANTIC
OCEAN
V157
Krome Avenue
Golden Glades
Opa Locka
Sunshine Parkway Extension
V31
V7
V3
MF
Miami Int'l.
TCA
MIAMI
ATLANTIC COASTAL ADIZ
V25
A39
V3-529
BSY
BR53V
BR69V
LEGEND
VFR CHECKPOINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC
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Cartographic Standards Section
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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

JACKSONVILLE, FLORIDA
JACKSONVILLE INTERNATIONAL AIRPORT
FIELD ELEV. 30' MSL



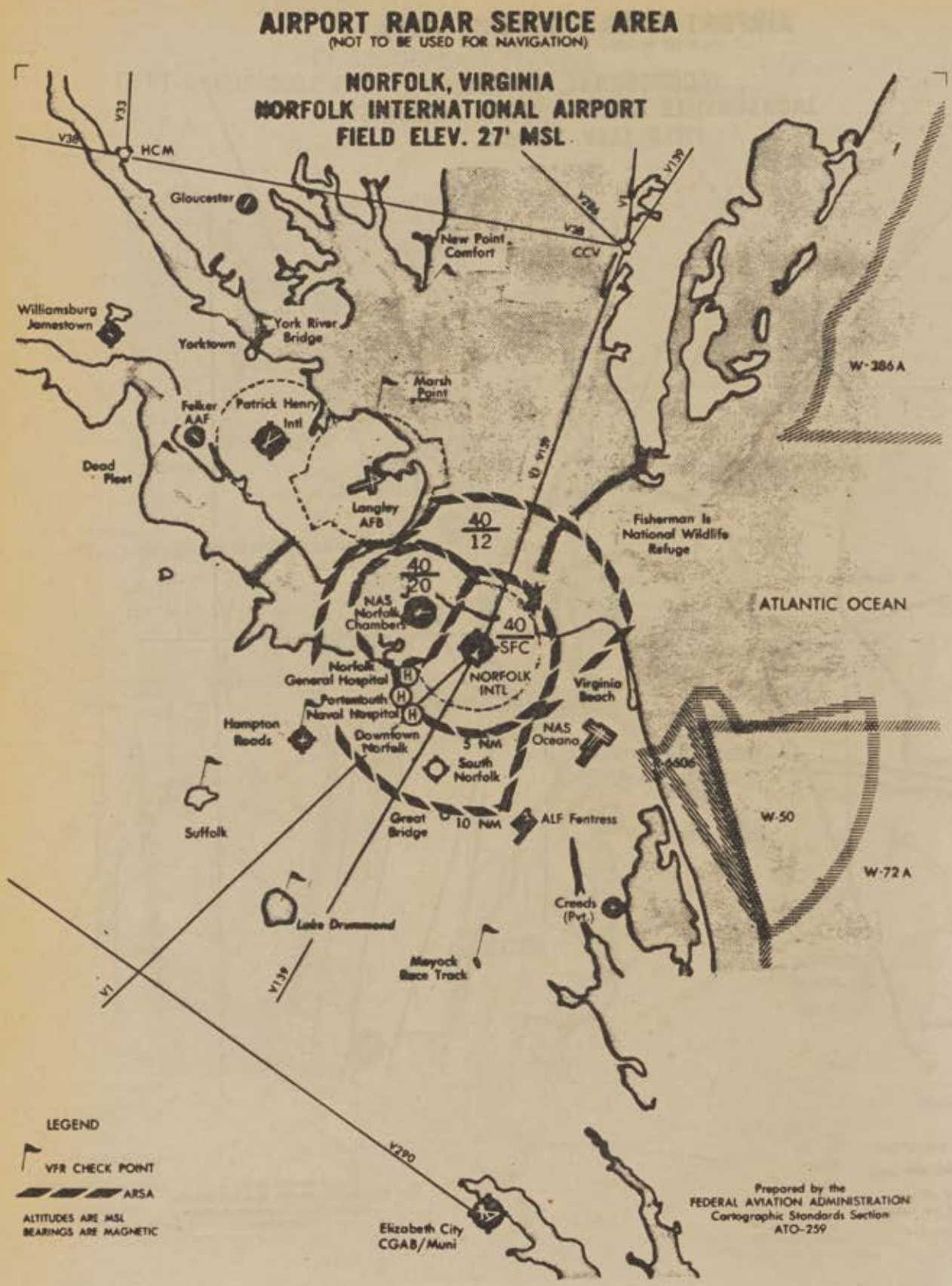
LEGEND

VFR CHECKPOINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

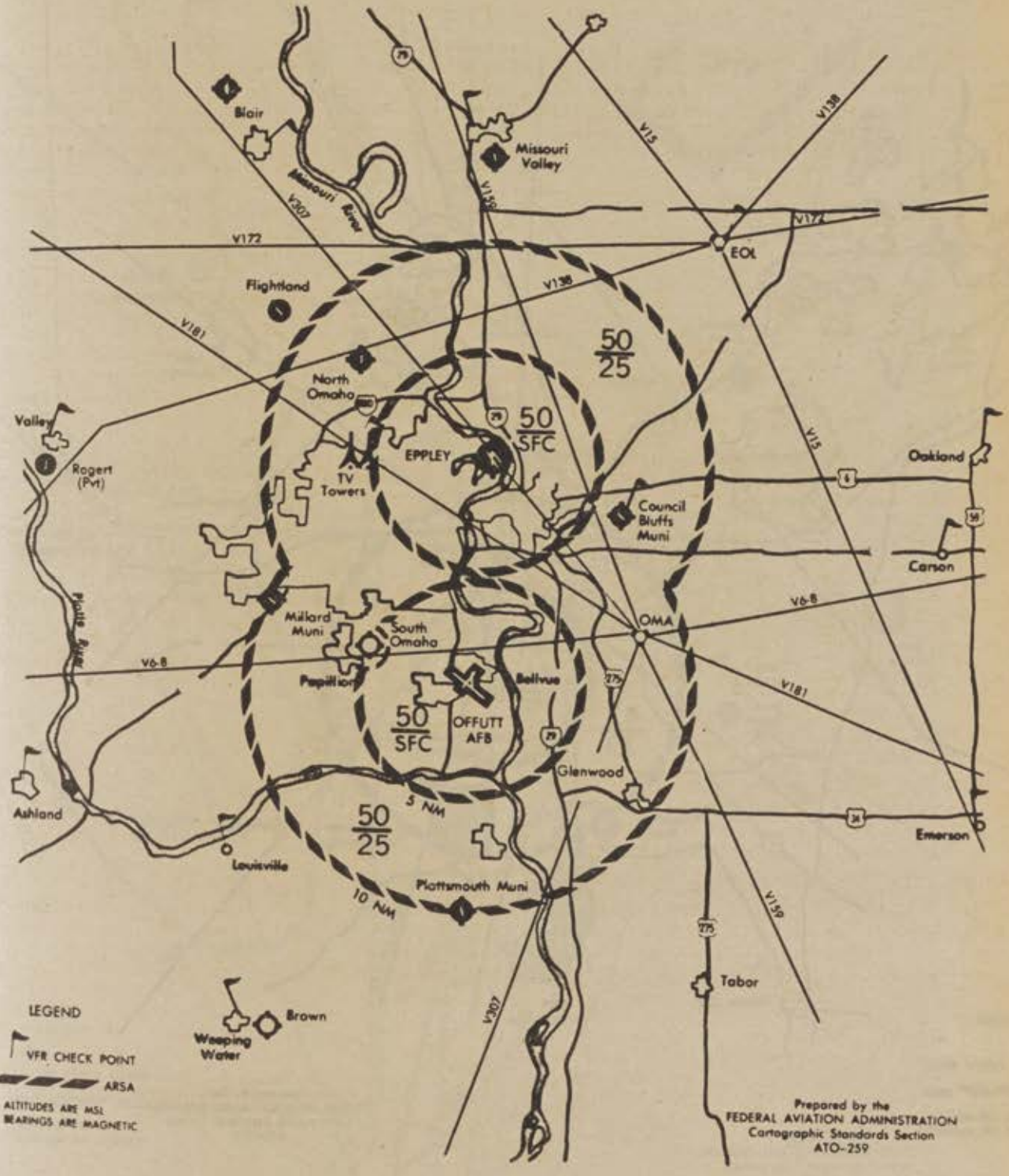
Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259


AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
NORFOLK, VIRGINIA
NORFOLK INTERNATIONAL AIRPORT
FIELD ELEV. 27' MSL
V33
V38
HCM
Gloucester
V139
V1
V28
V36
New Point Comfort
CCV
Williamsburg Jamestown
York River Bridge
Yorktown
W-386A
Marsh Point
Felker AAF
Patrick Henry Intl
Dead Fleet
Langley AFB
40/12
Fisherman Is National Wildlife Refuge
40/20
NAS Norfolk Chambers
ATLANTIC OCEAN
40/SFC
Norfolk General Hospital
NORFOLK INTL
Virginia Beach
Portsmouth Naval Hospital
Hampton Roads
Downtown Norfolk
5 NM
NAS Oceana
South Norfolk
R-6606
W-50
Suffolk
Great Bridge
10 NM
ALF Fentress
W-72A
Creeds (Pvt.)
Lake Drummond
Mayock Race Track
V139
V1
V290
LEGEND
VFR CHECK POINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC
Elizabeth City CGAB/Muni
Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

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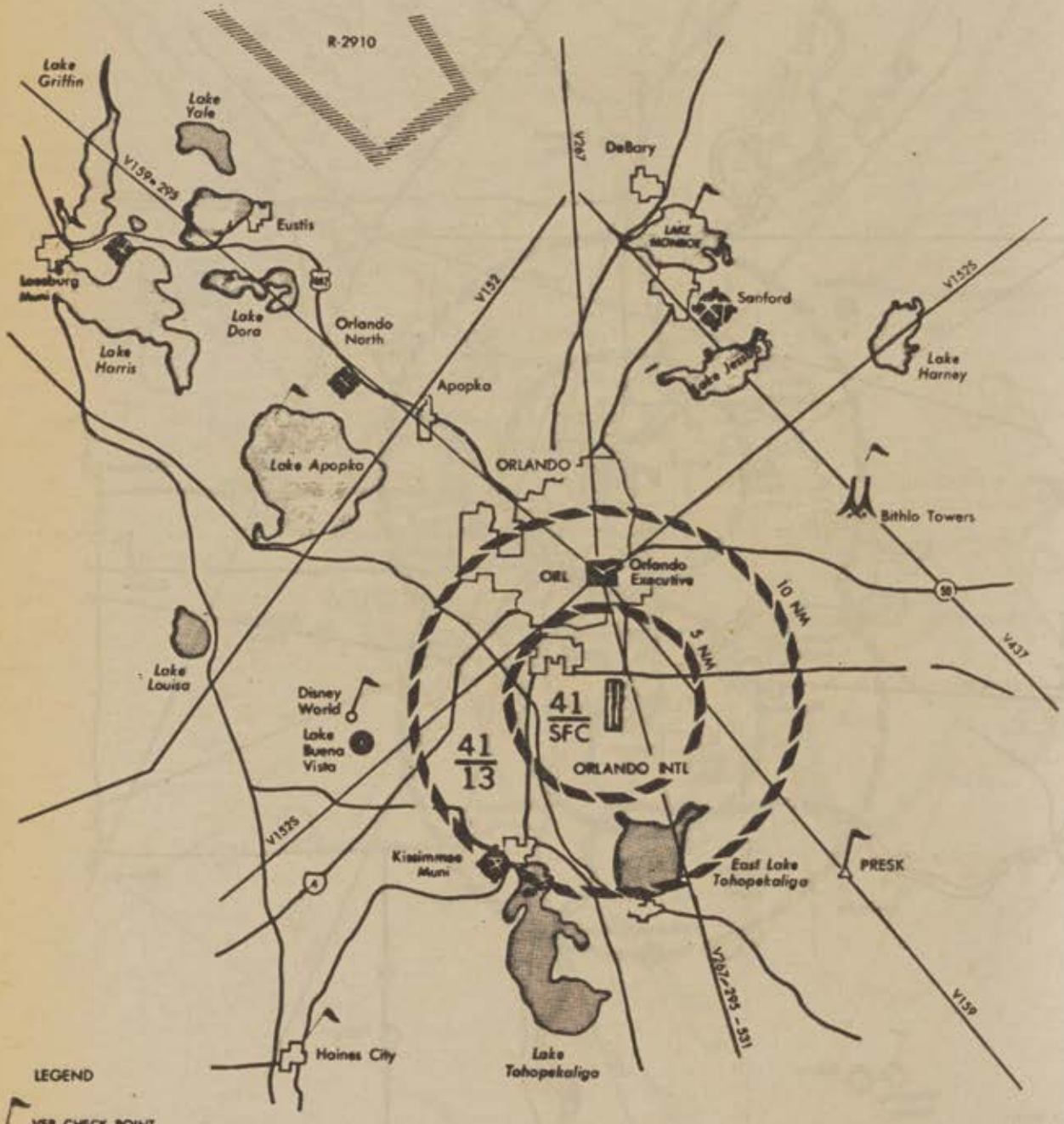
OFFUTT AFB, NEBRASKA
FIELD ELEV. 1048' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

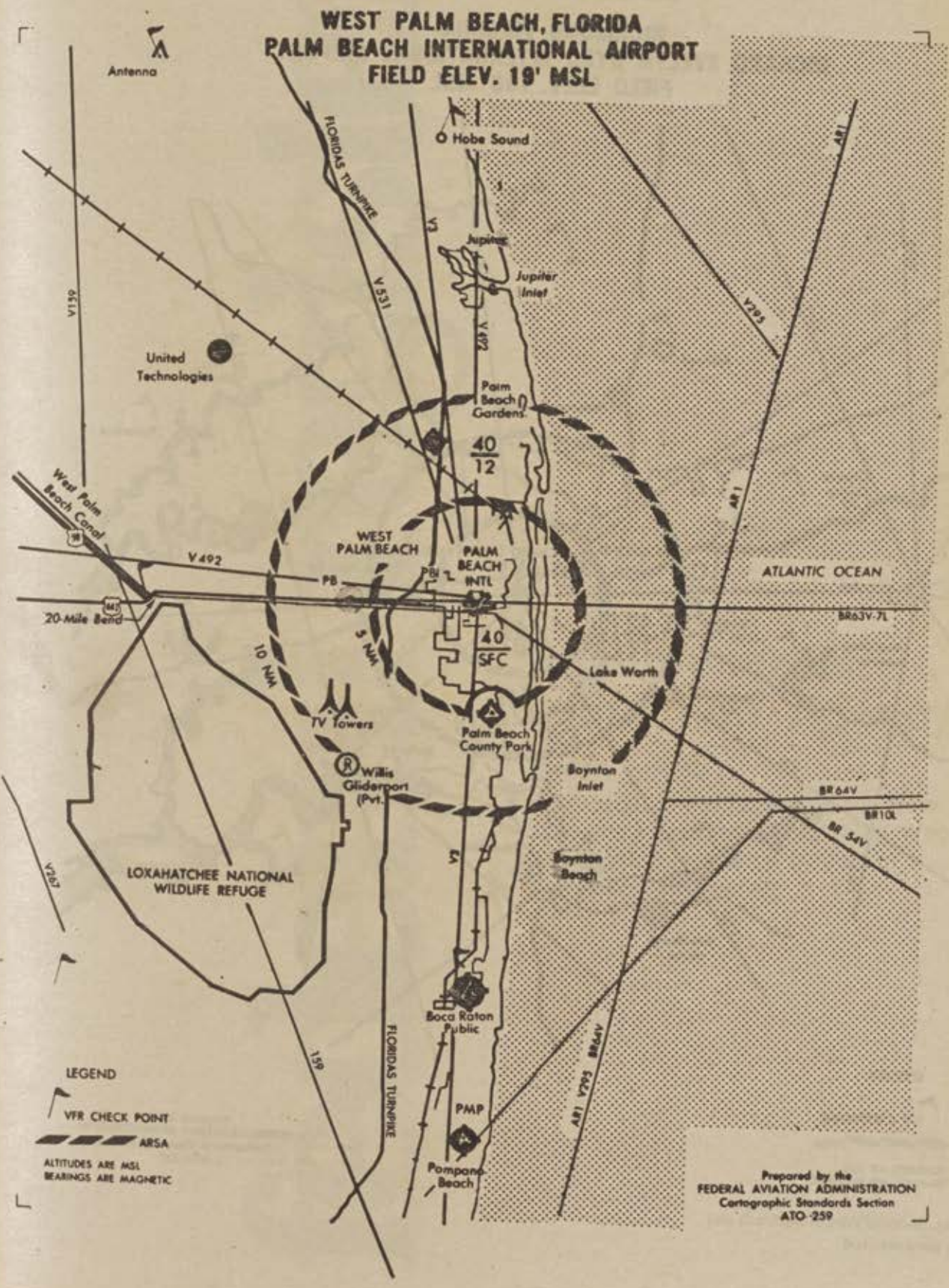
ORLANDO, FLORIDA
ORLANDO INTERNATIONAL AIRPORT
FIELD ELEV. 96' MSL



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Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

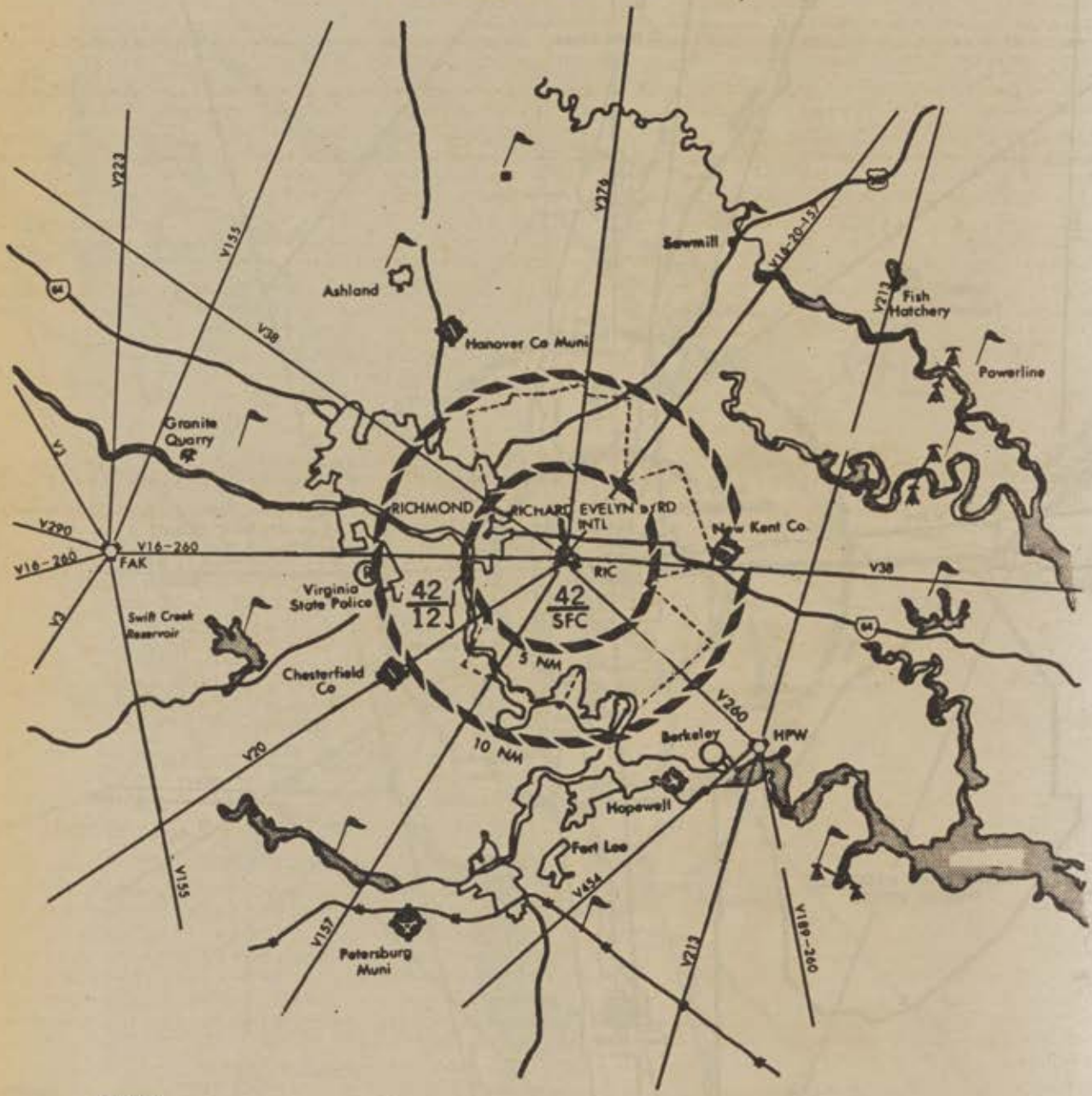
(NOT TO BE USED FOR NAVIGATION)



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

RICHMOND, VIRGINIA
RICHARD EVELYN BYRD INTERNATIONAL AIRPORT
FIELD ELEV. 168' MSL



LEGEND

VFR CHECKPOINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

[FR Doc. 85-18032 Filed 8-1-85; 8:45 am]

BILLING CODE 4910-13-C

federal register

Friday
August 2, 1985

Part IV

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Residential Wood Combustion; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2834-3]

Standards of Performance for New Stationary Sources; Residential Wood Combustion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This notice announces EPA's plans to develop new source performance standards for the control of particulate matter from residential wood combustion (RWC) devices. The purpose of this advance notice is to advise the public that regulatory activities are being initiated and to solicit information that would aid in standards development.

DATE: *Comments.* Comments must be received by September 3, 1985.

ADDRESS: *Docket.* A docket has been established for public comments. Send comments to Central Docket Section (LE-131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket A-84-49. Comments should be submitted in duplicate if possible.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Durkee or Mr. Jeffrey A. Telander, Industrial Studies Branch (MD-13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5595.

SUPPLEMENTARY INFORMATION:

Background

As of the end of 1983, there were an estimated 10.6 million RWC units in use. As referred to here, RWC units consist of freestanding woodstoves and fireplace inserts and do not include open fireplaces. Annual sales of new RWC units are projected to continue at approximately 1 million units per year. According to information published by the Department of Energy, roughly 60 percent of the RWC units are used as a primary source of heat while 40 percent are used as a secondary source of heat (with oil/gas as the primary source).

Actual emissions from RWC vary greatly depending upon the design and operation of the combustion device plus the type and condition of the fuel. However, data clearly indicate that particulate matter (PM) which includes polycyclic organic matter (POM), carbon monoxide (CO), and hydrocarbon (HC) emissions are substantial from RWC appliances. These appliances, unlike open fireplaces, contain an enclosed firebox where the air supply can be easily controlled, thus controlling the rate of wood combustion. To obtain desired heat outputs at low burn rates, the combustion process is "starved" of air (and thus oxygen). However, less oxygen not only slows the burn rate, but can also prevent complete combustion, causing significant emissions of products of incomplete combustion such as PM, CO, HC, and POM.

Presently, RWC contributes the following estimated annual emissions: PM—2.7 million tons, including POM—20,000 tons; CO—7.4 million tons; HC—62,000 tons. If the sales of RWC units continue at 1 million units each year, annual emissions are estimated to increase by the following amounts if not controlled: PM—216,000 tons, including POM—1,600 tons; CO—584,000 tons; HC—5,000 tons. Thus, by the year 2005, uncontrolled annual emissions from RWC units are estimated to total the following amounts: PM—7 million tons; CO—19 million tons; HC—159,000 tons; and POM—52,000 tons.

More than 80 percent of the PM emissions from RWC are smaller than 2.5 micrometers and almost all are less than 10 micrometers. Particulate matter of this size is considered respirable (they penetrate to the tracheo-bronchial and aveolar regions of the lung). Deposition in this region of the lung is of concern because the body may take years to remove the particles and repair the damage they cause. Exposure can increase coughing and chest discomfort, aggravate cardiovascular diseases, and may increase the adverse health effects of gaseous air pollutants.

Significant air quality problems are caused by RWC in localities where the number of wood burning devices are high. Emissions from RWC are a growing problem throughout all areas of the country where wood supplies are abundant. In fact, several areas are currently violating national ambient air quality standards (NAAQS) for PM and CO due to RWC. One study of ambient total suspended particulate (TSP) levels at seven sites in Oregon, Washington, and Idaho during the winter of 1980-81 estimated that during periods of high pollution in these communities, RWC was responsible for between 66 and 84 percent of the small respirable particulates (particles smaller than 2.5 micrometers).

Several areas in the Rocky Mountain region also are experiencing air quality problems partly or wholly attributable to RWC. These include Denver, Colorado; several ski resort communities in Colorado; and Missoula, Montana.

In Missoula, Montana, emissions inventory and direct sampling methods were used to determine that RWC was responsible for 54 percent of PM emissions and 39 percent of CO emissions during the winter. Also, an estimated 68 to 76 percent of the smaller, respirable particulates were found to be attributable to RWC. Surveys and modeling studies in Bangor, Maine; Chattanooga, Tennessee; and the State of New Hampshire suggest significant emissions and high air quality impacts due to RWC. In addition the following metropolitan areas have similar ambient air quality problems due to RWC: Medford, Oregon; Juneau, Alaska; Reno, Nevada; and Albuquerque, New Mexico.

The vast majority of the areas that are experiencing air quality problems due to RWC are urban areas. Thus, large numbers of people are being directly exposed to residential wood pollutants which are emitted at ground level.

Control Technology

There are two types of technology, noncatalytic and catalytic, that can be utilized to control emissions from RWC. The term "noncatalytic" refers to RWC units that have secondary combustion chambers or other stove modifications designed to control emissions. Secondary combustion can be achieved by mixing unburned gases from the primary combustion area with additional oxygen at a temperature sufficient to ignite the mixture or sustain burning. The emission reduction performance of RWC units equipped with secondary combustion controls can be highly variable. Performance varies with the burn cycle and operator attention.

The term "catalytic" refers to a RWC unit that is equipped with a catalytic combustor. The catalyst used on the combustor is a thin metal coating (usually platinum, palladium, or a combination) that allows nearly all the hydrocarbons and other flammable products in the smoke to burn at a temperature much lower than usual. In contrast to noncatalytic RWC units, a catalytic unit is most efficient at low firing rates. In addition, researchers have found that catalysts increase the thermal efficiency of a conventional RWC unit by 20-30 percent. This results in the user having to burn less wood in order to obtain the same amount of heat and, therefore, lowering fuel costs. Also, the catalyst greatly reduces creosote accumulation in the flue, thus reducing the potential for chimney fires. The

frequency of chimney cleaning is, therefore, also reduced which translates into additional cost savings.

Research has shown that RWC devices are generally operated at low burn rates, and it is at these burn rates that the largest amount of pollutants are produced. Research has shown that both catalytic and noncatalytic control technology are capable of reducing PM including POM, CO, and HC. Data from tests conducted on RWC devices equipped with noncatalytic control technology indicate that this technology is capable of controlling PM emissions at medium and high burn rates. Unfortunately, this control technology does not appear to be capable of controlling PM emissions at low burn rates. On the other hand, RWC devices equipped with catalytic control devices appear to control PM emissions over all burn rates. There is some concern about catalyst longevity. However, catalyst manufacturers are continuing their development efforts; and presently one catalyst manufacturer is producing a catalyst for which they offer a prorated 6-year limited warranty with 2 years free replacement. This particular catalyst has an expected operational life of about 12,000 hours.

The cost increase of incorporating catalytic or noncatalytic control technology into new RWC devices is estimated to be approxiamtely $200–$300 per unit. Replacement costs for catalytic combustors are estimated to be $50–$100.

Regulatory Activity

Regulations of varying stringency have been or are being adopted by some local and State governments. Certain communities require curtailment of wood burning when an air stagnation advisory is declared, whereas other communities have voluntary burning restrictions. In July 1984, the State of Oregon issued regulations which require all new RWC devices (free standing and fireplace inserts) sold in the State after June 1986 to meet the following PM emission standards: noncatalytic—15 grams of particulate per hour; catalytic 6 grams of particulate per hour. Oregon's Department of Environmental Quality (DEQ) estimates this represents approximately 50 percent particulate emission reduction when compared to conventional RWC devices. This standard changes on July 1, 1988, to the following: noncatalytic—9 grams per hour; catalytic—4 grams per hour. According to Oregon's DEQ, this standard represents approximately 80 percent particulate emission reduction when compared to conventional RWC devices. Compliance with this regulation is voluntary until June 1986. Oregon's regulation requires the manufacturer of RWC devices to have a representative of each model they wish to sell in Oregon tested by a laboratory accredited by the State. Thus far, Oregon has accredited one in-State laboratory and is in the process of reviewing an application from an out-of-State laboratory. Presently, Oregon has certified nine stove models, six noncatalytic and three catalytic.

Other States are also considering establishing emission limits. For example, the Colorado legislature has authorized the State Environmental Commission to establish statewide emission standards for RWC units. In addition, Massachusetts is considering regulating emissions from RWC devices.

Test Methods

Presently, there is no universally accepted method to measure emissions from a RWC unit. While developing emission limits for RWC units, Oregon also developed a test method. This test method is called Oregon Method 7. The EPA is currently using a modified Method 5 for research efforts to investigate emissions from RWC devices. A description of the modified method 5 sampling procedure is included in the docket. The American Society for Testing and Materials (ASTM) is in the process of developing a test method for RWC units which is slated to be released during the summer of 1985 on a provisional status.

Regulatory Approach

The EPA has concluded that a program to establish a Federal standard for RWC units is warranted and has begun gathering existing information on emissions, control technologies, test methods, certification procedures, and costs. The Agency is considering an expedited standards development approach based on the available data. The Agency will consider various emission limits, test methods, and certification procedures, including those of the State of Oregon. This approach has a number of advantages, foremost of which is achieving emission reductions up to 2 years sooner than under the Agency's traditional standard-development process. At a current sales rate of about 1 million units per year, this would mean control for an additional 2 million units and additional reduction in PM emissions of about 216,000 tons/yr. Other advantages include encouraging quicker development of more effective control techniques, quicker public awareness and education on the impacts and benefits of control and less cost to develop a standard. The EPA believes that the available emission control information is adequate to develop and set PM standards for new fireplace inserts and freestanding RWC units.

The more traditional standard-setting approach would include reference test method development, emission measurements with the test method, evaluation of the effectiveness of catalysts over long-term use, and a more detailed economic analysis. More specifically, in contrast to the expedited approach, the Agency would develop a test method and conduct its own independent testing of RWC units to quantify emissions and determine performance of control technology. The EPA-conducted tests with a single test method would quantify other pollutants in addition to PM, such as HC, and CO, and the ability to reduce these with different control techniques, on a consistent and repeatable basis. Test data on more types of units, reflecting the diversity of design, could be gathered as well as possibly expanding the scope of the standards to also include furnaces and fireplaces. More data on catalyst longevity would be available for consideration in setting the standard. A more comprehensive economic analysis could be performed by gathering more information on the economics that affect manufacturers and users of RWC units, thus enabling EPA to analyze a greater number of structural and usage subcategories for the RWC source category.

As noted above, the Agency believes that such a lengthy and detailed standard-development program is not needed for wood combustion units because an adequate data base for standards appears to be available. Developing standards on this basis is not expected to disrupt the availability of wood combustion units to the consumer; it is recognized, however, that a standard, whether developed rapidly or over a longer schedule, may result in the need for some manufacturers to redesign their products or to discontinue sales.

The two approaches involve important trade-offs. The Agency has made a preliminary decision to pursue the expedited approach, but is soliciting comments on the relative advantages and disadvantages of each. In several months, the Agency will make a final decision on the standard-setting approach to this source category, based on the amount and quality of available test data, environmental impacts of earlier control, applicability of control techniques and test methods, implementation and enforcement

considerations, cost of developing and implementing standards, and information and data gathered as a result of this notice.

The Agency is also seeking information and data on the technical, cost, economic, implementation, and benefits aspects of regulating RWC units. Of technical interest are emission and performance data for catalytic and noncatalytic control technologies during the entire operating cycle of the units. This includes catalyst longevity and emission reduction capabilities for particulates, carbon monoxide, and organics over several heating seasons, types or catalysts and configurations, causes of catalyst degradation, specific guarantees and conditions by catalyst manufacturers, operating and physical factors (such as air flow, humidity, type of wood, etc.) that affect combustion and pollutant formation, and design criteria for RWC units that incorporate either catalyst or noncatalyst control technology. The Agency seeks information and data on the accuracy, reproducibility, and comparability among all existing particulate test methods, including Oregon Method 7, the ASTM method, and the EPA Modified Method 5 and their ability to rank stoves according to their emission of PM including POM, and hydrocarbons. The EPA is interested in cost increases to the manufacturer and consumer of applying the various emission control techniques to RWC units. In addition, the EPA is interested in the cost benefit to consumers due to reduced wood consumption, reduced creosote formation, and greater operational safety. Other costs of interest are those related to emission testing, standards implementation, and enforcement. To analyze the economic impacts, EPA is soliciting the following information on businesses that manufacture and/or sell RWC units: firm sizes (employment, annual sales, and number of plants); production capacity and capacity utilization over the last few years; age and remaining lifetime of plants; how production line changes needed to produce controlled units would be financed; competitiveness of the market, and whether firms compete for sales in small geographic areas or in a national market; the mix of imported and domestic materials used in manufacturing the units; how many units are exported; and what prices firms charge (list and discounted prices and shipping costs). The EPA also is soliciting the following economic information on consumers: geographical distribution (for climate data); type of consumer (residential, commercial); how the consumer uses RWC units (primary or supplemental heat, water heating, cooking); alternative heating sources available to the user; initial capital and operating costs; time and money spent obtaining and perparing fuel, and cleaning the units; operating hours during each season of the year; and how much wood is consumed each season. Also of interest is information regarding the practicality of implementation of any regulations for RWC units, including catalyst availability, standards enforcement, certification, and labelling on units. Finally, the Agency is soliciting information on the beneficial aspects of RWC regulation, including impacts on emissions, visibility, odor, ozone formation, mortality, morbidity, agriculture, materials, indoor air quality, and the benefits or reduced creosote formation (thus fewer chimney fires and cleaning), and improved heating efficiency of the units.

The Agency does not intend that the proposed rulemaking preclude State and local control agencies from developing their own emission control regulations and certification procedures for RWC units. To assist State air pollution control agencies and others interested in control of RWC emissions, the Agency will share the information obtained through responses to this notice or obtained from other sources.

The Agency is aware that there are systems available which allow catalytic combustors to be retrofitted to existing RWC units. However, not all RWC units are capable of being retrofitted due to the many different unit designs, space limitations, and potential conflicts with existing safety regulations and building codes. Also, there are questions concerning the stove-to-stove performance of retrofit catalysts due to issues regarding flame impingement and the inability to optimize that catalyst inlet configuration on retrofit applications. Furthermore, the Agency believes that it would not be feasible to administer and enforce a regulation for retrofit of existing stoves on a national basis. Implementation of such a regulation would require that over 10 million existing stoves in private residences be located. In addition, each unit would have to be evaluated to determine if a retrofit system would be compatible. Enforcement and administration of a program for retrofitting existing stoves on a national basis would be resource intensive and extremely difficult to implement. Therefore, development of a standard for existing units is not being considered at this time. In the future, in order to provide guidance to State and local agencies, the Agency may develop a guideline document on retrofitting catalytic, or other controls, to existing units. Therefore, the Agency is soliciting comments on this issue and on the availability, applicability, safety aspects, and performance of retrofit control technology and the costs associated with retrofitting existing units.

Miscellaneous

A regulatory flexibility analysis under 5 U.S.C. 601, et seq., is not required for this notice. This notice would not impose any new regulatory requirements, nor would it impose any additional costs. This notice is also considered nonmajor under Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Paper and paper products industry, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 25, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-18113 Filed 8-1-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
August 2, 1985

Part V

Department of Transportation

Federal Railroad Administration

49 CFR Parts 212, 217, 218, 219, and 225
Control of Alcohol and Drug Use in Railroad Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 212, 217, 218, 219, and 225

[FRA Docket No. RSOR-6, Notice No. 7]

Control of Alcohol and Drug Use in Railroad Operations; Final Rule and Miscellaneous Amendments

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule on control of alcohol and drug use in railroad operations. The final rule prohibits on-the-job use, possession, or impairment by alcohol or any controlled substance, mandates post-accident toxicological testing after certain serious accidents and incidents, authorizes railroads to require breath and urine tests on reasonable cause, requires railroads to adopt policies to aid in the indentification of troubled employees, provides for pre-employment drug screens, and requires more complete reporting of alcohol and drug involvement in train accidents. FRA also issues miscellaneous amendments necessary to implement the new regulatory program.

DATES: Effective Date: November 1, 1985 except amendment to 49 CFR 225.17, which is effective January 1, 1986.

Dates: (1) Compliance with post-accident testing requirements is authorized on and after the effective date and is mandatory beginning on December 1, 1985. Compliance with requirements for pre-employment drug screens is authorized on and after the effective date and is mandatory beginning on March 1, 1986. All other provisions are fully operative on the effective dates (November 1, 1985, for new Part 219 and amendments to Parts 212, 217, 218; January 1, 1986, for amendment to Part 225).

(2) Any petition for reconsideration of any portion of the rule must be submitted not later than October 1, 1985.

(3) In a subsequent notice to be published shortly, FRA will announce the dates of conferences to be held in several cities for the purpose of acquainting the railroads, employees and other interested persons with the requirements of the rule.

ADDRESSES: (1) Any petition for reconsideration should be submitted to the Docket Clerk (RCC-30), Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590.

(2) The docket of this rulemaking is available for examination during regular business hours in Room 8201 of the Nassif Building at the above address. Please note that this reflects a change in the location of the docket facility.

FOR FURTHER INFORMATION CONTACT: Walter Rockey, Executive Assistant to the Associate Administrator for Safety, FRA, Washington, D.C. 20590 (Telephone: 202-426-0895); or Grady Cothen, Special Assistant to the Chief Counsel, FRA Washington, D.C. 20590 (Telephone: 202-426-9416).

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Abbreviations and Definitions

The following abbreviations and specialized terms are used with some frequency in this preamble and are collected here for the convenience of the reader:

AAR—Association of American Railroads.

AMA—American Medical Association.

ATDA—American Train Dispatchers Association.

BAC—Blood alcohol concentration, expressed as a "percentage" weight (in grams) to volume (100 milliliters). A BAC of .10, for instance, means that .10 gram of alcohol is present in each 100 milliliters (or one deciliter) of whole blood. The most common alternate way of stating the same concentration is by "milligrams percent" (milligrams per 100 milliliters), in which case the same BAC would be reported as "100 milligrams percent." BAC may be measured directly or estimated from concentrations in breath, urine, or other samples.

BLE—Brotherhood of Locomotive Engineers.

CAMI—Civil Aeromedical Institute, Federal Aviation Administration, Oklahoma City, Oklahoma.

EAP—Employee assistance program. A program established by the employer to help employees who are experiencing substance abuse or other personal problems that may ultimately affect their performance on the job. Some EAPs also serve members of employees' families.

NARUC—National Association of Regulatory Utility Commissioners.

National Planning Committee—A committee established jointly by rail labor, the railroads, and FRA for the purpose of fostering prevention efforts in the field of alcohol and drug abuse. Consists of a steering committee and a working group.

NIDA—National Institute on Drug Abuse.

NRAB—National Railroad Adjustment Board.

NTSB—National Transportation Safety Board.

REAP Report—Report of the Railroad Employee Assistance Project. Mannello, T.A., and Seaman, F.J., *Prevalence, Costs and Handling of Drinking Problems on Seven Railroads* (University Research Corporation 1979).

RLEA—Railway Labor Executives Association. RLEA is an "umbrella" organization for the traditional rail unions representing a large majority of rail employees in the United States.

Rule G—The railroad operating rule that prohibits use of alcohol or drugs by employees on duty or subject to duty. All railroads have such a rule in effect.

UTU—United Transportation Union.

Introduction

Preface

This final rule culminates a rulemaking process that began with issuance of an Advance Notice of Proposed Rulemaking (ANPRM) on June 30, 1983 (48 FR 30723; July 5, 1983). On June 5, 1984, FRA issued the NPRM (49 FR 24252; June 12, 1984), which was followed by five days of public hearings, a technical conference on post-accident testing, and receipt of written comments through the comment closing period of August 15, 1984. Since the comment closing date, FRA has continued to receive related materials and views. Consistent with our practice to consider late-filed comments to the extent practical, FRA has considered all comments received through March 31, 1985 in preparing this final rule.

The ANPRM and NPRM discussed in considerable detail the regulatory

options available to FRA, public response to those options, the background of the alcohol and drug problem on the railroads, current approaches to the problem by the railroads and employee organizations, relevant accident and injury statistics, and the Federal responsibility for promoting railroad safety. In order to provide a reasonably complete explanation of the rationale for the final rule in a single document, this preamble repeats a portion of the explanation and analysis contained in the NPRM, with appropriate modifications in light of comments received and developments noted in the industry since publication of the NPRM.

Background

The problem of alcohol use on the railroads is as old as the industry itself, and efforts to deal with it through carrier rules and enforcement began more than a century ago. In recent years the railroads have augmented traditional rule compliance efforts by establishing EAPs designed to reach employees whose drinking is compulsive or symptomatic of other, treatable problems. However, all efforts to control the alcohol problem, and the newer problem of drug abuse, have failed to end the loss of life and property damage associated with alcohol and drug-impaired employees.

The railroads are the only major domestic transportation mode without explicit Federal regulations governing alcohol or drug use. The Department of Transportation's Federal Highway Administration and Federal Aviation Administration administer provisions governing on-duty use of alcohol and drugs as well as medical certification programs that provide for the disqualification of flight crew members and truck drivers who suffer from alcohol or drug dependencies. The States also enforce criminal statutes forbidding the operation of private motor vehicles while under the influence of alcohol or drugs. By contrast, prior to this final rule there has been no Federal prohibition on alcohol or drug use by railroad employees engaged in safety-sensitive functions; and no State has had an active program of regulation.

Therefore, on June 30, 1983, FRA issued an ANPRM concerning the control of alcohol and drug use in railroad operations. That notice provided background on industry efforts to deal with the alcohol and drug problem. The ANPRM also included a discussion of—

- The Railroad Employee Assistance Project (REAP), a joint labor-management-FRA effort to define the extent of the alcohol problem on the railroads and develop recommendations for corrective action.
- The report of that project (the "REAP Report"), which compiled data from a 1978 survey of several thousand employees on seven railroads and set forth analysis and recommendations.
- Developments since the REAP Report, including an update (White Paper) published in June of 1982 and the emergence of Rule G "bypass" agreements.

The ANPRM set forth a wide range of options for action to address the alcohol and drug problem and invited views on the listed options and any other approaches that might prove useful in reducing alcohol and drug-related accidents.

Following publication of the ANPRM on July 5, 1983, FRA conducted five days of public hearings to elicit information and views. Hearings were held in Atlanta, Georgia, on July 25, in Kansas City, Missouri, on July 26, in Sacramento, California, on July 28, and in Washington, D.C., on September 1 and 2, 1983. A total of 57 individuals or organizations were represented by oral or written submissions. FRA received oral or written viewpoints from 19 employee sources (from the national level to individual union members), 20 railroads, 5 State and local government sources (one of which expressed the views of 21 State agencies), 14 private organizations and non-rail companies, 6 individual citizens, and 3 Federal agencies. In some cases, a single organization offered more than one witness and also filed more than one written submission.

Elements of the NPRM

FRA review of the responses to the ANPRM led to the identification of six regulatory proposals which were embodied in the NPRM. In particular, FRA proposed to—

- Specifically prohibit the use of alcohol and drugs by employees directly connected with rail operations (Hours of Service employees) and impose on the railroads an obligation to assure compliance with that prohibition;
- Require toxicological testing of employees involved in major accidents and incidents;
- Require that pre-employment physicals of applicants for employment in Hours of Service positions include a urine drug screen;
- Authorize the railroads to test employees for alcohol or drugs on reasonable suspicion of impairment, after accidents and injuries, and after serious operating rule violations;
- Require the railroads to institute policies that will promote the early identification of problem drinkers and drug users; and
- Require more complete reporting of alcohol and drug involvement in train accidents.

Public Proceedings on the NPRM

The NPRM was published in the **Federal Register** of June 12, 1984 (49 FR 24252). Hearings were held on July 17, in Denver, Colorado, on July 19, in Chicago, Illinois, on July 23, in New Orleans, Louisiana, and on August 2 and 3, in Washington, D.C. In addition, FRA convened a technical conference on post-accident testing on August 1, in Arlington, Virginia.

The public comment period closed August 15, 1984. Some late-filed comments were received immediately following the closing date, and additional communications relevant to the rulemaking have been received since that time. In no case does it appear that a commenter intentionally withheld comments that should have been submitted by the closing date, and FRA has considered late-filed comments as indicated above.

The NPRM elicited comments from a total of 92 participants, including 28 non-industry sources, 6 national labor organizations, 23 union organizations below the national level, 8 individual employees, two national railroad associations, and 25 railroads. Some of these commenters were represented by more than one witness and/or more than one written submission.

FRA greatly appreciates the time and effort expended by commenters in providing information and stating their positions before the agency. The process of public participation has greatly aided in sharpening the focus of the proceeding, developing a better understanding of the problems faced by workers and managers, and evaluating the regulatory proposals.

General Summary of Comments

Support and Opposition

The rulemaking drew express support from NARUC, NTSB, the New York Department of Transportation, the National Association of Railroad Passengers, the AMA, Louisiana State Police, certain shipper groups, and several other non-industry sources. In addition, a short line system, a regional rail system, a commuter railroad, and a major freight railroad explicitly indicated support for the rulemaking. The ATDA and another major freight

railroad supported the proposals with significant qualifications.

Railroads. AAR said it welcomes a greater federal role, but many of its members were less explicit (except with respect to authority to test). Most of the major railroads did follow the AAR in offering numerous proposed revisions or objections.

Congressional response. This rulemaking elicited an unusual degree of congressional interest, when compared with previous pending FRA rulemakings. The proposed rules were publicly announced by the Secretary of Transportation at a hearing before the Surface Transportation Subcommittee of the Senate Commerce Committee on June 6, 1984, called for the purpose of exploring the impact of alcohol and drug use on railroad safety. On September 20, 1984, the House of Representatives passed by voice vote H.R. 5585, section 2 of which would have directed the Secretary to issue, within 60 days, "a final rule or regulation to ensure the prevention of alcohol and drug use in railroad operations." (H.R. 5585 was not considered in the Senate prior to the *sine die* adjournment of the Ninety-Eighth Congress.) Rep. Henson Moore (La.) filed comments in support of the rulemaking, citing the Livingston, Louisiana, accident as evidence of need. Other specific Congressional reaction is described below.

Labor. The RLEA generally opposed the adoption of Federal regulations for a number of reasons including the following (summarized by FRA):

1. Other major safety issues remain "unaddressed."
2. Lack of accident data base.
3. Failure to establish that Federal rules will have a positive, rather than negative, impact.
4. (Unspecified) adverse affects on voluntary programs.
5. Lack of enforcement mechanisms.
6. Not cost-effective, particularly when compared to EAPs.

However, RLEA representatives indicated that they would not object to certain portions of the rules, as noted below.

The RLEA, BLE and other labor witnesses strongly expressed the view that only voluntary action will prevent alcohol and drug use. The Brotherhood of Railway Clerks (BRAC) said it did not have significant problems with the proposed rules, but did not believe they are the solution to the problem.

The most vociferous opposition came from over a dozen commenters who were local union officers and agreement employees. Some of them accused FRA of acting in bad faith, but others offered obviously sincere concerns regarding the use to which management of some railroads might put the proposed regulations, particularly the provisions dealing with breath and body fluid testing.

Operation Red Block: Alternative to Regulation?

Labor witnesses argued that the real answer to the alcohol and drug problem is good employee assistance programs, peer identification and referral systems, bypass and "companion" agreements. Bypass agreements are described in some detail in the ANPRM and NPRM. In general, they provide the opportunity for Rule G offenders to "bypass" discipline (generally for a first offense only) and, instead, receive counseling or treatment. Some bypass agreements offer the option of counseling or treatment only where the Rule G offense is reported by a co-worker; others operate on a more universal basis. "Companion agreements" are a new innovation since the beginning of this rulemaking. Companion agreements operate when an employee is detected in a rule violation by a management official. The employee is disciplined (generally dismissed) but is offered a probationary reinstatement on the condition that the employee first complete counseling or treatment. Like bypass agreements, companion agreements are generally limited to first offenses.

Since issuance of the initial notice in this rulemaking, these elements have been combined in a program on the Union Pacific Railroad that has been called "Operation Red Block." Although newly designated, Operation Red Block is the result of years of experimentation and work by the UTU, BLE, the Union Pacific and other railroads.

In recent months, the National Planning Committee has agreed to use the designation Operation Red Block as a title for a national prevention effort designed to enlist employees in prevention of job-related alcohol and drug use while declaring the commitment of the railroads to assisting employees with substance abuse problems. The national Operation Red Block program may take various institutional forms on individual rail properties, but its focus will be a joint effort between labor and management.

For the purpose of discussing comments in this preamble, "Operation Red Block" will be used to denote a highly structured program including formal collective bargaining agreements (bypass and companion), the active participation of rail labor organizations in identifying those employees who require counseling or rehabilitation, and provisions to reduce co-worker tolerance of job-related alcohol and drug use.

RLEA, UTU and BLE spokesmen have repeatedly and vigorously urged that Operation Red Block is a viable and growing alternative to regulation. By contrast, those railroads that have participated in instituting elements of Operation Red Block appear to view the project as a part of a larger effort to eliminate alcohol and drug use which includes active enforcement of Rule G through existing methods and enhanced means of detection such as those contained in the NPRM.

The labor organizations and Union Pacific offered strong arguments in favor of the Operation Red Block approach. Both UP and the participating labor organizations reported that experience with Operation Red Block on the UP has been positive. It was reported that volitional use of alcohol and drugs declined substantially on those portions of the property where the program had been fully implemented. However, statistical documentation of the effect of the program is difficult to develop and was currently unavailable. In Denver, a UTU spokesman said that there were UTU companion agreements in effect on seven railroads. Although a complete count of railroads and workers participating in all or part of the Operation Red Block concept is not available, FRA is aware that additional agreements are being executed as this rule is prepared.

Some labor commenters suggested that Operation Red Block and Federal regulations could not co-exist. A state-level union officer said that EAP and bypass agreements are working and that "any Federal intervention will disturb the delicate balance that is needed to maintain this position." The commenter thought FRA should observe an 18-month moratorium on regulations, appoint a study commission and undertake other measures in the fields of training and prevention.

Railroad reaction. One regional railroad that has recently instituted a program similar to Operation Red Block joined the labor organizations in cautioning against the issuance of Federal rules. That railroad suggested a one-year delay in implementation of regulations and a "variance procedure" providing exemptions to carriers and labor organizations that are making satisfactory progress toward solving their problems. By contrast, the Union Pacific itself supported the early adoption of Federal rules granting authority for improved detection of Rule

G violations. Like Union Pacific, most other railroads did not view Operation Red Block as an alternative to regulation, although they were generally receptive to the concept on its own merits.

Long-term viability. Perhaps the single greatest issue concerning Operation Red Block is whether, if it spreads to reach most railroad employees, it will constitute a sustained, long-term effort with relatively permanent effects on employee attitudes and demonstrable success in promoting early intervention with those who abuse alcohol and drugs. The commenters were understandably unable to offer much information on that point. Indeed, a local BLE officer who testified regarding the peer intervention component of UP's Operation Red Block said that he got the idea for local committees while reviewing literature in an attempt to respond to the ANPRM in this rulemaking. Another local BLE officer cited his "9 months of experience with a program that works," and a third said he was hopeful after 3 months.

A western railroad that has recently concluded agreements for an employee involvement program testified at the hearings that its previous attempts to encourage peer referral had not proved productive. Operation Red Block is further discussed under "Recent Developments," below.

Miscellaneous Issues

Minimum standards. The AAR, numerous railroad witnesses and the NTSB stressed that the rules should expressly state that they are minimum standards and that the railroads are free to adopt more stringent measures. A major railroad asked, in addition, for a declaration that the rules do not supersede the collective bargaining agreements with respect to disciplinary procedures.

Discipline. In the NPRM, FRA reviewed public comments that addressed the establishment of criminal sanctions, mandatory disqualification periods, and similar concepts. In general, the commenters responding to the NPRM did not take up these themes. However, a shipper group did urge clear standards for corrective actions—"actions that increase severity after the first offense." By contrast, an NTSB member indicated that the Board is not concerned with discipline. Like FRA, NTSB is only concerned that impaired employees be kept out of the railroad operating environment.

Timing. A local union representative and a railroad both suggested a moratorium on rules for a period (12 or 18 months) during which the progress of labor-management cooperation would be evaluated. They shared the view that Federal rules should be held in abeyance while Operation Red Block is established and evaluated on the individual railroad properties. The same railroad further recommended that carriers and labor organizations who were making progress be able to jointly seek exemptions from the operation of the rules. A major railroad, however, recommended a January 1, 1985, effective date for the proposed rules "in light of the available evidence on the extent of the problem."

Employees covered. The coverage of the final rule and its individual provisions was the subject of considerable discussion. FRA proposed to make the rules applicable to employees covered by the Hours of Service Act (generally operating crews, persons engaged in handling orders and other instructions with respect to train movements, and persons engaged in construction, maintenance and repair of signal systems). Several railroads and RLEA approved the Hours of Service class, but RLEA though FRA should also include supervisory employees, "because they issue orders for employees to perform, even though [the orders] may be unsafe." BLE and a few other commenters argued for coverage of maintenance-of-way and car forces, as well as operating department officers. Indeed, BLE would make the rule universal, a view shared by a commuter railroad and some local officers of operating unions. Some support was expressed for coverage of maintenance-of-way employees or, at least, their working supervisors.

NTSB thought the rules should apply to "all employees who potentially may be involved in an accident," but agreed that precise definition of additional categories of employees presents a difficult issue. NTSB said that its experience with alcohol and drug accidents "has been almost exclusively with people directly involved in operations."

Several labor commenters wanted officers subject to the same testing provisions as agreement employees. The railroads offered no objection to coverage of officers, although they did not want local chairman deciding who would be tested or when. (Other comments on coverage of the rules are discussed with respect to individual provisions, below.)

A local union organization asked that the rules be clarified to provide that covered service is only on-duty time.

Application to railroads. BLE specifically objected to the proposed exclusion of Port Authority Trans-Hudson from the coverage of the rule. The American Short Line Railroad Association, representing small railroads, stressed that many of its members are very different from trunk line carriers with respect to operating patterns and characteristics, degree of supervision, and known extent of alcohol and drug problems. One of its members asked for a full exemption from the entire rule for any railroad with fewer than 15 persons in covered service, whether freight or passenger.

Cut system and short calls. RLEA, BRS, and other labor commenters urged that any final rules include a right for employees to mark off, either without restriction as to notice of the assignment or in situations where they receive short calls. RLEA proposed that employees have the right to mark off without stated cause twelve (12) times each year (after which the employee would be referred for evaluation by the railroad's EAP). The railroads responded that a cut system would be counterproductive, since it would permit the problem drinker to continue to imbibe while subject to duty. Some employee representatives also urged better notice of assignments through improved line-ups or better scheduling of train movements.

Railroad lifestyles. Labor commenters stressed the difficult working conditions previously described in the NPRM—long and irregular hours, inability to lay off or stop for meals, short calls, increased duties on account of consolidations, boredom at away-from-home terminals, the family stress induced by these conditions, etc. Some of the commenters thought FRA should deal with the aspects of these problems that they saw as greater safety problems than alcohol and drugs, particularly sleep cycles. Others pointed to these conditions as explanations for alcohol and drug use—suggesting that no amount of direct regulation could address the underlying causes. One commenter thought the National Planning Committee should inquire into the effects of rotating shift work on fatigue. Another suggested that these conditions were inconsistent with the responsibility of crews to operate heavy trains and make the "split-second decisions" necessary to anticipate stops and other contingencies.

As was the case in the ANPRM cycle, the extent and variety of comments on the railroad lifestyle in response to the NPRM were impressive. Several local union representatives called for revision of the Hours of Service Act, and one representative suggested revision of basis-of-pay provisions in the collective bargaining agreements. Employee

representatives continued to stress the importance of recreational facilities at away-from-home terminals. Several labor commenters said that unreasonable work schedules are related to the insufficient number of employees available for assignments. It was suggested that dispatchers are often too overworked to provide line-ups and other information useful to employees attempting to estimate when they will be called.

Several commenters provided rather specific information on the long and irregular hours they or their co-workers were required to work. A UTU local chairman claimed that his railroad had restricted layoffs, in violation of the agreement, during a wheat harvest. Another UTU local chairman provided abstracts of time records for numerous employees in Wyoming, showing very erratic hours, occasional short rest periods and apparent attempts by the carrier to assure availability of employees by requiring them to mark off at precisely 11 hours and 59 minutes (thereby providing for 8, rather than 10, hours off). Other commenters cited instances of long or irregular hours out of their personal experiences.

Other rules. Participants had various suggestions for additional rules. Some of these suggestions were offered as substitutes for the proposed rules and some as additional measures that might be undertaken to ensure fitness. The Washington Legal Foundation urged the adoption of requirements for supervisory observations. Some labor commenters appeared to support licensing of locomotive engineers or others in safety-sensitive functions. The BLE suggested that FRA consider licensing of engineers to promote improved training in a new rulemaking following completion of this rulemaking. A commuter railroad also appeared to support licensing of engineers. Some commenters suggested the use of train control systems and alerting devices as an alternative or supplement to alcohol or drug rules.

Other comments. A consultant with expertise in substance abuse generally approved of the NPRM but questioned whether FRA might be underemphasizing prevention by failing to include standards for EAPs. The consultant said that some military units have experienced declines in self-referrals as the armed forces have pressed their drug detection programs and urged the creation of a centralized data system bringing together post-accident testing, pre-employment drug screens, EAP referrals, detection efforts and the like.

A short line railroad objected to the complexity of the proposed rules. The commenter would stress employee responsibility and provide Federal sanctions against employees who fail to report alcohol and drug violations.

A former railroad employee, now a consultant, cited an alleged lack of literacy among railroad managers and alleged discriminatory practices by the railroads as barriers to enlightened and fair application of the proposed rules. He urged that a neutral third party be designated to apply any regulations that might be issued.

Finally, FRA received strong encouragement from a variety of persons and organizations, particularly within organized labor, to make active efforts to acquaint employees and managers with the requirements of any final rules before they are implemented.

Testing of Breath and Body Fluids

Some of the comments on breath and body fluid testing cut across the individual proposals. Local union representatives cited the alleged technical deficiencies of breath testing devices, such as non-specificity and susceptibility to manipulation by the operator.

The BLE said that FRA must guarantee the "neutrality, integrity and validity" of tests, ensure "fair handling" of samples and secure "preservation without tampering." Several employees and employee representatives urged that any breath tests should be administered by persons not connected with the railroad. It appeared that some of these commenters would be satisfied by use of a testing system that, by its design, eliminates the possibility that the operator could control the outcome. Some employee representatives were opposed to all testing for disciplinary purposes, but others did not object or limited their objections to situations in which testing might be motivated by "malice."

Two companies offered systems to circumvent the cost and complexity of electronic or chemical testing devices. One advocated use of its saliva testing system. Another advocated use of its breath system, which consists of individual, disposable tubes containing reagents that change color at predetermined BAC levels.

Several commenters discussed the technical aspects of urine drug screens. A well-known commercial laboratory said that all positive drug screens should be confirmed by another method, preferably gas chromatography/mass spectrometry (CG/MS), and that chain of custody documentation should be a vital part of any program that involves discipline. The same commenter suggested retention of samples in frozen form for at least 60 days, together with all analytical data. Finally, the commenter said FRA should prepare a listing of forensic-quality laboratories for the railroad's use.

Another established commercial laboratory also stressed confirmation of urine test results for drugs by a more specific and sensitive technique. The commenter said that FRA should establish criteria for testing labs, including the requirement that the laboratory be dedicated to analysis of urine for drugs of abuse and that it be staffed by competent and certified personnel with expertise in handling samples for forensic use. The commenter advised that membership in a quality control program is an important indicator of competence, but that FRA should not seek to specify the particular assays or procedures employed by a laboratory.

A consultant, who is former head of the Drug Enforcement Administration, and a toxicologist from a commercial laboratory also indicated the importance of GC/MS confirmation. On the other hand, one railroad would make confirmation mandatory only if a sufficient portion of the sample remained, even where discipline is involved.

In comments submitted in response to the ANPRM, a university-based forensic toxicologist urged that FRA designate a laboratory to process all samples, headed by a "board-certified" forensic toxicologist. That commenter urged confirmation of all positives by gas chromatography, high pressure liquid chromatography, and finally by GC/MS.

The NTSB urged FRA to ensure standardized testing for drugs. NTSB thought that test procedures should be sensitive and specific enough to detect and quantify both illicit drugs and therapeutic levels of licit drugs.

The chief toxicologist of Chapel Hill, N.C., Dr. McBay, submitted a statement that said, in part, that few laboratories are set up to do "forensic" quality work and that few professional forensic toxicologists are available to interpret laboratory results.

The RLEA cited Dr. McBay and Dr. Richard Hawks of NIDA for the proposition that urine drug screens should not be used as the basis for discipline. Another commenter also quoted McBay to the effect tests should not be used as the sole basis for employment decisions or discipline and for the proposition that urine tests are useless to determine dosage used or impairment. In order to avoid confusion,

FRA has entered in the docket the letter from Dr. McBay, Dr. Dubowski, and Dr. Finkle to the *Journal of the American Medical Association* (*JAMA*), which is evidently the basis of the statements attributed to Dr. McBay by other commenters. *JAMA* 249:881 (Feb. 18, 1983). Dr. Hawks indicates that he does not recall the remark attributed to him. (He has written on the general subject. *See, e.g.*, Hawks, R.L. "Developments in Cannabinoid Analyses of Body Fluids, etc.," in *The Cannabinoids: Chemical, Pharmacologic, and Therapeutic Aspects* (Academy Press 1984)).

The comments highlighted a central dilemma of any attempt to control the use of drugs other than alcohol in an environment where safety is a prime consideration, *i.e.*, obtaining blood requires a somewhat invasive sampling technique while urine often does not provide firm indications with respect to recency of use or impairment. A commercial firm offered its saliva testing system as an alternative that it said could establish whether a subject has used marijuana within the preceding 4 hours. However, the reliability of saliva as an indicator of recent use was implicitly questioned by Dr. McBay in his filing.

Several commenters noted that body fluid test results for drugs other than alcohol are not readily translatable into degrees of impairment (in contrast to the relatively direct relationship between blood alcohol levels and impairment). They argued that generally recognized benchmarks do not exist that would permit generalizations regarding degree of impairment. Dr. McBay urged increased testing as a means of providing a better foundation for determining the behavioral effects of drugs at various levels.

One railroad urged that, if breath or body fluid testing is made mandatory, FRA inspectors should administer the tests. This commenter suggested that the inspectors should be persons with social service expertise whom employees would be more likely to approach with their problems.

Finally, a local union organization asked who will pay for testing.

General Accounting Office Report

During the period FRA was conducting public proceedings on the ANPRM and developing the NPRM, the General Accounting Office (GAO) was conducting a review of FRA activities related to alcohol and drug use and safety. GAO provided the Secretary of Transportation with a letter report on that review dated July 30, 1984 (B-215500), which FRA has included in the docket of this rulemaking and has considered in preparing this final rule. GAO stressed the limitations of the current observation techniques used to detect alcohol and drug impairment and suggested that testing should be required for at least some of the following circumstances:

> (1) after all FRA reportable accidents, excluding grade-crossing accidents, (2) after all fatalities of on-duty railroad employees and rail passengers, (3) when employees are suspected of alcohol and drug use, including after reportable injuries, and (4) during scheduled physical examinations.

GAO at 6.

In support of its recommendations for mandatory testing, GAO cited the resistance of employees to requests that employees submit to testing on a voluntary basis. GAO said that its review of selected cases on six railroads showed that railroad officials requested testing in at least 84 of 197 cases where employees were suspected of violating the railroad's alcohol and drug rules. Of the 84 cases where employees were asked to cooperate in testing, workers refused tests in 47 cases and refused to authorize release of the results to the railroad in 2 other cases.

After analysis of additional information gathered in its review, GAO concluded by noting its general agreement with the proposals contained in the NPRM. However, GAO expressed concern that the $150,000 threshold for property damage in the post-accident testing proposal was too high. GAO believed that inclusion of a larger group of accidents would tend to increase the deterrent effect of the provision and assist in the early identification of employees who might otherwise be involved in very serious accidents if not disciplined or assisted after lesser occurrences.

Recent Developments in the Industry

In the seven months since the close of the comment period, there have been a number of developments in the railroad industry that are relevant to the rulemaking. FRA has taken note of these events, reviewed various written submissions to the docket regarding the events, and has considered whether these developments would warrant a reopening of the rulemaking. FRA has determined that the current rulemaking process, which has not been underway for over two years, should be brought to a conclusion.

There has been no time in the past three years, at least, when there were not external developments of one kind or another that might ultimately affect the shape of Federal regulations; and it appears likely that the period of experimentation and ferment will continue, to an extent, for the foreseeable future. FRA views these developments as generally positive—in effect, a process of evolution. Indeed, some of these developments appear to anticipate or even rely upon the hypothesis that FRA will put in place clear standards related to the control of alcohol and drug abuse. There is no reason to suspect that recent developments will produce definitive results indicating a course contrary to that which appeared prudent based on review of the public comments submitted by the comment closing date, particularly in the absence of a known Federal policy around which other efforts can be constructed.

Nevertheless, these developments are summarized in three units below in order to provide the full background against which the decisions in the rulemaking are reached.

Urine testing programs. Two major western railroads have recently implemented programs under which employees are required to provide urine samples in situations similar to those proposed under the "just cause" authority of the proposed rule (sec. 218.109). So far as FRA is aware, neither program has been subject to legal challenge by the employee organizations.

FRA has received very little detailed information on the program instituted by one of the railroads. The other railroad and the UTU have provided some details concerning the program in effect on that property. Since August of 1984, this railroad has required employees involved in train accidents caused by human factors to provide urine samples after consultation between the local supervisor and a higher level manager. The employee is required to provide a sample at a clinic or hospital under contract to the railroad for this purpose. If the employee initially refuses to participate, the supervisor reads the employee a warning statement. If the employee continues in the refusal, the employee is removed from service and subject to discipline for insubordination.

In a telephonic report initiated by the railroad, it was stated that 580 employees had been tested, most of them operating employees. Seventy-nine (79) samples were said to be positive for alcohol or drugs (most of those postive for drugs). There have been 18 refusals, and the results were still pending for a small number of samples. In addition to tests of agreement employees, 338 officers were tested, of whom six (6) were positive. These statistics followed the trends indicated in a previous letter

to FRA from the railroad's chairman. The railroad indicates that it dismisses employees who test positive for illicit drugs (and presumably alcohol) in the urine, but immediately refers them to its EAP program and assists them in obtaining counseling or treatment. The dismissed employees are reinstated in a probationary status when they have discontinued use of drugs and are required to provide urine samples on demand for one year thereafter. According to the railroad, about half of the former drug users restored to service later test positive in a subsequent test (and are permanently dismissed). The railroad also says that voluntary referrals to its EAP have increased significantly (although it is not clear whether the increased referrals have resulted from the testing program or increased prevention efforts). The railroad has also implemented Operation Red Block with respect to a portion of its work force. The railroad said it has added two additional counselors, in part to handle the increased case load.

The railroad contends that its program has reduced human factor train accidents by about 70 percent since the inception of the program. The international officers of the UTU accuse the railroad of randomly testing "anything that walks or talks on the premises on the premise that there there is probable cause for such illegal actions . . . or for any other reason they can conjure up to fit the circumstances." FRA views both of these claims as factually unsupported at this time, since FRA has not had the opportunity to investigate the specific procedures followed by the railroad or the manner in which data is collected and analyzed.

This experience does tend further to confirm a fact already known (and discussed immediately below)—that a significant number of employees use illicit drugs either on or off the job. The experience also indicates the importance of setting down clear Federal guidelines in a timely manner, since most railroads are likely to rely upon a Federal authority to conduct tests, at least in the absence of an explicit agreement provision.

Periodic physical policy. Another major railroad has recently adopted a policy under which drug urine screens are conducted as a part of routine physical examinations. This initiative is consistent with a preliminary recommendation contained in the NPRM. Employees whose urine tests positive are not subject to discipline, but are withheld from service until they are able to provide a "clean" urine sample. An employee is apparently provided two opportunities to pass a follow-up test before adverse action is taken. The railroad encourages employees to avail themselves of the services of the EAP program to deal with drug abuse problems involving psychological or physical dependencies. FRA has no information at this time regarding the results of this program.

Operation Red Block conferences. In early 1985 FRA joined with railroad management and labor to formally launch the national Operation Red Block voluntary alcohol and drug prevention program by sponsoring five regional meetings in New York (January 28), Kansas City (January 30), Las Vegas (February 1), Cleveland (March 12) and Atlanta (March 14). In total, almost 1,000 people representing all the major railroads, many smaller railroads and the rail unions attended the five meetings. The attendees learned that an action-oriented prevention program can provide options for employees to deal with co-workers who may use alchohol and drugs on the job.

At the conferences, BLE and UTU representatives introduced the elements of Operation Red Block as implemented on several railroads. They stressed that a professionally staffed EAP, volunteer prevention committees to help "spread the word," and the commitment of both top management and union officials are necessary for a successful prevention program, as well as formal labor-management agreements. In recent months several major rail systems, representing all regions of the country, have decided to implement Operation Red Block or prevention programs containing similar elements.

FRA believes that this emphasis on prevention, along with the commitment to provide rehabilitation and treatment for first-time rule violators, should reduce over time the likelihood of employees tolerating or covering up for co-workers who use alcohol or drugs on the job. Recent developments with respect to the spread of Operation Red Block have tended to confirm FRA's view that Federal regulations should be consistent with this kind of private sector initiative.

In sum, recent developments follow trend lines set before the close of the comment period in this proceeding. Labor and management are increasingly concerned over the alcohol and drug problem and have chosen to emphasize different tactics as principal alcohol and drug countermeasures. However, there is also an inevitable convergence of competing positions. For instance, managements are using detection techniques in ways that emphasize changing unacceptable behaviors rather then merely penalizing them. Employees are increasingly declaring their stake in the observance of Rule G and recognizing the legitimacy of pubic concern for safety. What remains is for Government to put in place permanent structures that can facilitate, channel, and encourage the positive developments set in motion over the past two or three years.

Extent of Alcohol and Drug Use Problem

Public comments on the extent of the alcohol and drug problem have confirmed FRA's conviction that, while most employees are sober and fit for duty all of the time, a significant minority of railroad employees use alcohol and drugs in connection with railroad operations. It is clear that alcohol and drug use is sufficiently common to pose a significant safety problem. The largest number of commenters appeared to be convinced that the alcohol/drug problem is sufficiently deep and widespread to require some kind of new initiative. Some defended the railroads as merely on a par with other industries, but there was disagreement among those commenters as to whether public safety considerations indicated special efforts in the railroad context.

As was true during the comment period on the ANRPM, most of the industry participants commenting on the NPRM, on both the labor and management sides, have confirmed that alcohol and drug use does occur on the railroads with unacceptable frequency, despite existing rules and programs. These comments and information from all reliable sources, including FRA safety investigations, continue to indicate that the problem includes "pockets" of drinking and drug use involving multiple crew members (before and during work), cases of individual employees reporting to work impaired, and repeated drinking and drug use by individual employees who are chemically or psychologically dependent on those substances. (These categories are, of course, not mutually exclusive. A dependent drinker or drug user may actually institute an episode of "party drinking," or a person with no history of substance abuse problems may drink or use drugs secretively because of a desire to escape a life crisis.)

General comments on the extent of the problem. The President of the ATDA agreed with FRA's characterization of the extent of the alcohol and drug problem on the railroads. Several local

union representatives and employees offered comments tending to suggest that the problem has been overdrawn, at least in the media. One commenter, an employee of a southern carrier, estimated that 5 percent of railroad employees have alcohol or drug problems. Some from labor ranks agreed to the existence of a significant problem but thought it is not growing, only becoming more visible. Some thought that the railroads' problem is similar to that in other industries, but another labor commenter said that the railroads "cannot match" other industries with respect to the severity of the problem.

Reflecting the tensions inherent in many of the labor comments, one commenter said he disliked working with alcohol or drug-impaired employees, but liked the prospect of putting new disciplinary tools in the hands of management even less. A working locomotive engineer said the alcohol problem on his railroad had improved in the past 12 years, but a local BLE officer said he was personally aware of the need for a response to the substance abuse problem on his railroad.

Alcohol prevalence. The REAP Report findings remain helpful and illustrative of the kind of drinking that takes place in the railroad industry. The authors made the following estimates for six study railroads that employed one-half of the railroad work force:

- 23 percent of railroad operating personnel were "problem drinkers" (actually between 14 and 24 percent, depending on the definition used).
- 5 percent of workers reported to work "very drunk" or got "very drunk" on duty at least once in the study year (1978).
- 13 percent of workers reported to work at least "a little drunk" one or more times during that period.
- 13 percent of operating employees drank while on duty at least once during the study year.

All survey data are difficult to interpret, and there may have been changes in these drinking patterns since the study year. For instance, not all "problem drinkers" under the survey definitions brought their problems to work during the study year. The survey does not appear to be particularly helpful in quantifying the number of diagnosed alcoholics in the industry or the number of such persons in remission during a representative period of time. Nevertheless, these data continue to be acknowledged as credible indicators of a substantial problem by most carriers, the rail labor organizations, and many of their spokesmen.

Specific comments on alcohol use reinforce the impression that alcohol use is reasonably prevalent, while emphasizing that simple conclusions are not easily drawn. A national union officer used a 12 percent estimate (presumably referring to REAP findings concerning job-related use in a single year), but still concluded that "this industry is a safe place to work, in part due to employees' contributions." Another union officer thought a job-related alcohol use rate of 12 percent might be accurate for some locations on his railroad, but not for others.

Other drug prevalence. FRA is increasingly persuaded that use of other drugs, and performance decrements stemming from their use off the job, are becoming a substantial problem in the railroad industry. As FRA noted in the NPRM:

> Drug abuse is . . . a problem of national scope that touches all segments of our society, including the professions. It is not surprising that marijuana use is in increasing evidence on the railroads, since 27 percent of young adults reported current use of that substance in a National Institute on Drug Abuse survey (National Survey on Drug Abuse: Main Findings at 31 (1982)). There is also evidence that use of cocaine, estimated at 6.8% of young adults in the 1982 survey, may be growing among middle income persons such as railroad employees as a consequence of increases in supply. Drug users constitute a growing segment of the populations served by the employee assistance programs, and indications are increasing that drug use is emerging as a significant safety problem in railroad operations.

NPRM p. 12; 49 FR 24254. Comments received in response to the NPRM tended to confirm, rather than challenge this analysis.

The AAR indicated that railroads in the Northeast are seeing approximately 30 percent of their pre-employment drug screens prove positive for marijuana. Amtrak reported that 24 percent of its pre-employment drug screens had proved positive since inception of its program in September of 1983, and a freight railroad reported 30–35 percent positives in its hiring effort in a major midwestern city. It should be recalled that pre-employment drug screens were not conducted prior to the inception of this rulemaking process, except by one railroad that did not include marijuana in the list of substances tested. Therefore, it is reasonable to assume that a substantial proportion of recent hires in the railroad industry brought habits of substance abuse to their current period of employment.

The experience of the western railroad (reported under "Recent Developments" above) also tends to support the existence of significant drug abuse among railroad employees.

The fact that drug abuse is reasonably prevalent among a substantial minority of railroad employees does not, of course, mean that they all necessarily bring their problem to work. However, it is inevitable that some do. Additional anecdotal evidence is available to confirm this conclusion. A western railroad cited the example of an employee who lost his hand while apparently under the influence of cocaine. Employees of the same railroad testified that there are a significant number of regular users of illicit drugs at their work location who bring their problems to work, and a union representative from a southern railroad cited the "increasing problem with drug abuse among our young people." In one train accident determined by the NTSB to have resulted, in part, from drug use (Newcastle, Wyoming), at least one member from each of three separate crews implicated in the accident tested positive for marijuana at levels suggesting either very recent use or regular use. Drug abuse surfaced in additional accidents discussed below.

History teaches that easily documented substance abuse problems tend to represent only a small portion of the actual problems. Further, the pathology of drug abuse makes it inevitable that prevalence of off-the-job use will translate into a smaller, but by no means insignificant, problem in the workplace.

Safety Consequences of Alcohol and Drug Use

In the NPRM, FRA stated its preliminary conclusion that "alcohol and drug use result in safety risks and consequences that are unacceptable." (NPRM at 13; 49 FR 24254.) This conclusion was based on a record of accident investigations and reports extending over more than a decade. FRA also noted that the documented consequences of alcohol and drug use may well be exceeded by those that have been recorded. (The reasons for this are discussed in detail, below, under "Post-Accident Testing.")

FRA believes that the documented accident picture, together with accumulated judgments of commenters in this rulemaking, clearly indicate a need for additional initiatives to control alcohol and drug use. The need for action is underscored by the fact that the documented data undoubtedly understate the extent of the actual problem. Many additional train accidents, fatalities in train incidents, and injuries in train incidents are

caused by alcohol or drug impairment, but the role of alcohol or drugs escapes detection or is inadequately documented or reported.

Finally, the historic accident pattern could be altered substantially if an alcohol or drug-imparied employee were to cause a catastrophic accident involving release of hazardous materials in a populated area or multiple fatalities to passengers. Limiting the risk of such an event to the lowest possible level must be a major objective of the railroad safety program.

Updated Accident Data

Since issuance of the NPRM, FRA has continued to review the railroad accident/incident record. At the time of the NPRM, FRA had identified 34 fatalities, 66 injuries and over $28 million in property damage (in 1983 dollars) that were judged to have resulted from the errors of alcohol and drug-impaired employees in 45 train accidents and train incidents during the period 1975 through 1983. One of those accidents resulted in the release of hazardous materials and the evacuation of an entire community of 2,700 persons, some of whom were unable to return to their homes for an extended period.

In order to ensure that this data is the best and most reliable available, FRA has continued to review the 1975–1983 data. Although the commenters did not specifically challenge FRA's findings with respect to the accidents relied upon, FRA has, on its own motion, determined that one accident should be deleted from the previous count because of the insufficiency of data to confirm the inference of significant impairment (accident at Farm, West Virginia, September 6, 1980). FRA had previously excluded other accidents from this tabulation because alcohol could not be directly linked to the cause or consequences of the event and, in one case, because alleged drug use could not be established because samples were not adequate for a full toxicological analysis.

The 1984 toll of alcohol and drug-related accidents may have represented a new record, at least in the train accident category, but inadequate post-accident testing procedures and other factual gaps arising from the nature of the investigations have made resolution of the 1984 experience very difficult.

Train accident summaries. In cooperation with NTSB, FRA conducted investigations of several accidents during 1984 that appear at this date to involve alcohol or drugs as a contributing factor or that involve sufficient evidence strongly to suggest the possibility of such involvement. FRA emphasizes that some of these accidents are still subject to review by NTSB, and in those cases NTSB will make formal findings of probable cause. FRA's purpose here is to ascertain, by order of magnitude, the recent impacts of alcohol and drugs on railroad safety—not to anticipate any finding of probable cause with respect to a particular accident. In compiling this peliminary listing, FRA has excluded those accidents that involve positive tests for alcohol or drugs, or similar indications of alcohol/drug use, where these results appear not to bear on the cause or severity of the accident. The recent accidents are summarized on Table 2, below. (Table 2 is an updated and corrected version of Table 2 in the NPRM.)

FRA has included on Table 2 only those train accidents investigated by FRA with respect to which FRA deems it probable that alcohol or drugs played a necessary contributing role in the cause or severity of the accident. All of the accidents on Table 2 are relied upon in the economic analysis accompanying this final rule.

Table 2a is a new compilation of 1984 train accidents investigated by FRA with respect to which there is a significant possibility that either alcohol or drugs may have played a role. The accidents illustrate the difficulty of documenting the alcohol and drug problem. In two accidents, for instance (Carbondale, Ill., and Alvarado, Texas), recent alcohol or drug use is reasonably well documented for one crew member. However, interpretation of the data at the levels detected is difficult; and in each case the crew member who appears to have been in violation of Rule G (or with respect to whom the most complete evidence is available) may not have been operating the train. In such cases, alcohol may be viewed as a distinctly secondary or "possible" contributing cause.

In a third case (Camden, Arkansas), evidence suggests the possibility of alcohol use by one crew member and marijuana use by a second crew member. However, adequate samples were not available for either individual; and other evidence was not dispositive.

In a fourth case (Newcastle, Wyo.) a very thorough NTSB investigation concluded that marijuana use by the engineer of the striking train (in a rear-end collision) was a contributing cause in the accident. Although it is clear that the engineer had made fairly recent use of marijuana, FRA is not persuaded that the current evidence is adequate to conclude that the engineer used the substance with sufficient recency to have experienced acute effects at the time of the accident. However, NTSB had additional information before it that tends to support its determination; and FRA's election not to include this accident on Table 2 merely indicates a judgment at the margin of a very difficult case.

FRA calls attention to the accidents on Table 2a because they indicate the possible involvement of alcohol and drugs in some of the more serious events of the past year and the difficulty faced by the investigating agencies, particularly in the absence of clear procedures to ensure that toxicological samples will be promptly obtained. FRA does not rely upon these events in its economic analysis.

Train accidents reported to FRA. During 1984, the railroads utilized cause code 510 (impairment of efficiency due to alcohol or drug impairment) with respect to 2 accidents, 1 of which had not been investigated by FRA. The latter (at Detroit, Mich.) is reflected on an updated Table 3. (The Camden, Ark., and Alvarado, Texas, accidents were also reported using code 510, but in each case the report was filed by a railroad other than the railroad employing the crew members at fault, while reports filed by the employing railroads did not make mention of alcohol/drug involvement.) Tables 2 and 3 have been further modified by moving the "Proviso, Illinois" accident formerly shown on Table 3 to Table 2 (where it is listed as "Melrose Park, Illinois"). This change is made because FRA did, in fact, make a contemporaneous investigation of that occurrence.

Employee fatalities in train incidents. During 1984, FRA identied three (3) employee fatalities in train incidents that are listed, with previous relevant incidents, on an updated Table 4. Two of these involved maintenance-of-way personnel, and a third was a brakeman.

Readers are reminded that Table 4 was designed to display the full range of alcohol and drug-related fatalities in train incidents. Its scope was broader than the scope of Table 2. In preparing the proposals contained in the NPRM, FRA relied upon 20 of the accidents displayed on Table 4 that involved covered employees with appreciable blood alcohol readings (19) or an impairing drug found in the body (1).

The 1984 data do not change the total of 20 fatalities among covered employees (in train incidents) involving alcohol or drugs as a necessary element in the cause of the event. The only fatality involving a covered employee for which available toxicology or other evidence established alcohol or drug impairment was at Enola, Pennsylvania. In that case the yard brakeman was

struck by a car body that (in quick summary) had been lifted out of the centerplate by a heavy coupling. Although it may be that the brakeman could have avoided the hazard had he been sober, FRA's investigation could not establish that such would have been the case. Unlike many other train incidents involving alcohol, the brakeman evidently did not contribute to the creation of the hazard itself. Therefore, FRA does not rely upon this event as a part of the accompanying economic analysis. The events involving the two maintenance-of-way employees are, of course, of interest with respect to the possible need for future rulemaking activity.

Summary table. A ten-year summary covering the period 1975 through 1984 is set forth as an updated Table 1. The summary reflects only those events believed relevant to the rulemaking for which FRA was able to conclude that alcohol or drug use by a covered employee played a necessary part in the cause of the accident or materially affected the severity of the accident. Accidents displayed on Table 2a are not included; nor are certain aforementioned employee fatalities. Thus, the Table is believed to state the statistical case with respect to documented alcohol and drug involvement in a conservation way.

Table 1 shows that alcohol or drug impairment was responsible for 28 train accidents and 20 fatal train incidents. These 48 accidents and incidents together accounted for 37 fatalities, 80 nonfatal injuries, $20.4 million in railroad property damage, and $13.8 million in additional damages related to environmental clean-up at Livingston, Louisiana (damages and clean-up costs stated in 1984 dollars). These totals do not include damage to lading, damage to other non-railroad property, public response costs, or monetary consequences flowing from fatalities and injuries.

Undocumented accidents and casualties. Referring to pre-1984 data, the NPRM concluded:

> [T]he documented data tell only a part of the story. Many alcohol and drug-related accidents and injuries are not so recorded under the existing reporting system. From available information, it appears highly probable that because of the latitude present in that system the railroads either fail to detect or fail to report alcohol and drug involvement in a significant number of cases. For instance, of 15 significant train accidents identified by NTSB or FRA investigations as involving alcohol or drugs, the respective railroads reported alcohol or drug involvement in only 6. The under-reporting of alcohol and drug involvement is likely even more pronounced in the vast majority of accidents which do not occasion a Federal investigation.

(NPRM p. 14; 49 FR 24254.) (Considering the Melrose (Proviso), Ill., accident as significant and deleting the Farm, W. Va., accident from the count results in a ratio of 15 accidents determined to have alcohol or drug involvement to 7 accidents reported by the railroads using code 510 in the period 1975–1983.)

Despite the harsh light of public attention focused on the alcohol and drug problem in 1984, the railroads used cause code 510 (impairment of efficiency and judgment due to alcohol or drugs) for only 1 of the three (3) 1984 accidents with respect to which FRA investigations found alcohol or drug involvement in the cause. One additional fatality-producing train accident for which the railroad employed code 510 was investigated by FRA as an employee fatality and is included on Table 4 as a matter of administrative convenience (Proctor, Minn.). Thus, with this accident included, the total for the years 1975 through 1984 is 19 train accidents investigated by FRA and determined to have alcohol or drug involvement in the cause (or severity) only 9 of which were reported using code 510 (the alcohol/drug impairment code) for either primary or contributing cause.

FRA remains convinced that improved reporting systems and consistent toxicological testing of employees after major accidents would disclose numerous additional cases of alcohol and drug impairment among employees involved in human failures.

The NPRM explained that alcohol and drug-related employee fatalities in train incidents are at least twice as numerous as reflected in current statistics. It further noted that many non-fatal injuries in train incidents are likely caused by alcohol and drugs each year—a dimension of the problem for which no reported data are available. (NPRM at 15, 22–24; 49 FR 24254, 24265–24266.)

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TABLE 1
SUMMARY OF RAILROAD ACCIDENTS/INCIDENTS
(1975-1984) WITH ALCOHOL OR DRUGS DIRECTLY AFFECTING CAUSE

		Fatalities	Injuries	Damage (million $)
Train accidents investigated by FRA	18	17	76	16.0 (R.R.)
Other train accidents rept'd by the railroads	10	0	4	.3 (R.R.)
Total train accidents	28			
Employee casualties/train incidents* (ops only)	20	20	N/A	
Total accidents/ incidents	48			
Total fatalities		37		
Total injuries			80	
R.R. damage total				16.3
R.R. damage total (1984 dollars)				20.4
Total damages (1984 dollars)				34.2**

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*A train incident is an event involving the movement of railroad on-track equipment that results in a death, a reportable injury, or a reportable illness, but in which railroad property damage does not exceed the reporting threshold for train accidents. This listing does not include fatalities to non-operating employees.

**Includes additional Livingston, LA., damages of $13.8 million in 1984 dollars (principally environmental cleanup) but not damage to lading or third party property in the other accidents.

NOTES: (1) In this listing, one reported train accident that involved minor property damage has been listed with train incidents because it was investigated by FRA as an employee fatality.

(2) This listing does not include alcohol and drug-related fatalities in non-train incidents -- i.e., in settings other than railroad operations.

Table 2
Listing of Railroad Train Accidents Involving Alcohol and/or Drug Use as Causal Factors*
(Investigated by) FRA
(January 1975 through December 1984)

Accident Location	Date	Positive Lab Result/Carrier Drugs - Alcohol	Fatalities	Injuries	Railroad Property Damage-Equipment and Maintenance of Way Estimate of Costs	Accident Descriptive
Black Rock, N.Y.	06-15-75	.16 ENGR CN/PCT	-	35	70,281	Rear End Collision (Passenger Trains)- Intoxicated engineer of following train failed to control train in accordance with signal indication.
Oglesby, GA	07-28-77	.23 ENGR SCL	1	1	458,350	Derailment caused by excessive speed on a restrictive curve (1 locomotive and 13 cars). Engineer operating under the influence of alcohol.
Wooster, Ohio	11-18-78	.14 ENGR Conrail .10 BRA	-	3	167,504	Side Collision - While under the influence of alcohol, engineer and front brakeman ignored stop signal.
Carnero, NM	12-31-78	.27 ENGR ATSF	2	1	29.500	Side Collision - While under the influence of alcohol, engineer failed to control movement of train. Front brakeman failed to take appropriate action.
Aurora, NE	5-17-79	[1]ENGR, BN	-	2	56,400	Rear End Collision- Engineer failed to control movement. Head brakeman failed to take appropriate action.
Thousands Palms, CA	7-24-79	.18 ENGR, SP	1	4	1,441,700	Rear End Collision- Engineer failed to observe stop signal indication while under alcohol influence. Front brakeman failed to take appropriate action.
Alliance, Ohio	9-12-79	.17 ENGR, Conrail	-	3	2,416,000	Derailment caused by excessive speed through crossover. Engineer fell asleep. Others in cab failed to take appropriate action.
Royersford, PA	10-01-79	N/A Conrail	2	-	467,500	Rear End Collision- Conductor operating locomotive under the influence of marijuana failed to control train movement in accordance with signal indication.
Pisgah, CA	5-11-80	.16 ENGR, ATSF .16 BRA, ATSF	1	3	1,684,750	Rear End Collision- Engineer failed to operate train in accordance with signal indication and at excessive speed. Brakeman failed to take appropriate action.
Bostic Yard, NC	4-01-81	.166 ENGR, Clinchfield	-	-	244,016	Head-on Collision- Engineer failed to operate train in accordance with signal indication while under the influence of alcohol.

* Necessary element in the direct cause or severity of the accident.

[1] Developed through the formal hearing and investigative process. Record also revealed that employee received treatment at a prior time for alcoholism.

Table 2—Continued
Listing of Railroad Train Accidents Involving Alcohol and/or Drug Use as Causal Factors*
(Investigated by) FRA
(January 1975 through December 1984)

Accident Location	Date	Positive Lab Result/Carrier Drugs - Alcohol	Fatalities	Injuries	Railroad Property Damage-Equipment and Maintenance of Way Estimate of Costs	Accident Descriptive
Duncannon, PA	2-10-82	[2]ENGR, Conrail	-	4	222,600	Head-on Collision-Engineer failed to operate train in accordance with signal indication. Brakeman failed to take appropriate action.
Newport, AK	10-03-82	.08 ENGR, MP	2	2	919,000	Side Collision (at end of double track)-Engineer under the the influence of alcohol.
Livingston, LA	9-28-82	See Descriptive ICG	-	6	1,669,525	Derailment (considerable hazardous commodities) Engineer and front brakeman dismissed for alcohol consumption.
Melrose Park, IL[3]	7-13-83	.298 ENGR, CNW	0	1	37,000	Derailment, Engineer passed stop signal and ran over derail.
Sullivan, IN	9-14 83	.29 ENGR .04 BRA LN	2	2	823,828	Rear End Collision-Engineer failed to control train. Front brakeman failed to take appropriate action.
Greystone, NY	3-16-84	ENGR, Metro-North	-	4	65,000	Rear End Collisioin. Engineer of following train failed to control train in accordance with signal indication. Engineer tested positive for barbituates.
Wiggins, CO	4-13-84	Fireman, BN .091	5	2	3,891,428	Head-on Collision. Several witness statements indicate engineer was intoxicated. Test on engineers body was positive for alcohol, but a level could not be determined because of the condition of the body.
Silver Bow, Mt.	11-24-84	ENGR, UP .069	1	3	1,320,239	Derailment at 68 mph on 25 mph curve.
			17	76	$15,984,621 $19,957,598 - Expressed in 1984 Dollars	

Special Notes

[0]In accident situations where death did not occur, the metabolism of alcohol in the body continues. Hence, delayed BAC testing reflects a lower BAC than that which actually existed at the time of the accident. Therefore, in the above listed accidents, the BAC is understated due to the length of elapsed time occuring following the accident until the testing process takes place.

[0]Another accident occurred on the Burlington Northern Railroad at Angora, Nebraska, on June 6, 1980, which resulted in two fatalities, three injuries, and having railroad properly damage estimated at $1,530,000. The engineer of locomotives assigned to a stalled train had coupled to a consist of helper service locomotives five miles forward from the location of the stalled train. Excessive speed and other poor judgement factors resulted in the collision of the combined locomotive consist with the stalled train. The BAC of the engineer controlling the movement was negative. The BAC of the non-controlling Engineer was .074. The responsibility of the controlling Engineer was clearly direct. The responsibility of the non-controlling engineer was subordinate. Therefore, this accident was deleted from the above listing, but is herein highlighted to provide clarification.

[0]Known evacuation of areas residents only in the Livingston, Louisiana, accident.

* Necessary element in the direct cause or severity of the accident.

[2] The laboratory report concluded that the BAC was sufficient to affect reflex and coordination; however, the BAC was not specified.

[3] Previously listed on Table 3 as "Proviso, IL."

Table 2a

Listing of 1984 Train Accidents Involving Alcohol or Drugs
for which Data is Insufficient to Establish Impairment as a Causal Factor

Accident Location	Date	Positive Lab Result/Carrier Drugs-Alcohol	Fatalities	Injuries	Railroad Property Damage - Equipment and Maintenance of Way Estimate of Costs	Accident Description
Newcastle, WY	4-22-84	ENGR, BN	2	2	1,358,993	Rear End Collision, Engineer of following train failed to control train in accordance with signal indications. Engineer tested positive for marijuana.
Carbondale, IL	5-26-84	F. Brkm, ICG .0369	-	-	144,907	Rear End Collision, Engineer of following train failed to control train in accordance with signal indication. Front brakeman failed to take appropriate action.
Camden, AK	6-23-84	Fire, MP	-	2	700,750	Side Collision. Fireman operating train and tested positive for marijuana (urine). Engineer left scene of accident. Witness statements indicate he appeared to have consumed alcohol.
Alvarado, TX	10-21-84	Brkm, ATSF	1	1	1,930,391	Side Collision. Engineer failed to control train. Front brakeman tested positive for alcohol, marijuana and methamphetamine (in urine) failed to take appropriate action. According to witnesses, the Engineer may have have consumed alcohol.
			3	5	4,135,041	

Table 3

Listing of Railroad Train Accidents Involving Alcohol and/or Drug Use Reported by Railroad Carriers but not Investigated by FRA (January 1975 through December 1984)

Accident Location	Date	Reporting Carrier	Fatalities	Injuries	Railroad Property Damage Equipment and Maintenance of Way Estimate of Costs	FRA Cause Code Primary	FRA Cause Code Contributing	Accident Type
Ramsey, WY	08-02-76	UP	-	-	54,128	510	570	Derailment
Huntington, OR	08-16-76	UP	-	-	12,000	510	550	Head on Collision
Jamaica, NY	11-12-76	LI	-	2	38,030	524	510	Side Collision
Tacoma, WA	05-22-78	MILW	-	-	5,200	533	510	Rear End Collision
Memphis, TN	10-19-79	SLSF	-	-	18,000	510	-	Rear End Collision
Morrilton, AK	02-12-80	MP	-	-	24,600	510	-	Derailment
Burnsville, West VA	03-18-80	B&O	-	-	19,000	510	-	Broken Train Collision
Carlsbad/Eddy NM	04-23-82	ATSF	-	-	15,500	510	550	Side Collision
Toledo, OH	10-23-82	Conrail/ Toledo Term.	-	2	10,000	520	510	Side Collision
Detroit, MI	07-14-84	NW	-	-	96,695	510	538	Derailment
			-	4	293,153			

427,591 - Expressed in 1984 Dollars

Accident Code Descriptives

510 - Impairment of Efficiency and Judgement Due to Drugs or Alcohol
520 - Fixed Signal, Failure to Comply
524 - Hand Signal Improper
533 - Failure to Stop Train in Clear
550 - Coupling Speed Excessive
570 - Buffing or Slack Action Excessive
538 - Shoving movement, absence of man on or at leading end of movement

Table 4
Listing of Employee Fatalities Investigated by FRA Which Resulted from Train and Non-Train Incidents Involving Alconol and/or Drug Use (January 1975 through December 1984)

Accident Location	Accident Date	Autoposy Yes	Autoposy No	Positive Lab Result Drug	Positive Lab Result Alcohol	Employee Category	Carrier	Accident Descriptive
Charlotte, NC	1-22-75	x			.10	Yard Foreman	SOU	Fell from moving freight train.
Red Desert, WY	7-02-75		x		.159	Track Laborer	UP	Struck by approaching train for which he had failed to provide personal safety clearance.
Secor, IL	8-21-75	Unknown			.146	Switchman	TWP	Struck while in path of approaching train.
Portland, OR	8-31-75		x		.17	Yard Foreman	SP	Struck while in path of moving cars.
Denver, CO	2-15-76		x		.37	Dinning Car Inspector	DRGW	Fell beneath coal train he attempted to climb over coupling device to reach opposite side.
Baltimore, MD	9-05-76	x			.08	Brakeman	UP	Fell while attempting to board locomotive.
Farmville, NC	12-22-76	x		x		Flagman	SOU	Suffocated beneath spill of corn from overturned car. Accident caused by his failure to remove derailing device prior to movement. (type of drug - impramine)
West Cambridge, MA	5-20-77	x			.19	Brakeman	BM	Struck while in path of approaching train.
Proctor, MW	8-04-77	x			.105	Brakeman	DMIR	Crushed between side ladder of moving locomotive and standing cars (misaligned movement).
Stemmers Run, MD	2-11-77	x			.07	Brakeman	Conrail	Struck by approaching train while he crossed track.
Green River WY	3-18-78	x			.16	M of W Foreman	UP	Expired from smoke inhalation from bunkhouse stove.
Laramie, WY	9-11-78	x			.36	M of W Laborer	UP	Lost balance and fell beneath train while crossing between moving cars.
Denver, CO	323-79	x			.098	Switchman	DRGW	Fell beneath moving train while alighting from caboose.
Ranier, MN	3-27-79	x			.273	Trainman	DWP	Fell beneath caboose from which he was alighting.
Livonia, MI	4-23-79	x			.07	Brakeman	CO	Fell beneath or placed himself in path of a moving caboose.
LaJunta, CO	8-11-79	x			.133	Switchman	ATSF	Fell beneath caboose while attempting to board it.
Chicago, IL	8-12-79	x			.14	Switchman	CNW	Ran over by approaching train while he sat on track.

Table 4
Listing of Employee Fatalities Investigated by FRA
Which Resulted from Train and Non-Train Incidents
Involving Alcohol and/or Drug Use
(January 1975 through December 1984)

Accident Location	Accident Date	Autoposy Yes	Autoposy No	Positive Lab Result Drug Alcohol	Employee Category	Carrier	Accident Descriptive
Wilmington, CA	11-23-79	x		.11	Brakeman	UP	Struck by side collision with car he placed to foul during prior switching movement.
Lubbock, TX	3-23-80	x		.116	Yard Helper	ATSF	Fell beneath moving cars while crossing from one side to the other to facilitate an uncoupling. Drug type not identified.
St. Louis, MO	9-05-80	x		.111	Switchman	MP	Fell beneath moving cars he was attempting to uncouple.
E. St. Louis, IL	11-02-80	x		.102	Clerk Messenger	NW	Operated company highway vehicle onto interstate highway against current of traffic and collided with another vehicle.
St. Helens, OR	2-11-81	x		.08	Brakeman	BN	Signaled to initiate movement and did not stand clear of it.
Hotchkiss, CO	2-19-81	x		.336	Track Patrolman	DRGW	Fell from on track inspection vehicle while it was in motion in an apparent state of unconsciousness.
Calamus, OR	3-19-81	x		.38	Brakeman	SP	Alighted from locomotive into path of approaching train.
Eola, IL	10-28-81		x	.104	Yard Clerk	BN	Placed himself in path of approaching train.
Potts Valley, VA	3-01-82	x		.36	Carpenter	NW	Fell from bridge to river. Safety belt/line not secured.
Claymont, DE	4-19-82	x		.155	Lineman	Amtrak	Electrocuted when he progressed with work prior to power being shut-off.
Amherst, MA	5-26-82		x	.034	Machine Operator	CV	Drove equipment into path of approaching train.
Paxton, NE	12-10-82	x		.02	Machine Operator helper	UP	Dismounted machine from live side into path ow approaching train.
Concord, KY	4-28-83	x		.29	Trackman	CO	Struck by approaching train while inspecting track.
Villa Grove, IL	5-03-83	x		.18	Conductor	MP	Struck while in the path of the movement of his train.
Elkhart, KS	7-07-83		x	.35	Brakeman	ATSF	Struck by overturning car for which he was to control movement.
Kearny, NJ	9-30-83		x	.085	Trackman	ATK	Struck by train.
Enola, PA	6-30-84		x	.167	Brakeman	CR	Struck by freight car.
Napfor, KY	8-25-84	x		.27	Trackman*	SBD	Struck by train.

*Living in camp car -- off duty at time of accident.

Summary of Employee Category and Type

Train/Engine Service	- Train	21
	- Engine	-
Transportation (Other)	- Yard Clerk	1
	Messenger	1
	Dining Car Inspector	1
Maintenance of Way	- Track Patrolman	2
	Track Laborer	4
	Foreman	1
	Carpenter	1
	Lineman	1
	Machine Operator	1
	Machine Operator Helper	1
	Grand Total	35

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Comments on the Accident Data

Preface to the comments. FRA cannot escape the necessity to comment on the role reversal demonstrated by the comments in this rulemaking. Historically, the railroads urge before this agency and the Congress that the industry operates with a generally high level of safety (as it has, particularly in recent years). Employee organizations, on the other hand, traditionally stress the risks to their safety posed by the remaining hazards. Indeed, in recent years labor organizations have filed numerous law suits challenging FRA administration of the Federal railroad safety laws and regulations without the foundation of specific accident data such as the data presented by FRA in this rulemaking. FRA, as custodian of the public's interest in both safe and efficient transportation, has consistently sought to make sense of both these positions in relation to the particular regulatory subject matter. In some cases that task has been made more difficult by the unstated economic agendas that inevitably influence positions taken on safety regulatory issues.

In the current rulemaking the traditional roles are substantially reversed. Labor representatives generally argued that the safety problem associated with alcohol and drugs has been blown out of proportion, while railroad commenters have viewed the problem as more serious. FRA has considered these comments, but has also endeavored to formulate its own judgment with respect to the public policy significance of the accident data and accident potential.

Comments. Although the commenters generally did not submit information bearing on the specific accident data advanced by the NPRM, there were a number of comments bearing on its relative significance for public policy. In written and oral comments, a union officer at the state level cited statistics on total railroad accidents, trip reports, miles operated, trains dispatched, and the like for the apparent proposition that the documented alcohol and drug accidents are not statistically significant. Interspersing quotations from press accounts on the problem to illustrate the alleged misperceptions of those presumed to influence public opinion, the commenter sought to persuade FRA that "alcohol and drug use in the railroad industry is very minor." Another state-level union officer took a similar approach.

A national UTU officer cited statistics from the recent General Accounting Office review of alcohol and drug use on the railroads for the proposition that alcohol and drug-related accidents are a very small part of the total railroad safety problem. A UTU member said that the alcohol and drug problem is much less serious than that of track and equipment-caused derailments.

By contrast, the president of a major railroad said that "the true extent of human suffering—and property damage—that result from alcohol and drug use in the railroad industry is understated." The AAR added the following:

> [A]lcohol and drug abuse poses a particular problem for the railroad industry because of the potential for widespread disaster stemming from actions of an employee influenced by alcohol or drugs . . . . It would be a dereliction of duty for the railroads and FRA not to utilize every weapon at their disposal to curb alcohol and drug abuse on the railroads.

Significance of the Prevalence and Accident Data

Both the data bearing on the extent of the alcohol and drug use problem in the railroad industry (prevalence of use and job-related use) and the accident data must be considered in determining whether alcohol and drug regulations are reasonably "necessary" to safety. The accident data are crucial to understanding the actual and potential consequences of job-related use. The circumstances of the individual accidents are of interest in attempting to determine whether the accidents could have been prevented by reasonable measures. Prevalence data is useful in identifying potential accident exposure, formulating qualitative judgments concerning the extent to which alcohol and drug involvement in accidents may be under-reported, and determining on the one extreme whether the affected population is a minute and intractable minority (and thus virtually impossible to find before an accident) or, on the other, whether the problem is spread over a vast number of lightly-affected employees (perhaps drawing into question the capacity of the industry to apply certain countermeasures to the target population).

Based on its review of accident investigation files and reports, as well as the aggregate data, FRA believes that the accident picture is both serious and susceptible to modification. Prevalence data tends to confirm the strong indications that the accident, casualty and damage statistics (tying alcohol or drug involvement to particular accidents) are incomplete. At the same time, it is clear that the target population of actual and potential Rule G offenders, while significant, is not beyond the capacity of disciplinary systems or EAPs to handle (although some additional resources will likely be required).

Ideally, it would be desirable to combine prevalence and accident data in an incidence/over-representation study such as the studies undertaken in the motor vehicle field (showing that impaired employees are more likely than non-impaired employees to become involved in accidents). Unfortunately, there are almost insuperable obstacles to obtaining reliable and statistically significant data of both kinds for any given time period. But even if such a study were to be feasible, it would make little sense at this juncture to delay needed responsive action while employees and members of the public gave their lives to prove what is already widely accepted by those with expertise in this field. Virtually all commenters in this rulemaking have agreed with the proposition that alcohol and mind-altering drugs have effects on employee performance that are inconsistent with the safe discharge of their safety-sensitive functions. Both FRA and the NTSB share strong convictions with respect to alcohol involvement in the accidents and incidents reported above (with the qualification that NTSB has not completed its formal review of all accidents that occurred in 1984). Alcohol, in particular, is known to be a safety problem in every major arena of life where risks and alcohol use correspond. There is no reason to believe that the situation is different on the railroads and every reason to believe that it is the same.

Fortunately, the railroads employ a variety of redundant safety systems (including multi-person crews on through trains) that limit the number of cases in which impairment results in tragedy. Unfortunately, it is sometimes the case that both the primary and secondary safety systems fail simultaneously. When this occurs, the public is put at risk.

Alcohol and drug involvement in major accidents. From the point of view of overall accident statistics, such as total train accidents and total casualties, there is little question but that documentation of the alcohol and drug problem is limited. This is especially true when one focuses only on the railroad-reported statistics. For instance, in 1983 the railroads reported 3,906 train accidents, but indicated alcohol or drug involvement in only 2 of those accidents (both of which were investigated by NTSB, FRA, or both agencies). This is not atypical. Alcohol and drug involvement in other train accidents is either not detected or not reported. Railroad-reported data on alcohol and

drug involvement in train incidents that produce personal injuries is not available because the current reporting system does not ask for it, and anecdotal evidence is very fragmentary.

Why, if this is the case, are FRA and many other informed observers demonstrably concerned? The reason is that a partial review of the statistics is misleading, and another dimension must be examined. More careful review suggests that alcohol and drugs play a significant role in precisely those categories of accidents that threaten the public safety and claim the lives of employees and members of the public—*i.e.*, the accidents that are the highest priority for action by FRA.

For instance, during the period January 1982 through August 1984, there were 33 train accidents on the Nation's railroads that resulted in fatalities, exclusive of accidents at rail/highway grade crossings (a category with respect to which the public sector response is massive and with respect to which rail employee impairment is unlikely to be a major factor). Of the 33 fatal train accidents, at least 3 (9 percent) can be attributed to alcohol impairment. Those 33 accidents caused 59 fatalities, of which at least 9 (15 percent) resulted from the accidents involving alcohol.

In the NPRM, FRA explained that where autopsies were available for employees killed in train incidents, 22 of 136 cases (16 percent) showed positive results for significant levels of alcohol or other drugs (principally alcohol). (This percentage, incidentally, is much higher than the most pessimistic estimates of job-related alcohol or drug use for any given duty tour.) This was true despite the fact that not all autopsies contained toxicological analyses. NPRM at 22–24; 49 FR 24265, 24266. To this information should be added the fact that most toxicological analysis performed during the period probably was not capable of detecting the presence of many drugs of abuse at all significant levels.

In short, alcohol, in particular, is a significant problem affecting the number of fatalities resulting from railroad operations. Further, the potential exists for significant accidents affecting the public. For instance, the Livingston, Louisiana, derailment of September 28, 1982, was one of the most serious hazardous materials accidents in the United States since 1980, resulting in the release of hazardous materials and a major evacuation.

Potential for catastrophic accident. An accident like Livingston could happen again, with even more grave consequences. The railroads transport large quantities of explosives, flammable gases, flammable liquids, and poisons, including products capable of producing both short and long-term damage to the environment. An example of a product which presents a large risk of open-air detonation is propane. A single tank car may contain 30,000 gallons of that product, sufficient to create a large vapor cloud and inflict damage over a wide area if ignited. The railroads also carry many of the same chemicals that have caused major public concern when accidentally released from chemical factories.

Although the Department of Transportation has required tank car builders and owners to expend millions of dollars upgrading their equipment to make it more crashworthy, no container can withstand the kinetic forces associated with a high-speed accident that happens to follow a particularly destructive pattern (as when cars are turned at a sharp angle to the track centerline and "stack up" on one another in a major derailment or collision).

Indeed, despite improved track, safer equipment, improved training, and lower normalized accident rates overall compared with five years ago, the potential for a catastrophic hazardous materials accident still exists. FRA continues to work through regulatory development and enforcement efforts to limit the degree of this risk. However, any strategy that omits countermeasures directed at the problem of alcohol or drug impairment is incomplete.

Similarly, alcohol and drug impairment threatens the safety of passenger operations. Not only must crews of passenger trains be free of alcohol and drug impairment, so must the crews of freight trains that operate over the same rights-of-way. If we have not yet experienced a serious passenger train accident for which alcohol or drug involvement has been documented, it must nevertheless be remembered that the potential exists.

Railroad Lifestyle and the Need for Action

Working Conditions and Regulation

Throughout this rulemaking it has been suggested by some labor representatives and others that alcohol and drug use is a manifestation of a problem, rather than the problem itself. According to this line of argument, FRA should be concentrating on the improvement of railroad working conditions generally—particularly better recreational opportunities at away-from-home terminals, greater regularity in railroad work schedules, and better advance notice of unscheduled assignments.

It is impossible to determine whether railroad working conditions actually contribute materially to alcohol and drug use patterns. Certainly in some respects they may. Labor and management clearly need to work on mechanisms to limit layovers at away-from-home terminals. Such layovers mean idleness away from the employee's family, most often under less than ideal conditions.

By the same token, it is not possible to conclude that alcohol and drug use is exclusively a function of boredom or irregular hours. Excessive use of alcohol can be found in many meccas of leisure-time activity, where entertainment and cultural enrichment are available on every hand. Drug abuse can be found even among those who work regular shifts.

FRA believes that substantial control of alcohol and drug use patterns in the railroad industry can be achieved despite any conditions that may tend to foster or aggravate them. Indeed, the problems of irregular hours, short calls, and disrupted body rhythms make it all the more important that alcohol and drug use be brought under control. Substance abuse cannot cancel out the effects of fatigue or depression; to the contrary, uncontrolled alcohol and drug use can only make the situation worse. Many of the accidents reviewed for this rulemaking apparently involved inattention or sleep by one or more employees; and the evidence is strong that alcohol or drug use exacerbated pre-existing propensities for such behavior.

FRA is not authorized to engage in a wholesale reordering of economic relationships, railroad crew calling practices, and housing arrangements at away-from-home terminals in the hope that experimental regulations will tend to promote improved performance. Indeed, the Hours of Service Act, which already bears many marks of labor-management influence, occupies much of this field and effectively precludes comprehensive regulation under the Federal Railroad Safety Act.

FRA can offer means of controlling alcohol and drug use; and employees and the railroads can bring about significant improvements in safety if they continue to view their use as a common enemy.

"Cut System" Proposals

FRA has also considered the views of employee representatives who have urged the adoption of provisions permitting employees to "mark off" when they are given short notice of unscheduled assignments. FRA

recognizes the legitimate interests of both the railroads and their employees with respect to availability for unscheduled service. Although current collectively bargained arrangements clearly contemplate that certain employees hold themselves in readiness for extended periods of time, and labor has as great an economic stake in those arrangements as management, mutiple factors indicate that the parties should re-examine current arrangements, particularly the extensive use of extra or "spare" boards for employees in train or engine service. The issues attendant to this practice go far beyond the problem of the employee who fails to estimate correctly his call time and is "caught short" by a call received just after the employee has consumed an alcoholic beverage. In many cases, extra board work means extremely irregular hours, producing fatigue and disruption of normal body rhythms.

The Hours of Service Act is only a very limited control on this problem. It provides the assurance that an employee will have an opportunity to rest, without consideration for the timing of the rest in relation to previous sleep cycles or the anticipated upcoming duty tour. Responding to this set of problems is a matter far beyond the scope of this rulemaking. The parties may find solutions in more adequately staffed extra boards, more scheduled assignments, or a more liberal policy that would permit employees to mark off without penalty if a short call catches the employee in any way unrested or unfit to work.

This problem will not be solved by taking the position that all proposals for the adjustment of existing contractual provisions relating to unscheduled service are intended to accommodate the problem drinker or drug user. Progress will be made only if management takes the position that this is an issue of health and welfare, as well as personal convenience, and if labor recognizes that concessions will have to be made that may limit the desire of some employees to maximize earnings through maximum availability.

FRA believes that the frustrations with current arrangements that have been expressed repeatedly in this rulemaking can provide an impetus to constructive collective bargaining. FRA will watch with interest to ascertain whether, and to what degree, the parties make progress toward a more rational and humane system. We do not rule out the possibility of regulation should they fail to do so.

Difficulty of Detection

Several provisions of the proposed and final rules mandate, or authorize, use of breath or body fluid testing to ascertain whether alcohol or drugs have been used and, if they have, the extent of that use and likelihood of a resulting performance impairment. One of these provisions (post-accident toxicological testing) does not involve a foundation of specific behavioral or clinical indications that can be directly related to alcohol or drug use, but rather the occurrence of an event that suggests the probability of human failure (or the possibility of human failure coupled with a high degree of public interest in determining cause). The provision authorizing the railroad to conduct breath and urine tests also contains categorical criteria directed at situations where fitness is called into question. In the case of pre-employment drug screens, testing is also mandated in connection with a medical examination.

The reader who has not been involved in the process of public participation may well ask why it is necessary to authorize testing when the employee does not show outward signs of impairment. The answer to that question is straightforward: in a significant proportion of cases—probably a clear majority of the cases involving violations of this final rule—there may be no external signs detectable by the lay person or, in many cases, even the physician. Reliance upon traditional detection techniques will not provide the capability to detect on-the-job impairment, let alone the kind of drug use habits sought to be identified in pre-employment drug screens.

The result of uneven detection is reduced deterrence. Therefore, it is crucial that a detection capability be provided if alcohol and drug-related accidents and casualties are to be prevented.

Both alcohol and the variety of controlled substances pose detection problems. Obviously, the majority of railroad supervisors are better able to detect extreme alcohol impairment than drug impairment. The signs are generally more obvious, the order of alcoholic beverages provides a more distinctive cue (in some cases), and supervisors are generally either social drinkers themselves or have spent extended periods around social drinkers. Supervisors may even have had the opportunity to see a given employee both sober and clearly intoxicated (it is to be hoped off the job) so as to provide benchmarks for evaluation.

However, even the effects of alcohol do not always provide clear indications. Alcoholics and other habituated drinkers may be able to achieve elevated BAC's (even in excess of .30 percent) without showing outward signs that would be evident to a person with limited training. Indeed, a person with extensive training might not note the effects unless that person were making specific inquiry. (This does not mean these drinkers are safe to work with. Acquired tolerance for alcohol is likely selective, and even the habituated drinker may drink in excess of the selective tolerance level. Indeed, most alcoholics do so with some frequency.)

As FRA noted in the NPRM (without subsequent contradiction), research indicates that social drinkers, bartenders, and even some police officers cannot accurately judge levels of intoxication. Langenbucher, J.W., and Nathan, P.E., "Psychology, Public Policy, and Evidence for Alcohol Intoxication," *American Psychologist*, 38(10):1070–1077, 1983. The problem is two-edged. It is possible for an observer to rate a sober person as intoxicated. But it is also possible for an observer to rate a person sober who has achieved a BAC of .10 or more (even if the subject is not an alcoholic or heavy drinker).

The fact that medical personnel become involved, as in a case of an injury to an employee, may not appreciably improve the situation. Many emergency rooms regularly test blood samples for ethanol precisely because they can miss even high blood alcohol level during triage. Indeed, hospitals have experimented with use of breath testing devices in an effort to more quickly determine blood levels. Gibb, Kenneth A., M.D., *et al.*, "Accuracy and Usefulness of a Breath Alcohol Analyzer," *Annals of Emergency Medicine*, 13(7):516–520, 1984. The problem of detection may be particularly severe where the alcohol impaired person is injured. Although the medical facility may determine the blood alcohol level incident to diagnosis, public records may not reflect that determination (unless a deliberate effort is made to do so); and officials responding to the accident may fail to note the impairment. *See, e.g.*, Maul, Kimball I., M.D., *et al.*, "Culpability and Accountability of Hospitalized Injured Alcohol-Impaired Drivers," *Journal of the American Medical Association*, 252(14):1880–1883, 1984 (of 37 cases with elevated blood alcohol levels, investigating officer made no determination regarding alcohol ingestion in 13 cases; 5 of the remaining 24 subjects were thought not to have been drinking).

It has recently become possible to evaluate alcohol use by a horizonal gaze nystagmus test (precise measurement of eye movement). However, use of this technique requires considerable training and practice; it is not presently a substitute for more direct measurement of blood alcohol levels; and it does not appear likely that any significant portion of railroad supervisors could be qualified in this technique, given the many competing demands on their time and attention.

If detection of alcohol use is difficult, detecting the use of the wide variety of controlled substances presents a challenge that is even more formidable. Many drugs of abuse produce effects much more subtle or complex (and sometimes more pernicious) than alcohol. Although cases of more extreme drug intoxication (or withdrawal) may produce symptoms and behaviors sufficient to trigger detection, most drug abusers will be careful to control their demeanor when there is a threat of detection. Commenters in this rulemaking generally recognized this problem, although labor spokesmen sometimes contended that co-workers know who is doing drugs (in some cases, presumably, because of the admissions of the drug user or observation of drug use).

At least one large metropolitan police department has begun developing techniques for evaluating subjects to determine drug intoxication by category of substance, using highly trained and practiced observers. However, the utility and transferability of this expertise is only now being evaluated. Certainly there are no shortcuts on the horizon.

Although it is possible to provide railroad line supervisors with enough information to evaluate egregious cases and from a reasonable suspicion of drug impairment sufficient to warrant further evaluation (or testing), it is not realistic to suppose that supervisors can do what physicians, police officers and others cannot—readily detect drug use by a substantial portion of persons who are currently impaired. Again, many hospitals routinely run drug screens on patients admitted for treatment precisely because of the difficulty of detection (and the need both to respond to problems of toxicity and avoid interactions with therapeutic drugs) and the potential confusion between drug use symptoms and other physical or mental problems.

In sum, to decide that alcohol and drug use in railroad operations will be dealt with only where acute effects are so dramatic as to become Motorious would be to acquiesce in the continuation, and potential growth, of this problem. From the point of view of regulatory strategy, the only present alternative to such acquiescence is the selected use of breath and body fluid testing. With reluctance, but without regret, FRA has chosen that alternative.

Summary of Conclusions

On the basis of available information, including comments submitted in response to the ANPRM and NPRM, FRA has determined that final rules should be issued to control alcohol and drug use in railroad operations. The problem of job-related alcohol and drug use by railroad employees is significant and can be shown to have significant, unacceptable consequences. Control of this problem is necessary both to prevent accidents and casualties of the kind already experienced and to reduce further the risk of a truly catastrophic accident. FRA's conclusions and analysis are contained in this document and, to the extent not superseded by this document, in the NPRM. FRA's conclusions are broadly summarized below.

Conventional methods of controlling the alcohol/drug problem have proven inadequate by themselves. Rule G enforcement, while crucial to control of volitional drinking and drug use, has been hampered by inadequate means of detection, limited incentives for self-referral, and the reluctance of co-workers to identify the offender. Accordingly, most violations do not come to the attention of management and the intended deterrent effect of the rule is compromised. EPAs have made major strides in addressing the problems of employees with substance abuse problems, but even the best of the programs have been unable to attract early participation by many in the target population. Education and awareness efforts, while helpful in modifying attitudes if coupled with institutional changes, cannot be expected to solve the problem alone. (For further analysis see NPRM at 26–52; 49 FR 24266–24271.)

Exclusive reliance on voluntary programs is not warranted by available information and would be detrimental to the voluntary programs themselves. FRA is encouraged by the progress of employee representatives and the railroads in implementing the elements of Operation Red Block, including active participation by employees through their union organizations in prevention and referral activities. It may be that several years' experience with the new voluntary programs will demonstrate their effectiveness and durability to such a degree that regulation and enforcement can be modified to a significant extent. However, it is not yet clear that this is the case. Indeed, the drive toward Federal regulation, and the extensive process of factfinding and analysis that has accompanied it, has actually provided the foundation for the current voluntary initiatives. It is more likely that reasonable enforcement practices and active labor-management cooperation in prevention programs will reinforce one another than it is that either approach can replace the other.

It would be a retreat from responsibility to conjecture that voluntary programs can do the job alone. FRA withheld regulatory action for over a decade after passage of the Federal Railroad Safety Act of 1970 precisely for the purpose of promoting voluntary solutions and promoting their implementation. Although much was accomplished during that period, it has become evident that much more needs to be done. The programs now being launched under the rubric Operation Red Block are conceptually sound and offer great promise. However, they lack the kind of national track record that would permit any evaluation of their effectiveness over the long term. Information presented on Operation Red Block during the process of public participation in response to the NPRM indicated that the experiment is still in its infancy. Some witnesses testified on the basis of only a few months' experience with the program. While some components of the concept have been tested on a small scale, the long term viability and durability of the approach must necessarily be demonstrated over a period of several years and on a representative group of railroads. There is some question, for instance, whether programs requiring heavy employee involvement (or "ownership") can be successfully transplanted to those railroads where labor-management relations are generally less favorable to the growth of such cooperative ventures. It remains to be seen whether the partnership approach of Operation Red Block can actually serve as an "ice breaker" in the labor relations on those properties. In short, although there is every reason to promote voluntary programs and to believe that they offer hope for turning the problem around over the long term, there is no basis for pulling back from necessary regulatory initiatives.

Indeed, Federal regulations of the kind issued in this final rule will actually undergird and sustain voluntary initiatives for several reasons. First, adoption of Federal standards expresses the public's interest in the prevention of alcohol and drug-related accidents. Second, imposition of a continuing legal

duty on the railroads to prevent job-related alcohol and drug use reinforces management's commitment to finding solutions. Third, better documentation of alcohol and drug involvement in accidents provides the best illustration of the need for voluntary action and a continuing barometer of its success or failure. Fourth, the enhanced detection capacity offered by this rule will help to reduce co-worker tolerance of job-related substance abuse by lending credibility to the co-worker's contention that the alcohol and drug abuser risks discipline against both the offender and other employees.

Absent the issuance of regulations, the industry will not undertake optimal responsive action. It is not reasonable to believe that the railroads will be able to make significant strides in addressing alcohol and drug use without the encouragement and tools provided by regulations. Unlike companies in some other industries, the Class I railroads are generally self-insured. There is no effective policing of safety practices by insurance carriers. (Catastrophic coverage is often purchased on the international market and is not believed to be experience rated to the particular client in any sense relevant to this rulemaking.)

Although the railroads clearly desire to prevent alcohol and drug-related accidents, and have obvious incentives to do so, the policy of the Railway Labor Act, as construed in arbitration and in the courts, severely limits the ability of management to implement new techniques to control the problem. FRA has previously described Award No. 23334 of the First Division, National Railroad Adjustment Board (June 25, 1982), which blocked the attempt of a western railroad to institute random breath testing of employees by use of a portable device. The Board ruled that compulsory testing was not authorized by existing collective bargaining agreements and that requiring employees to submit to such testing was inconsistent with longstanding custom and practice under those agreements. The breadth of the language used in the award suggests that other, more limited programs of testing would also be deemed to offend the status quo policy of the Railway Labor Act, if implemented by unilateral action of management.

In theory, of course, the railroads could bargain with employees to obtain the right to test. But history suggests that there is no real likelihood that such an agreement could be reached, and the "section 6 notices" served prior to issuance of the NPRM in this proceeding did not even address the subject. Management has matters of greater economic significance that it must keep at the top of its bargaining agenda. Employee representatives would naturally insist on concessions of various kinds in exchange for the right to test, and it is not clear that all of the relevant crafts would ever agree to compulsory testing. Even under the best of circumstances, there is no one at the negotiating table representing the interests of public safety; and the testing issue has too great a bearing on the public interest to become intermixed with other negotiating points.

In addition to the issue of capacity, it is necessary to consider the issue of commitment. FRA has concluded that the managements of some railroads and their counterparts in some railway unions remain unaware of the threat that alcohol and drug use poses to the safety and efficiency of their operations. Although recent accidents and this rulemaking have had the salutary effect of confronting some of the railroads with the extent of their problems, much remains to be done. Just as the promotion of voluntary programs requires constant attention to the consequences of alcohol and drug use, so effective management action will be sustained only if the railroads perceive a continuing need. Again, careful documentation of this problem through post-accident toxicological testing and improved accident reporting will be critical to its resolution.

The issuance of necessary and appropriate Federal regulations is required by sound policy and prevailing law. Piecemeal action by individual States is not a viable alternative to Federal regulation. State agencies with jurisdiction over railroad safety report little or no activity directed specifically at the prevention of alcohol and drug-related accidents. At the same time, recent publicity concerning this problem has prompted interest on the part of legislators and others in State government. As explained in the NPRM (pgs. 25–26; 49 FR 24266), it is essential that any regulatory strategy be implemented on a national scale in order to ensure the uniformity mandated by section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434) and avoid uneconomic and potentially conflicting requirements. The National Association of Regulatory Utility Commissioners has recognized this imperative by supporting the proposed rules. The program of State participation in investigations and surveillance under the Federal Railroad Safety Act offers a mechanism for tapping the resources of State government without imposing inconsistent regulatory requirements on the railroads (see 49 CFR Part 212).

Finally, FRA enjoys limited discretion in determining whether to regulate this field. Section 202 of the Federal Railroad Safety Act (45 U.S.C. 431) requires the Secretary of Transportation to "prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety . . . ." The statute, of course, entrusts this determination to administrative judgment. But the information and views before FRA present a compelling case for determining that regulation is, in fact, necessary to the achievement of the statutory objective.

The proposed rules should be adopted with significant modifications responsive to the comments. As reflected above, FRA has carefully considered whether the issuance of regulations is necessary to safety and has concluded that it is. In proceedings on the ANPRM and NPRM, FRA has also reviewed a wide range of alternative regulatory strategies and has identified those approaches that appear to be most appropriate to control of alcohol and drug use. Based on review of the comments submitted in response to the NPRM, FRA has determined that the proposals advanced by FRA should be adopted with important modifications designed to ensure their proportionality, effectiveness, and fairness.

Final Rule Provisions (With Section-by-Section Analysis)

This segment will discuss the final rules as adopted. Each unit within this discussion sets forth a summary of the proposed rule, comments on the proposal, FRA analysis, and a description of the final provision. FRA has carefully reviewed all comments submitted. In preparing this summary, however, FRA has omitted reference to some comments that were repetitive of points raised in response to the ANPRM and discussed in the NPRM, as well as comments that were clearly beyond the scope of the NPRM.

Style and format. FRA has elected to edit the entire rule text, including those portions of the rule that are preserved without substantive change from the NPRM. In doing so, FRA has attempted to respond to those commenters who urged directness and clarity. Nevertheless, the complexity of the issues that emerged during the rulemaking has required that the rules anticipate a variety of contingencies while making clear the extent to which they affect, or do not affect, collateral

matters. Therefore, the final rule text is somewhat lengthier and more detailed than the proposed rules.

FRA has also identified the need to display the regulatory text in a more suitable format. The bulk of the proposed rules were organized as a new subpart proposed for inclusion in Part 218 of Title 49, Code of Federal Regulations. However, use of the subpart format required numerous levels of subdivisions with individual sections, making it difficult for the reader to follow the flow of the rule without undue effort. Use of a new part (Part 219) will facilitate better organization, easier reading, and (as necessary) later amendment. Subject headings have been used in some cases even within subdivisions of paragraphs, solely to guide the reader. The headings do not restrict or modify the application of the rule text.

General Provisions (Subpart A)

Section 219.1 describes the purpose and scope of the new part. The section notes that the new part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with the Federal rules. For example, as noted below, the industry's own Rule G has traditionally been construed to prohibit an employee from reporting for work with any quantity of alcohol in the employee's body. Nothing in these rules in any way restricts a railroad from continuing to apply Rule G in this fashion.

Section 219.3 (§ 218.3 amendment in the NPRM) governs the applicability of the new part. The rule applies both to freight and passenger railroads that operate in the general system of rail transportation and to commuter and other short-haul rail passenger service in metropolitan and suburban areas (as described by section 202(k) of the Federal Railroad Safety Act, as recently amended). As a practical matter, this means that all commuter operations are covered by the new rules.

PATH. The NPRM identified the Port Authority Trans-Hudson (PATH) as a somewhat unique case that should be addressed in the comments (NPRM at 133; 49 FR 24286). PATH is a common carrier by railroad and thus subject to the Federal railroad safety laws and regulations (except where exclusions have been provided). On the other hand, PATH has many physical and operating characteristics similar to rail rapid tranist systems, which are not within FRA's regulatory authority. FRA did not receive a filing from PATH with respect to this rulemaking. But the BLE objected to excluding any commuter railroad from the rules, "particularly one like PATH, since the loss of life and limb in any accident on such properties could be catastrophic."

FRA agrees that, while PATH may have characteristics that might warrant its exclusion from certain other Federal requirements, with respect to the control of alcohol and drug abuse it faces the same issues and accident potential that affect other short-haul passenger operators. Therefore, the rule has been crafted specifically to include PATH.

Small railroads. The other major issue of exclusion or inclusion presented by the comments relates to short line railroads. FRA had proposed to except small short lines from the pre-employment drug screen portion of the rule. A commuter railroad objected to the exclusion for railroads with 15 or fewer Hours of Service employees, as did a major freight railroad. BLE said the exclusion should not apply to any passenger carrier, regardless of size. None of the commenters offered persuasive reasons for their conclusions.

Comments from the ASLRA indicated that proposals for identification of troubled employees might also pose a problem for small railroads, because of the difficulty of holding open a position while the individual receives treatment. More significantly, the ASLRA indicated that the smaller railroads do not report significant alcohol or drug problems or their properties, a representation not inconsistent with available accident/incident data.

FRA believes that the interests of safety will be adequately served if true short line railroads are subject to the prohibition on alcohol and drug use and the requirement for post-accident testing. Clearly such railroads need to guard against alcohol and drug use on their properties. Most of these railroads transport hazardous materials or passengers. In all cases co-workers may be subject to life-threatening hazards from the actions of impaired employees. Where significant accidents do occur that indicate the possibility of alcohol or drug involvement, post-accident toxicological testing should be performed.

On the other hand, the very small railroads have many characteristics that warrant special treatment. As FRA said in the NPRM,

> Many such railroads are located in rural communities where applicants are well known to the railroad managers. These smaller railroads usually enjoy closer supervision, carry lighter volumes of hazardous materials, and engage in low-speed operations that pose less [of a] threat to public safety. A disproportionate number of alcohol and drug-related accidents involve collisions between two trains, and the smaller railroads generally have lower traffic densities that (in combination with lower speeds) make serious collisions quite rare. None of the railroads in this group has experienced a documented alcohol or drug accident since 1975.

NPRM at 170–171 (49 FR 24293).

It is not clear that a Federal authorization for "reasonable cause" breath or urine testing for small railroads is needed or would be of significant utility. Small railroads indicated little interest in Federal authority to test for cause, presumably because their work forces are not organized. However, if such authority were to be conferred, fairness and proportionality would necessitate the imposition of voluntary referral and co-worker report policies, as well.

There is no question that smaller railroads could be at a disadvantage in establishing pre-employment drug screen programs. Again, FRA said in the NPRM,

> The costs of testing for these railroads on a per-unit basis would likely be higher than those for larger railroads, since they hire only infrequently and would not enjoy the economies of scale available to larger railroads. It is likely that many do not have formal physical examination procedures, a difference that would also drive up marginal costs. This exclusion will also avoid the imposition of new paperwork burdens on small business entities that are ill-equipped to handle them.

NPRM at 171 (49 FR 24293). The nationale was not directly challenged by the commenters, and FRA remains convinced that the mandate for pre-employment drug screens should not apply to small railroads.

Accordingly, FRA has excluded small railroads from the application of the new Subparts C (Authorization to Test for Cause), E (Identification of Troubled Employees), and F (Pre-Employment Drug Screens). The criterion for exclusion is the same one proposed for pre-employment drug screens, *i.e.*, railroads with 15 or fewer employees in covered service. This criterion is modeled after the waiver provision of the Hours of Service Act (45 U.S.C. 64a(e)), but the railroad will not have to make application to be excluded from the operation of the stated portion of the regulations.

FRA specifically requested comment as to whether any distinction should be made between small railroads that provide passenger service, rather than, or in addition to, freight service. BLE indicated that the exclusion should not apply to passenger carriers of any size,

relying upon its "common sense" judgment.

Although FRA tends to agree that in the abstract applying all provisions of the rule to small passenger carriers might seem desirable, FRA has concluded that this is not practical. Virtually all of the small passenger operations are excursion services. Much of this service is operated on a sporadic or occasional basis. In many cases, trains are handled by part-time employees or even volunteers from the community. Imposing pre-employment drug screen requirements and other detailed policies on such operations would be disproportionate to the legitimate safety concerns surrounding these operations.

The excursion operations are normally conducted at limited speeds over track dedicated to the purpose or under absolute block restrictions. Train handling problems are minimal, and stopping distances generally much shorter than in the case of conventional freight operations (or high-speed passenger operations). The principal safety concerns attendant to these operations involve the maintenance of equipment and track, particularly the condition of steam boilers that power many of the locomotives. FRA carefully monitors the safety of this equipment and track, as well as operating practices, to ensure that the enjoyment of rail nostalgia is not attended by the same loss of life that was so common in the early days of steam transportation.

Obviously, if the results of the post-accident testing program or other information indicates the need to extend these subparts to small railroads (or small passenger railroads), FRA will not hesitate to commence a proceeding to do so.

Section 219.5 (§ 218.101 of the NPRM) defines several terms used in Part 219. A few of these terms deserve separate discussion.

"Covered employee" is defined as an employee who has been assigned to perform service subject to the Hours of Service Act during a duty tour, whether or not the employee has performed or is currently performing such service, and any person who (in fact) performs such service. "Covered service" is service subject to the Hours of Service Act. This is a practical, rather than a craft-based, definition of the persons and functions subject to the regulations. However, the employees that will most often fall within the definition of covered employee are train and engine crews, yard crews (including switchmen), hostlers, train order and block operators, dispatchers, and signalmen. These are the functions identified by the Congress as being connected with the movement of trains and requiring maximum limits on duty periods and required off-duty periods in order to ensure their fitness.

"Drug" is defined as any substance (other than alcohol) that has known mind or function-altering effects on human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances. This definition is provided to establish a broad frame of reference for treatment of drug issues in the regulations, although it is only use of controlled substances that is prohibited by § 219.101. For instance, it is reasonable from the point of view of safety to apply a voluntary referral policy (§ 219.403) to an employee who has a problem with abuse of a drug not on the controlled substance list (or not yet on that list), even though FRA does not yet have sufficient information to prohibit use of the substance on a system-wide basis.

"EAP Counselor" is retained as a defined term even though it was subject to considerable misunderstanding in the proposed rules. The EAP Counselor means a person *or persons* qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling that problem. The definition states that the EAP Counselor may be a full-time salaried employee of the railroad or a practitioner who contracts with the railroad on a fee-for-service basis, including a qualified physician.

Note that the definition is based both on qualifications and functions and that the functions may be divided between or among qualified persons. For instance, a railroad could provide that its EAP director will make return-to-service decisions under Subpart E or require that the ultimate decision be made by the railroad's chief medical officer (or a consulting psychiatrist) on the basis of the EAP's evaluation and the report from the treatment center or hospital/clinic providing primary care. The railroad could vest ultimate responsibility in its medical officer but permit the medical officer to delegate the decisional function in broad categories of cases (*e.g.*, drug abuse habits not involving a diagnosis of clinical dependence).

The definition does not permit a manager or line supervisor to make these judgments, unless the supervisor is qualified to do so and acts solely on the basis of the regulatory criteria.

"Impact accident" is a new term used in describing a category of events for which post-accident toxicological testing is required. "Reportable injury," "reporting threshold," "train accident," and "train incident" are also used in Subpart C.

"Train" is given the same meaning assigned in the regulations governing signal systems (49 CFR Part 236.832). It includes, but is not limited to, a freight, passenger, or work train, a switching movement, or a lite engine. For these purposes, a track motor car or highway/rail vehicle (other than such a vehicle used to move rolling stock) is not a train.

Section 219.7 is the standard provision under which an application for waiver of the regulations may be filed and handled.

Section 219.9 (§ 218.113 of the NPRM) governs the responsibility of the railroad for compliance with the substantive requirements of the regulations and, thereby, specifies when the railroad will be liable for a civil penalty under *Appendix A*. Comments on this element of the NPRM were rather limited. A major railroad expressed concern that it might be strictly liable for failure to comply with post-accident testing provisions because of injuries not reported until after everyone had left the scene or for requiring samples where damage estimates later prove to be excessively high. FRA has clarified the substantive regulation (§ 219.201(c)) to indicate that the railroad is expected to make good faith determinations based on reasonable inquiry and the information available at the time the decision on testing must be made. A railroad is not subject to penalty if it has met this standard, even if it later develops that the criteria of § 219.201(a) were not met.

A second railroad described the penalty provisions as an "unnecessary burden" and contrary to the spirit of cooperation FRA has sought to foster in this area. A local UTU officer made a similar comment, but without explanation. FRA expects to pursue implementation of the regulations in a spirit of cooperation, but is required by law to pursue the application of statutory sanctions in any case where such action is necessary to secure compliance in the present or to promote future compliance. FRA is specifically required by section 209 of the Federal Railroad Safety Act to assign a penalty amount to each regulation that it issues and to pursue collection of the penalty as necessary to accomplish the regulatory objective.

It should also be noted that a failure on FRA's part to qualify the railroads' responsibility for compliance could lead to an inappropriate assignment of liability in a private damage action.

since the statutory standard is one of strict liability.

A short line railroad lamented the fact that civil penalties would be assessed against the railroad, rather than offending employees. FRA has no choice in this matter. The decision to apply penalty sanctions only to the railroads was made by the Congress during consideration of the Federal Railroad Safety Act in 1970.

A major freight railroad suggested that the rules be swiftly finalized but that the penalty schedule be made effective one year later. FRA included the penalty schedule in the NPRM at the express request of the railroads (in order to facilitate public comment). No comments were, in fact, submitted on the dollar amounts assigned in the schedule. Therefore, FRA is not aware of any legal or practical justification for failing to make it effective immediately. However, since passage of the Federal Railroad Safety Act it has consistently been FRA's practice to promote compliance in the early stages of regulatory implementation through measures short of civil penalty assessment—except in obvious and egregious cases. FRA recognizes that, given the regulatory subject matter, it will be crucial to establish positive working relationships with both management and labor on the railroad properties. In a later section of this preamble FRA discusses the implementation conferences that will begin this process.

The penalty schedule located in *Appendix A* is consistent with the overall order and scheme of the penalty schedule proposed in the NPRM. The amounts of the penalties have been carried forward. Where penalties have been added to the schedule, to either improve clarity or to aid administration, the penalty levels are commensurate with the levels proposed in the NPRM.

The basic penalty provisions remain. For instance, penalties for violation of § 219.101 of the rule, where the railroad requires or permits an employee to go or remain on duty while impaired, correspond to NPRM penalties under § 218.103. Penalties for failure to conform with requirements for post-accident testing correspond to those assigned to § 218.105 of the NPRM.

Similarly, penalties for violations of § 219.301, the authorization to test for cause, follow from penalties for violation of NPRM § 218.109. Penalties for failure to adopt and implement policy required by Subpart E of the Rule and penalties for failure to meet pre-employment drug screen requirements of Subpart F reflect the NPRM penalties.

The creation of additional items in the schedule reflects either a decision to assess a specific penalty for violations contained in the NPRM catch-all provisions, *i.e.*, failure to observe other requirements, or the need to respond to changes in the final rule. In both cases the penalty amount is within the range contemplated in the NPRM penalty schedule. For example, the penalty for violation of the § 219.209 requirement to provide a written report where a sample is not provided in a post-accident situation is new, yet it is anticipated in the NPRM penalty for failure to observe other requirements of post-accident testing, and is in keeping with the penalty schedule for a § 225.11 violation of reporting requirements. (*See* 49 CFR Part 225, Appendix B.)

In general, the penalties are intended to reflect amounts that would tend to encourage routine compliance, recognizing that not all violations will be detected or documented. However, the schedule recognizes the importance of persuasion as the margin, *i.e.*, the importance of the prospect of a stern sanction in those cases where a railroad officer might be tempted to engage in deliberate non-compliance for reasons of expediency.

The schedule also recognizes that the best sanctions for certain prohibited conduct will be effected by private mechanisms. For instance, if an employee is suspended as a result of a breath or urine test that was poorly conducted, the most effective remedy will be the award of back pay and benefits to the employee by the board of arbitration.

Perhaps the most difficult portion of the rule for any railroad to satisfy is the implicit requirement of § 291.9(a)(2)) (218.113(a)(2) of the NPRM) that the railroad "exercise due diligence to assure compliance with section 219.101 by a covered employee." This provision calls on the railroad to exercise a high degree of supervisory vigilance to prevent job-related alcohol and drug use, possession and impairment. FRA received no comments suggesting that this standards be diluted.

Section 219.9(a)(1) (§ 218.113(a)(1)) also presents a challenge by barring any railroad from knowingly requiring or permitting a covered employee to go or remain on duty in covered service in violation of the alcohol/drug prohibition rule. As is always the case in the law, knowledge on the part of an employee or agent of the corporation is imputed to the corporation. This rule may be applied in a regulatory context to limit the imputation of knowledge where the employee or agent's responsibilities do not pertain to the subject matter at hand. However, in the railroad environment, carrier rules generally impose broad duties on all personnel to report unsafe conditions and practices that may come to their attention. The proposed rule would have imputed to the company knowledge of any employee or agent other than the offending employee or that employee's co-workers. Amtrak said that imputed knowledge should be further limited to knowledge obtained by a "railroad management employee or a supervisor in the offending employee's chain of command." The final rule adopts a formulation similar to that suggested by Amtrak.

Section 219.11 requires that covered employees consent to breath, urine, and blood testing under the circumstances specified by Supart C (post-accident toxicological testing of blood and urine) and Subpart D (reasonable cause testing of breath and urine). Consent to the tests is both required and implied as a matter of law. It is true that employees will retain the raw power to refuse testing, since the regulations do not authorize physical coercion. However, employees will not enjoy the right to refuse; and any refusal will be unlawful. The minimum consequence of a refusal to submit to post-accident toxicological testing is set forth in § 219.213, since FRA mandates those tests and the railroad should be on notice of the minimum required action in relation to such a refusal. The consequences for refusing a test under Subpart D (reasonable cause) are those provided under the railroad's disciplinary standards and procedures, since the railroad is the initiating party.

The final rule does not contain the consent form requirement for post-accident testing, but instead contains several provisions intended to substitute for that requirement. *Section 219.11(c)* requires each employee to consent to release of remaining portions of body fluid samples taken for diagnostic purposes by treating medical facilities and the results of tests on those fluids and the results of any hospital lab tests (which may be performed on samples used up in the testing process that were taken prior to the samples taken under the FRA requirements). The provision also requires the employee to consent to release of information concerning any drugs administered after the accident but before samples were taken for diagnostic or FRA purposes (in order to not to confuse the analysis). *Section 219.11(d)* requires the employee to execute a consent form for the taking of samples and their release for toxicological analysis under Subpart C.

if the medical facility requires execution of such from as a condition of assisting in the sample collection process. Although execution of such a from is probably not required to protect the medical facility from liability (since the regulations are explicit on the consent required), it became clear during the rulemaking that, as a practical matter, the medical facility may require the further assurance provided by a form of its own design. Obviously, this requirement does not require an employee to waive any claim for malpractice with respect to the drawing of blood or proper handling of the samples (matters for which the practical exposure is, in any event, negligible).

Section 219.11(f) goes beyond the proposed rule to the extent that it requires non-covered employees, as well as covered employees, to consent to removal of necessary body fluid and/or tissue samples for toxicological analysis under Subpart C. Fatal train accidents and train incidents involving alcohol and drugs very often result in the death of the impaired employee. Obtaining adequate samples for toxicological analysis in the case of fatalities to non-covered employees will begin to provide the kind of data required to determine whether the rules adopted here should be extended to employees engaged in functions that support railroad operations, such as maintenance of way and structures, car and locomotive inspection and maintenance, and similar activities. FRA believes that this modest extension of the NPRM proposal is warranted on the basis of the public proceedings already undertaken, which included extensive discussion of this issue.

FRA has the authority to obtain these samples under section 208 of the Federal Railroad Safety Act, but creation of the implied consent requirement will facilitate the acquisition of this evidence in a more timely manner and on a more regular basis. Timely action is particularly important here, since delay would mean that the body is embalmed and, in many cases, buried before action can be taken to compel production of the samples.

Section 219.13 addresses the preemptive effect of the regulations, which are issued under the authority of the Federal Railroad Act of 1970. Section 205 of the Act reads as follows:

> The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard covering the subject matter of such State requirement until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

Paragraph (a) of the regulation restates the effect of section 205. Paragraph (b) states that FRA does not intend to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property. While this part, taken with railroad industry rules and other Federal requirements, makes out a unified program for the civil regulation of alcohol and drug use in railroad operations, it is not an adequate substitute for criminal prosecution in a situation where *mens rea* and harm to the public safety or health correspond. This statement is intended to make clear the intent of FRA that the existence of Federal regulations not create a defense in a prosecution of a railroad employee whose conduct produces actual harm in violation of statutes derived from, or modeled upon, traditional common law crimes such as manslaughter.

FRA believes that the preemptive effect of this part will advance, rather than impede, the accomplishment of State objectives. Although several States do presently have statutes that address the job-related use of alcohol or drugs by railroad employees, those statutes have only rarely been enforced. The greatest capability for enforcement of anti-drinking and drugging rules lies with the railroads, who employ supervisory forces (and railroad police or special agents), and their employees. Both rail managers and employees have strong personnal and economic incentives to avoid the loss of life and property that alcohol and drugs can cause. These rules will both strengthen the resolve of the railroads to address this problem and provide important new information and tools not previously available.

FRA has not received comments from any State requesting that FRA withhold Federal regulation in favor of State regulation. A representative of one State that recently enacted a statute on this subject testified at a public hearing in support of the proposals contained in the NPRM. The representative was requested to consult his counsel and advise FRA how best to reconcile the State and Federal approaches. FRA did not receive further information in response to that request.

Section 219.15 deals with the expression of alcohol concentrations in whole blood and with the conversion of breath readings to estimated blood levels. The approach taken is consistent with that used in enforcement of drunk driving laws on the highways.

Section 219.17 governs construction of the regulations. Paragraph (a) says that nothing in the part restricts the power of FRA to conduct investigations under section 208 of the Federal Railroad Safety Act of 1970. For example, requirements that voluntary referrals be handled on a confidential basis would not restrict FRA's access to records pertinent to an ongoing investigation under appropriate conditions.

Paragraph (b) says that the regulations may not be construed to create a private right of action on the part of any person for enforcement of the part or for damages arising from non-compliance with this part. The objective of these regulations is not to spawn litigation over matters collateral to safety. To the extent a railroad engages in a practice clearly prohibited by this part, FRA has adequate statutory sanctions, including assessment of civil penalties and issuance of orders directing compliance, to ensure that the regulations are respected.

This provision is included in Part 219 because of the extent to which it addresses employer/employee relationships. The fact that such a statement does not appear in other FRA regulations may not be read to indicate a contrary result.

Section 219.19 describes the content of the Field Manual that FRA will make available to the railroad industry.

1. Federal Prohibition on Alcohol and Drug Use

a. Summary of Proposed Rule (§ 218.103)

The proposed rule would have prohibited the use or possession of any drug, defined as a controlled substance, by any employee while the employee is assigned to perform service covered by the Hours of Service Act. An exception was provided for possession of an unopened container of an alcoholic beverage in the employee's personal motor vehicle.

The rule would have prohibited any employee from reporting for covered service or going or remaining on duty in covered service while under the influence of, or impaired by, alcohol or any controlled substance.

The proposed rule contained two conclusive presumptions. First, a BAC of .05 or above would have given rise to a presumption of impairment by alcohol.

An employee would have been presumed impaired by a controlled substance if the employee had a quantity of the drug in the employee's body fluids sufficient to affect the perception, mental processes or motor functions of an average person.

The proposed rule would also have established a standard 2100 to 1 ratio for comparing breath and blood alcohol levels.

b. Public Comment

The comments on the rules as a whole indicated that there is substantial support for an alcohol and drug prohibition and that the railroads are at least prepared to acquiesce in such a rule. However, positive comments directed specifically at this portion of the NPRM were limited. The proposed federal alcohol and drug prohibition elicited support from NARUC, one state department of transportation, the American Medical Association, and at least two railroads. Other commenters making express reference to this section either opposed the concept of a federal rule (notably UTU) or took exception to one or more specific provisions.

Minimum standards. The AAR and many of the railroads expressed concern that any Federal alcohol or drug standard could be construed as displacing and rendering unenforceable current Rule G formulations, either directly or by implication. For this reason, some of the commenters wanted FRA to refrain from regulation entirely. Others merely wanted explicit regulatory language recognizing the railroad's existing policies.

Use of alcohol or drugs during duty hours. The commenters appeared to be unanimous in the opinion that on-duty alcohol and drug use should be prohibited in any Federal rule addressing the subject matter (although some would withhold regulation in favor of other measures).

Use of alcohol and drugs prior to duty. One railroad urged that the rule prohibit use of alcohol by an employee "subject to duty." The commenter did not define this phrase. (See NPRM at 28–31; 49 FR 24266–24267.) A labor commenter, by contrast, complained that a Rule G formulation containing this phrase is used to prohibit alcohol use by employees except during vacation periods, implying that FRA should not be so strict.

In a related comment, the Washington Legal Foundation suggested a pre-duty abstinence period for "illegal" drugs. For alcohol, the Foundation would require 8 hours abstinence where there is at least 8 hours notice of the beginning of the assignment. A commuter railroad advocated an 8 or 12-hour abstinence period.

BAC. The largest volume of comments addressed the blood alcohol concentration (BAC) issue. The railroads generally contended for a "no alcohol" rule, such that an employee would be required to report for duty without any trace of alcohol in that employee's system. They worried that adoption of any regulatory standard other than ".00" could signal a relaxation in the rule of conduct for employees. A university-based toxicologist said FRA should specify that "any forensically documentable BAC constitutes grounds for removal from service."

The AAR shared the concern of the railroads that the Federal rule could undermine the railroads' positions in arbitrations. The AAR emphasized that a relatively small amount of alcohol taken in conjunction with an antihistamine can produce a substantial impairment and expressed anxiety that the .05 proposal might become a "floor" for disciplinary purposes. Despite its fear that a BAC level could be misconstrued, AAR thought the concept of a conclusive presumption was sound and would "greatly enhance the enforcement programs conducted by the nation's railroads." AAR thought FRA should adopt an absolute prohibition at .03, though the railroads would continue to insist that employees not have any alcohol in their systems.

AAR emphasized that railroad duties "require the ability to concentrate on specific, repetitive tasks for long periods of time." AAR thought that any level should be set at the point there is a potential for a degradation of relevant mind or body functions.

NTSB noted that it would not want to see discipline based on a breath test of .02 and agreed that there is not yet any demonstration of impairment below that level. NTSB submitted a table of authorities that tended to support the existence of performance decrements at .03 percent or above.

Amtrak thought that if a quantitative standard were to be adopted it should be .03 percent. Amtrak urged that the "minimum standards" qualification be further strengthened to state that the Federal level could not be used as evidence more strict standards are not reasonable.

Two local BLE representatives concurred in an absolute .05 standard. At least one national union appeared to argue for adoption of .10 percent if any level were stated that might require discipline, on the ground that this level is widely accepted as a test of intoxication on the highway.

A railroad requested a clear statement that the proposed .05 percent presumption does not give any employee the prerogative to be under the influence of alcohol while on duty merely because his BAC is less than that level. RLEA and BRS, on the other hand, argued that any presumption at .05 or above should be rebuttable.

There was extensive discussion of the fact that any BAC measurement is merely a snapshot of a level that may be ascending or—more likely—descending. AAR thought some employees might be tempted to gamble that their BAC would fall below the absolute Federal level in the period between an accident and the time a test could be administered. A western railroad noted that an employee could be on duty with a BAC of .08 and yet drop below .05 prior to a test conducted 3 hours later. Another western railroad expressed similar concerns. The chief medical officer of a third western railroad noted the same problem and expressed the following view:

> In my opinion, any presence of alcohol in an employee's body fluid is inconsistent with safe rail operations. The .05 percent BAC per se level of intoxication does not address the significant minority of persons who would be impaired to some degree by a blood alcohol level of less than .05.

Rule G offenses based on observations. The AAR expressed concern that the grant of testing authority might be viewed by some arbitrators as requiring direct evidence of BAC levels. AAR said that the regulation should state that railroads may take disciplinary action on the basis of observations, as is the case today.

Impairment. One local UTU commenter urged deletion of the prohibition on "impairment" by alcohol or drugs, believing that the term "under the influence" is sufficient and that adding the term impairment could provide a basis for harassment.

Possession. AAR would limit the ban on possession of drugs to controlled substances, even though it advocated a broader definition of the term "drug." The AAR and five railroads argued strongly against any exception to the alcohol possession prohibition for unopened containers in private automobiles on railroad property. Some of the commenters expressed concern that private automobiles are often used for railroad business. Others believed that they could be used to "stash" alcoholic beverages or drugs that might be used at some point during the duty tour.

Drugs. The definition of "drugs" was contained in § 218.101 of the proposed rules. A "drug" was defined to mean a controlled substance. Commenters generally supported use of the controlled substance list to identify prohibited drugs, but many advocated broader prohibitions. The AMA suggested FRA study whether further controls might be appropriate for antihistamines and other unspecified substances. A university toxicologist also suggested review of other candidate drugs by an expert panel. AAR and the railroads favored broad bans on mind-altering substances.

A major eastern railroad said that the controlled substances list is often two to three years behind with respect to new drugs in use by drug abusers. The commenter joined other railroads in urging the prohibition of "any mind-altering of function-altering substance including, but not limited to, a controlled substance."

A local BLE officer said that the regulation should be specific. BLE suggested adherence to FAA regulations on drug use, but did not point to portions of the regulations it intended that FRA copy. (§ 91.11 of Part 91, Title 14, Code of the Federal Regulations, provides that "No person may act as a crewmember of a civil aircraft . . . while using any drug that affects his faculties in any way contrary to safety.")

Prescription drugs. In the NPRM, the matter of prescription drugs was handled through the definition in § 218.101. An employee would have been permitted to use a controlled substance under a prescription issued by a medical practitioner if the private practitioner made a good faith judgement that use of the substance was consistent with safe performance of the employee's duties. AAR suggested that the operative language be moved to the substantive section and noted the potential for after-the-fact ratification of drug use by a personal physician. AAR and the railroads favored approval of some of all therapeutic uses by the railroads' own physicians. They noted that individual physicians may not be fully aware of the nature of the employee's job requirements or of the consequences that could flow from impairment. Amtrak suggested that the employee be required to notify the supervisor of any prescription drug use or, alternately, obtain chief medical officer approval for such use. An eastern railroad weighed in with a similar notification proposal. Amtrak and a system-level BLE officer suggested that certain prescribed drugs could be pre-approved for use (and/or listed as impermissible). However, a local BLE representative expressed concern that the railroads might not permit legitimate therapeutic use of some drugs.

The AMA offered the following comment:

> We believe that the provision in the proposed rule that allows covered employees who are using a prescription drug to continue to work if their physician makes a good faith judgement that use of the substance by the employee at the prescribed dosage level is consistent with the safe performance of the employee's duties is absolutely essential. This provision recognizes that many individuals' drug regimens are stabilized to the extent that they can safely perform railroad operations and that their drug use is under the supervision of a physician. Failure to include such a provision would have serious adverse consequences, if a covered employee who is properly complying with a prescribed regimen is penalized, or if the employee fails to comply with the prescribed drug regimens for fear of loss of employment.

Drug impairment presumption. The proposed rule would have deemed an employee to be in violation of the drug impairment standard "if the quantity of the drug in the employee's body fluids would be sufficient to affect the perception, mental processes or motor functions of an average person." This approach was criticized by the railroads, the RLEA and public witnesses, who viewed the provision as vague and unenforceable. The commenters cited the current state of pharmacological knowledge and the wide variances in the effects produced by particular drugs on different subjects (or even the same subject under varying conditions). Several commenters argued that the rule should forbid the presence of any detectable level of controlled substance in the employee's body fluids. At least three commenters appeared to suggest that even the employee's urine should be free of drugs or their metabolites. These commenters were proposing, in effect, that employees should be forbidden from using drugs off the job, as well as on the job.

By contrast, an eastern railroad said that the presumption of impairment should exist "if the quantity of the drug in the employee's body fluids would be sufficient to affect the perception, mental processes, or motor functions of the employee."

Some employee representatives appeared to indicate that off-the-job drug use was not relevant to safety. One labor commenter filed a paper by a physician engaged in research who sought to counter the contention of most researchers who have studied the disposition of marijuana in the body that the principal marijuana constituent ("THC") is stored in fatty tissue and "leeches out" into the bloodstream. The commenter appeared to be concerned that the railroads would use the presence of residual THC as a basis for Rule G violations; and comments by some of the railroads appeared to suggest that they might, in fact, take that position.

NTSB said that, with respect to marijuana, "the determinant of use must be a reliable blood analysis for THC and its metabolites until non-intrusive means to detect the presence and time of use are developed." However, NTSB apparently did not mean to limit the proscription of the rule to proven on-the-job impairment. Indeed, NTSB stated that "the rules should be drafted to explicitly reject the social use of controlled substances, including marijuana, by those involved in railroad operations."

c. Final Rule Provision (Subpart B)

The time has come for the issuance of a clear Federal prohibition on the job-related use or possession of alcohol and other drugs by employees engaged in safety-sensitive functions. Such a regulation is necessary to provide a foundation for both public and private sector initiatives designed to control this problem. The public is entitled to know that the railroads and their employees are subject to firm and meaningful standards; and railroad employees deserve the protection that such standards can help to provide.

Importantly, a Federal rule of conduct will emphasize to employees the public safety implications of alcohol and drug use. It will improve Rule G compliance by reducing the perception that Rule G is "management's rule" and helping to convince co-workers that they have a stake in ensuring that everyone is fit to work.

There is always a danger, of course, that issuance of a Federal prohibition could be perceived to relax what is already a tough, if at least partially ambiguous, industry rule. FRA intends no such relaxation. The regulatory text can itself provide reassurance concerning the continuing viability of Rule G in its various formulations, at the same time strengthening the application of that rule by setting minimum standards for its implementation. FRA intends to communicate this message as directly as possible through regional public conferences accompanying the issuance of this final rule and through the network of FRA and participating state inspectors who visit the railroad properties every day, as well as through this preamble.

The nominal concern expressed by the railroads is that they will lose the ability to fire the employee who can only be proven to have "beer on his breath" upon reporting for work. FRA believes that such terminations have been infrequent, and that the current system for Rule G enforcement, together with the need to move freight and passengers, is more likely to lead many supervisors to ignore signs of possible alcohol consumption that do not rise to the level of obvious drunkenness rather than to face the disruptions and inconveniences associated with charging the apparently marginal violator under Rule G. In any event, nothing in this rule will prevent the railroads from taking disciplinary action on the basis of the same information commonly utilized today.

Therefore, *Subpart B* of the new Part 219 is devoted to the prohibition of alcohol and drug use, including the problem of therapeutic drug use.

Section 219.101 ("Alcohol and drug use prohibited") contains the basic prohibitory language. *Paragraph (a)(1)* prohibits on-the -job use of alcohol or controlled substances by covered employees. It also prohibits any employee from reporting for covered service or going or remaining on duty in covered service under any one of three conditions: (1) while the employee is under the influence of, or impaired by, alcohol; (2) while the employee has a BAC of .04 or above; or (3) while the employee is under the influence of or impaired by any controlled substance.

The ban on on-the-job use refers to any such use while the employee is assigned to perform covered service. For instance, an employee who accepts a call to perform yard service and reports at the appointed time becomes subject to the prohibition on reporting, even though the employee may not yet have engaged in the movement of rolling stock. "Use" is intended to have its common sense meaning. For instance, an employee may not ingest an alcoholic beverage, inject a controlled substance, or take a controlled substance in pill form. The problem of lingering effects of alcohol and drugs taken into the body prior to reporting for work is addressed in paragraph (a)(2).

The ban on possession is intended to reduce those situations in which employees may be tempted to indulge in alcohol or drug use while on the job. FRA believes that the railroads will continue to apply their current policies with respect to possession of alcohol and drugs. However, it is important to state as a minimum Federal policy that covered employees may not have these substances in their possession while they are on duty. The term "possession" is defined in § 219.5.

Paragraph (a)(2) deals with the present condition of the employee, rather than the act of taking the substance into the body. It is principally directed at the problem of pre-duty use, but applies equally to the condition of an employee who has used a substance on the job without being detected in the act.

Paragraphs (a) (2)(i) and (2)(iii) deal with the employee who is under the influence of, or impaired by, alcohol or a controlled substance. FRA is aware that these terms may have differing meanings from one regulatory context to another. FRA intends them to have their common meanings. By "under the influence of" FRA intends to refer to noticeable effects of alcohol or a drug that cause the employee to behave or appear in a way characteristic of the effects of the substance and thus suggest that the employee is not fit to undertake safety-sensitive functions. For instance, an employee who is under the influence of alcohol or another central nervous system depressant may give evidence through slurred speech ("heavy tongue") or unsteady gait. An employee who is under the acute influence of a central nervous system stimulant may appear extremely nervous or unusually talkative. Obviously, for an employee to be found "under the influence" it will be necessary to form a judgment that the observed appearance or behavior is related to alcohol or drug use, as opposed to other causes. However, these are the kinds of determinations required of the railroads under their existing rules.

The concept of "impairment" relates to the employee's ability to perform his functions properly. For instance, an employee with a significant level of alcohol in his system might be capable, as a result of practice or selective tolerance, to conceal the conventional signs that he is "under the influence." However, if the employee fails to perform an assigned task in a proper manner, and it can be established that that failure was associated with alcohol consumption, the employee would be shown to be "impaired."

These categories are not mutually exclusive with respect to their practical effect. For instance, an employee might have alcohol on his breath and "glassy" eyes without other signs of being intoxicated (or "under the influence"). However, if the employee also failed to perform his duties correctly the supervisor might be warranted in concluding that the employee was in violation of the rule. The testing authority conferred by Subpart D can assist in resolving marginal cases.

Paragraph (a)(2)(ii) sets a *per se* level of alcohol that is absolutely prohibited. FRA has decided to sue the *per se* prohibition in lieu of a conclusive presumption because the outright prohibition is simpler and more easily understood by the lay persons who will apply it.

FRA is persuaded that the available scientific data, together with reasonable inferences therefrom, firmly supports a *per se* prohibition of any blood alcohol concentration of .04 percent or greater. This conclusion rests on the following considerations:

1. The standard will be civil in nature. Violation of the standard will not result in any criminal prosecution or loss of liberty. Rather, the standard is designed to promote the safety of railroad operations.

2. Persons subject to this standard will be employees of transportation companies engaged in interstate commerce and can reasonably be expected to maintain a high level of fitness to perform their jobs with a minimum of risk to other employees and the public. Indeed, the rule imposed by employers in the industry for over a century has been one of "no alcohol," and it may be expected that employers will continue to enforce this high standard. To the extent available information permits, the Federal standard should be reasonably consistent with the existing private sector rule, so as not to undo the positive effects of the latter.

3. Considerable data from experimental or clinical settings supports the proposition that low levels of alcohol can and regularly do have detrimental effects on human performance, including divided attention skills and information processing, in the motivated subject. Although detrimental effects are reported at lower levels, and even after alcohol is eliminated from the body (the so-called "hangover effect"), the consensus of scientific and professional opinion appears to be that material detrimental effects on human performance begin at least in the range of .04 percent. *See, e.g.*, American Medical Association, *Alcohol and the Impaired Driver* at 58–59 and research summarized at 36–57 (1970, reprinted by National Safety Council 1976); Bjerver, B.M., and Goldberg, L., "Effect of Alcohol Ingestion on Driving Ability," *Quarterly Journal of Alcohol Studies*, 11:1–30, 1950; Billings, C.E., *et al.*, "Effects of Alcohol Ingestion on Driving Ability," *Aerospace Medicine*, 44:379–382, 1973; Laurell, Hans, "Effects of

Small Doses of Alcohol on Driver Performance in Emergency Traffic Situations," *Accident Analysis and Prevention*, 9:191–201, 1977; *Alcohol and Highway Safety 1984* at 16–23 (National Highway Traffic Safety Administration); *Alcohol and Highway Safety* at 15–19 (National Highway Traffic Safety Administration 1978). Although low doses of alcohol may not appreciably affect simple reaction time in most subjects, such doses may appreciably affect choice reaction time (response in divided attention situations of the kind experienced by operators of transportation vehicles). *See, e.g.*, Huntley, M.S., Jr., "Effects of Alcohol and Fixation Task Difficulty on Choice Reaction Time to Extrafoveal Stimulation," *Quarterly Journal of Studies on Alcohol*, 34(1):89–103, 1973. Indeed, some studies suggest that significant performance decrements may be measurable at BAC's below .04. *See, e.g.*, Moskowitz, H., "Skills Performance at Low Blood Alcohol Concentrations" (Southern California Research Institute, May 1984; unpublished); Flanagan, N.G., "The Effects of Low Doses of Alcohol on Driving Performance," *Medical Science Law*, 23(3):203–209, 1983.

4. Although railroad-specific studies are not available, railroad employees perform tasks, similar to many of those used in alcohol studies, requiring that they be free from the known physiological effects of even low levels of alcohol.

5. Railroad managers and employee representatives alike agree with the objective of preventing the use of alcohol in railroad operations and concur in the view that the use of any quantity of alcohol while on duty is inconsistent with the high level of safety toward which they strive in other areas. This suggests an accumulated experiential judgment on the part of the railroad industry that alcohol is detrimental to safe functioning in railroad operations.

6. FRA's review of the documented alcohol-related accidents over the past decade indicates that a significant portion probably involved fatigue, inattention, drowsiness, or a sleep state on the part of the crew members at fault. In each case, it appears likely that alcohol caused or exacerbated these conditions. This indicates that one of the primary dangers of alcohol use in the railroad environment is a generalized depressant effect on the central nervous system of fatigued or unmotivated employees, who may be functioning in an environment where there may be significant intervals between stimuli. The classic case is the operation of a train during the late night or early morning hours over familiar territory with few or no signals and with relatively long intervals between public grade crossings, where there is little need for frequent throttle adjustments or brake applications. Conditions in the locomotive cab or caboose may contribute to this syndrome (harmonic rock, steady background noise, lack of interior illumination during hours of darkness), a fact attested to by employees participating in this rulemaking and recent accident investigations. While the contribution of alcohol to the syndrome is not readily subject to verification under experimental conditions, it is nevertheless extremely probable in view of FRA's knowledge of working conditions in the railroad industry, the accident data, and the known effects of alcohol on the human body. Further, it is consistent with data developed in other contexts. *See e.g.*, Ryder, J.M., *et al.*, *Effects of Fatigue and Alcohol on Highway Safety*, Report No. DOT–HS–805–854 (National Highway Traffic Safety Administration 1981) (hereafter "Ryder").

Accident data reveal that alcohol intoxication substantially increases—by more than five times—the probability that falling asleep at the wheel will be the direct cause of a motor vehicle accident. Treat, J.R., *et al.*, *Tri-level Study on the Causes of Traffic Accidents*, Rep. No. DOT–HS–805–085 at 103 (National Highway Traffic Safety Administration 1979). Research concerning the effects of alcohol indicates that these generalized effects can occur at moderate blood alcohol levels. Erwin, C.W., *et al.*, "Alcohol-Induced Drowsiness and Vigilance Performance," *Journal of Studies on Alcohol*, 39(3):505–516, 1978 (short duration study shows detection performance inversely related to BAC, with material difference, in view of authors, only at high dose; but percentage of eyelid closure time rose materially even at low dose. (.03)). Indeed, although some studies have suggested that very small doses of alcohol may temporarily relieve stress effects associated with fatigue, it is likely that ingestion of moderate doses (in the range of .04 to .06) actually contributes to fatigue and drowsiness in the post-absorptive stage. *See, e.g.*, Landauer, Ali A., and Howat, Peter, "Low and Moderate Alcohol Doses, Psychomotor Performance and Perceived Drowsiness," *Ergonomics*, 26(7):647–657, 1983 (subjects receiving, *inter alia*, .05 percent peak dose report feeling drowsy for up to 3 hours (in post-absorptive stage)); Ryder at 72 (indicating probability that fatigue, diurnal pattern, and alcohol may interact to enhance impairment during night-time hours). Thus, a railroad employee who comes on duty, particularly for an evening or early morning shift, after having consumed several drinks, very likely poses a higher safety risk with respect to attention to the task at hand, even if the employee's BAC is declining through the .04 or .05 range. This problem may be much more serious than suggested by laboratory studies, since the employees who use alcohol before reporting for duty may lack motivation; and the work environment may not include the same stimuli (including awakening the dozing subject in one study) found in the laboratory context.

7. The choice of *per se* level for a civil regulatory program requires consideration of the problem that employees may seek to function at the margins of its limits, despite the advice of FRA, medical and other experts that any alcohol is detrimental and despite stricter standards promulgated by employers. But precise estimation of one's own BAC is difficult, if not impossible. Even in carefully controlled laboratory experiments, attempts to attain predetermined BAC's by administering doses tailored to body weights of the subjects may result in "overshooting" the target level. In actual practice, employees may not even know the alcohol content of the beverages that they have consumed; and the tendency of social drinking to extend to "one more round" is appreciated by most adults. Therefore, the civil standard should contemplate that employees may underestimate the effects of alcohol (or even the number of drinks consumed) and sets the absolute ceiling for consumption accordingly.

8. Some accident data in the highway mode indicates an increasing risk of fatal accidents beginning at .04 percent (although a sharp rise in risk is not encountered until the .08 level). *Alcohol and Highway Safety* at 16 (National Highway Traffic Safety Administration 1978).

9. Blood alcohol testing may be done in the absorption phase, as well as in the elimination phase. For instance, an employee reporting for duty with a BAC of .04 might very well have a higher BAC within the next hour, depending on the amount of alcoholic beverage consume and the recency of the last consumption prior to reporting. Decisions as to whether to relieve an employee and call another crew member must be made promptly; and if they cannot be made

promptly, there may be an unintended incentive to ignore the impediment to dispatching the train.

10. Unlike the Federal Highway Administration and the Federal Aviation Administration, FRA has not adopted a pre-duty abstinence period for alcohol. A significant pre-duty abstinence period such as 8 hours (the rule for aviation) tends to limit actual BAC levels, for all but the heaviest consumption, to very low ranges (assuming compliance with the requirement of abstinence). Further, such a period tends to ensure that persons in safety-sensitive positions who do have alcohol in their systems will be in the elimination (post-absorptive) phase, thereby limiting the problem described immediately above and also avoids the rather more pronounced subjective effects of alcohol that may be more closely associated with the absorptive phase.

11. Many BAC measurements in the railroad context will necessarily be conducted one or more hours after the event that gave rise to the need for the test. Alcohol is eliminated from the blood at a rate of approximately .015 percent per hour (on average), but estimation of prior blood alcohol levels is difficult because of individual variations. Again, the *per se* level established by regulations should be one which will promote extreme conservatism in the consumption of alcohol by those employees who are not inhibited from such consumption by the more strict "no alcohol" policies of their employers.

Many of the considerations listed above may also be cited for the proposition that the *per se* level should be set lower—even that FRA should adopt a "no alcohol" rule. However, FRA is persuaded that a stricter Federal standard would not be appropriate. Under the Federal Railroad Safety Act, direct enforcement actions can be brought only against the railroad (absent creation of an elaborate licensing or disqualification program). *Certainly each railroad should be encouraged to promote an alcohol-free workplace.* However, the minimum regulatory standard should take into account the difficulty of that task, particularly with respect to detection of alcohol impairment at very low blood alcohol levels. Further, there is some logic in the position that the railroads' supervisory and detection programs should be concentrated not so much on the employee with a very low blood alcohol level as on the employee with a BAC in the range for which safety risks are better documented. For instance, it may be less useful to check the breath of all employees reporting for work than to make regular efficiency tests that measure actual job performance. It may be the case that there exists for most individuals a BAC (perhaps below .02) that is effectively *de minimis* from the point of view of safe job functioning—at least when viewed against the background of other performance-related factors such as illness, variations in effective rest prior to reporting for duty, and subject-to-subject variations in mental acuity, judgment and general physical fitness. (This assumes that the BAC under .02 is the peak level achieved.)

The risk of an alcohol-related accident likely increases as BAC increases, whether one makes reference to highway, rail or other data. Currently available accident data does not establish increased risk of an accident below the .04 level.

FRA has chosen a *per se* level identical to that recently adopted for flight crews by the Federal Aviation Administration (50 FR 15376; April 17, 1985). Although FRA has been aware of FAA's consideration of this problem, FRA has reached its conclusions independently. It is inevitable that the two actions will be compared. FRA recognizes that the level set by FAA is, in part, informed by the often very complex divided attention tasks undertaken by pilots and other flight crew members, as well as the reduced oxygen available in cabins pressurized to levels well above 5,000 feet. However, the considerations discussed above, such as the absence of pre-duty abstinence requirements and the record of alcohol apparently contributing to sleepiness or inattention, clearly indicate the need to set the *per se* level at .04 percent.

FRA has considered the research cited by the NTSR and the testimony of railroad witnesses in support of a lower *per se* level in relation to the choice of the .04 percent standard. FRA believes that the research supporting material performance decrements below .04 percent is not sufficiently persuasive in relation to actual risks on the railroads to support a lower *per se* level at this time. Indeed, both NTSB and AAR settled upon a recommended .03 percent level, only .01 percent less than the standard adopted. However, it is undoubtedly the case that some individuals are materially affected at lower levels, particularly where alcohol is taken in combination with other drugs (such as antihistamines, marijuana or depressants). The *per se* level in no way excuses the conduct of an employee who reports to work so affected.

It is appropriate to stress three points in conclusion:

First, the .04 percent is not a threshold below which corrective action is not authorized; it is a floor at or above which corrective action is mandatory.

Second, the fact that an employee might test just below .04 percent on a breath or other test does not necessarily mean that the employee could not be found in violation of the Federal *per se* standard. For instance, an employee with a BAC of .03 percent after the expiration of four hours on duty could easily be demonstrated to have had a BAC above .04 percent at the time the employee reported for duty (or to have consumed alcohol on duty, itself prohibited).

Third, the fact that a *per se* BAC is included in the regulation in no way restricts the railroad's ability to proceed with discipline under its own rules (or the Federal rule) solely on the basis of observations by a supervisor or other evidence traditionally accepted for this purpose.

Paragraph (b) defines "controlled substance" to have the meaning assigned by 21 U.S.C. 802. FRA has elected to state the drug prohibition as a ban on use of controlled substances because, as a class, they are mind and function-altering drugs that can impair the faculties of railroad employees. Further, controlled substances are available by only three methods: (1) illicitly, (2) by prescription or physician distribution, or (3) through controlled and documented sale over the counter. Thus, the very means of acquisition will tend to put even the uninformed employee on notice concerning their potential properties. Finally, controlled substances constitute the great bulk of drugs of abuse that might be used for non-therapeutic purposes.

The commenters overwhelmingly approved this definition, although many would have made the prohibition broader. FRA recognizes that there is some merit in the argument for a broader definition. However, the commenters have not persuaded FRA that the definition proposed is so underinclusive as to outweigh the benefit of referring to an established list of drugs that can provide concrete notice to employees of the conduct proscribed.

There appears to be little support for inclusion of specific additional drugs. The AMA's suggestion that antihistamines should be studied for inclusion is illustrative of the complexity of the problem. "Antihistamine" is a term referring to numerous chemically heterogeneous drugs that share certain

pharmacological characteristics. However, they are also dissimilar in many respects. If the AMA and Department of Transportation are unable to say with certainty which of these substances, if any, should be absolutely proscribed from use by the employee engaged in safety-sensitive functions, it makes little sense to employ a broad definition that leaves the employee to guess whether the substance should be viewed as forbidden. The counter-argument here is that the user of an antihistamine preparation, for instance, is best able to judge the effects of the drug, at least where the drug produces noticeable effects such as drowsiness or unsteadiness. Further, the buyer of a street drug may not know what he or she is getting but certainly knows that the intended effect may not be consistent with clear-headed discharge of his or her responsibilities as a railroad employee. FRA has chosen the conservative course for the present, recognizing that the railroads may, with good reason, elect to retain or institute broader prohibitions.

FRA does expect that the railroads will revise their rules to the extent necessary to prohibit, at a minimum, job-related use of all controlled substances. The current standard Rule G formulation refers only to "narcotics." While it is true that some railroads employing that formulation have supplementary rules and policies going to other controlled substances, and while some arbitrators may have been persuaded that the term "narcotics" is intended to be read as reaching substances other than those noted principally for the analgesic effect (largely opium-based drugs), greater clarity and specificity is to be recommended. Stimulants, hallucinogens, depressants, and marijuana (by far the most prevalent drug of abuse) are not "narcotics" in any legal or pharmacological sense—let alone in the parlance of the circles where illicit drugs are purchased.

FRA did not note any active assertion by the commenters of a reservation with use of the controlled substance list. In other transportation contexts, it has sometimes been argued that acute use of central nervous system stimulants (such as amphetamines, methamphetamines or cocaine) may not result in measurable performance decrements in controlled laboratory settings using motivated subjects. Indeed, under highly controlled conditions, performance may be temporarily enhanced. FRA takes this lack of comment as illustrative of the sophistication of the railroad industry, employees and management alike. While stimulants (including the nonregulated stimulant, caffeine) may occasionally be used to combat the effects of fatigue or lack of sleep, reliance on stimulants in a work environment is not advised (particularly those stimulants with a high dependency potential). The availability of stimulants may actually encourage poor rest habits and promote risk-taking. Where intake is not regulated carefully, the elimination of recent stimulant doses may result in precipitous and deep sleep or other serious after effects. Excesssive intake can result in loss of coordination or even trigger hallucinations. Evidence is accumulating that episodic abuse of cocaine may be characterized by absorption in the drug experience, over-confidence, and consequent errors in job performance. FRA has no reservation concerning the prohibition of stimulants or any other drug group represented on the controlled substances list.

Paragraph (c) states that this section does not restrict a railroad from imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of Part 219 or for other purposes (*e.g.*, to promote productivity, protect the business reputation of the company, prevent violations of criminal law on railroad property, etc.). FRA believes that this language is fully responsive to the concerns of the AAR and some railroads that Federal rules may be read to replace Rule G or render it unenforceable.

Paragraph (d) provides that § 219.101 may not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not used in the business of the railroad. That is, under the final rule such presence is not made a Federal concern. But the paragraph also says that the section may not be construed to restrict a railroad from establishing such a prohibition.

FRA has concluded that, although the railroads are free to prohibit the presence of alcoholic beverages in a vehicle parked on company property, it does not follow that the railroads should be subject to a general Federal obligation to prevent such possession, except where the vehicle is used for company business.

Note on abstinence period. Throughout this rulemaking FRA has considered proposals by various parties that FRA impose a pre-duty abstinence period of a set duration or that barred alcohol or drug use by an employee "subject to duty." FRA has previously explained in detail why an abstinence period requirement has not been adopted. NPRM at 58–62; 49 FR 24272–24273.

FRA views the proposal of one commenter for an abstinence period of eight (8) hours applying only to illicit substances to be unacceptable for the reasons already articulated, particularly lack of enforceability. There are two further objections. First, it would be unfortunate if such a provision were to be construed to mean that use of illicit substances by an employee in safety-sensitive functions is acceptable (an implication obviously not intended by the commenter). Second, the arbitrary 8-hour limitation is less than the period during which at least some illicit drugs produce acute effects.

Section 219.103 ("Prescribed drugs") addresses the use of drugs prescribed or otherwise authorized for use by a medical practitioner. *Paragraph (a)* follows the policy of the proposed rule in permitting the employee to rely on the judgment of the personal physician (or dentist, in an appropriate case) if the personal physician has been made aware of the nature of the employee's duties.

FRA agrees that it is desirable for the railroad medical officer to evaluate the safety of prescription, over-the-counter and patent drug use, since the private physician may not be effectively acquainted with the full range of facts relevant to the employee's duties. Further, in some cases a given employee may receive medication from or through more than one practitioner. However, FRA believes that few railroads maintain the kind of staffing and information systems needed to provide timely and expert guidance to employees on the 7-day, 24-hour basis required by railroad operations. Imposing on employees the duty to obtain clearance from a carrier medical officer who cannot be reached prior to the time set for reporting for duty would merely serve to shift the blame to the employee when an accident or injury occurs. The railroads that appeared before FRA did not appear prepared to accept the responsibility of providing such guidance except in selected cases.

Paragraph (b) recognizes the legitimate interest of the railroad company in reviewing the therapeutic use of drugs by its employees. A railroad may elect to require its employees to notify a designated representative (who is readily accessible) of therapeutic drug use prior to the start of the duty tour. If the employee is required to obtain approval for therapeutic drug use prior to

reporting for duty, the railroad should provide adequate means for obtaining such approval in a timely manner.

In no case should notification or approval systems be established that present unreasonable obstacles with respect to employee compliance, since such arrangements will undermine employee confidence in the fairness of the railroad's alcohol and drug policy.

2. Post-Accident Toxicological Testing

a. Summary of Proposed Rule (sec. 218.105)

The proposed rule would have required that post-accident toxicological testing be conducted after approximately 550 train accidents and incidents each year. Testing would have been required after any train accident involving a fatality, reportable injury, damage to railroad property of $150,000 or more, or release of hazardous materials. Testing would also have been required after a train incident involving a fatality or loss of arm, leg or eye. Rail/highway grade crossing accidents and trespasser injuries would have been excluded from the class of accidents covered.

Employees tested would have included train or yard crews and other employees directly involved in the event who are subject to the coverage of the Hours of Service Act. The railroad was required to take all practical steps to obtain blood and urine samples from employees, which were to be collected at a medical facility. Samples were to be shipped to a laboratory designated by FRA. The railroad was to notify FRA if a medical facility declined to take samples from an unconscious subject or if the custodian of the remains of an employee declined to cooperate in obtaining samples for testing.

The proposed rule would have required that all covered employees execute consent forms affirming their consent to post-accident testing. The forms were to be made available where injured or deceased employees might be unable to affirm consent after an accident.

Any employee who refused to provide a blood or urine sample would have been subject to a standard period of disqualification of six (6) months. The railroad would have been required to provide a hearing soon after removing the employee from covered service.

The proposal also included a requirement that the railroad make a short narrative report in any case where samples were not obtained as required by the regulation.

At the technical conference on August 1, 1984, FRA presented the relatively simple concepts under consideration for packaging, shipping, and centrally analyzing samples obtained in the post-accident testing program, including the use of a shipping kit ("tox box") similar to the kit used for many years by the Federal Aviation Administration and NTSB in aviation accident investigations. These kits would be maintained at major terminals on the railroads (or in selected company vehicles) and taken to the medical facility to which employees are transported. Samples would be placed in the kits and shipped by air freight to FRA's designated laboratory, the Civil Aeromedical Institute (CAMI) toxicology laboratory in Oklahoma City, Oklahoma, where tests would be conducted.

b. Public Comment

Post-accident testing drew outright or qualified support from NARUC, the New York Department of Transportation, AMA, ten railroads and one local labor officer. RLEA and UTU indicated they did not oppose the provision. UTU found it a constructive proposal, so long as employees and their representatives have an opportunity to obtain the results. RLEA emphasized the need for frequent calibration of testing equipment. BLE opposed the requirement of consent as a condition of employment.

Three railroads and some local union officers opposed imposition of the mandate to test. One of these railroads thought the burden of testing was not justified by the need to develop statistics. A second thought testing should be at the option of the railroad (*i.e.*, should not be mandatory).

Two railroads advocated an exception for testing in any situation where it is known immediately that the employees are faultless as to cause or severity. Another railroad would test only where it is clear that there was human failure.

A local UTU officer thought the proposal would result in harassment, paperwork, and "unjustified conclusions of 'man failure'." The officer believed post-accident testing would also lessen morale. Another UTU local officer believed testing under the proposal would be frequent, but unproductive.

Deterrence. One of several grounds upon which FRA advanced the post-accident testing requirement was its potential for deterrence of job-related alcohol and drug use. Several commenters questioned that premise, believing that post-accident testing would be useful only for generating statistics. A consultant in the drug field believed that post-accident testing could not serve as an effective detection or deterrence tool because of the relatively small number of events captured. At the technical conference on post-accident testing, a railroad EAP director argued that post-accident testing would never deter alcohol and drug abusers; but another participant said that "abusers and users" might have different responses. A northeast railroad thought post-accident testing "may add to the desired deterrent effect." AAR and a commuter railroad thought it would be "only marginally beneficial as a deterrent and detection mechanism."

In general, the commenters did not disagree with that portion of FRA's rationale relating to the need for more accurate and complete data on individual accidents. (*See* NPRM at 145–148; 49 FR 24289.)

Events covered. Several railroad commenters, including AAR, noted that the proposed rule attempted to use severity indices to select accidents and incidents for inclusion in the testing requirement. AAR said that severity is an "indiscriminate" measure of whether testing is indicated. Several witnesses urged that tests should not be required where it is "known" that there was no human failure. Railroad witnesses contended that many of the accidents identified for testing in the NPRM are equipment and track-caused derailments with respect to which human failure can be effectively excluded very soon after the accident. Testing in these cases was said to be unfair to employees, detrimental to the smooth flow of commerce, and an unnecessary burden on the railroads.

A commuter railroad thought that testing after a train incident would be warranted in the case of an employee injury but not where the injury was to a passenger alighting from the train.

Thresholds. Two of the testing thresholds came under particularly pointed attack: the substantial property damage and injury thresholds. AAR said that the $150,000 threshold could be triggered by damage to three box cars or one locomotive. This would result in testing after many "fender-benders." A railroad said the 80% of its accidents over $150,000 do not involve human factors. Although believing that "severity is an indiscriminate measure," AAR and several railroads indicated that they would settle for a threshold of $500,000. Some suggested that the higher threshold be indexed for inflation. By contrast, as discussed above, GAO's audit report on alcohol and drug abuse strongly urged testing after all reportable train accidents.

Similarly, AAR noted that the injury threshold could be triggered by injuries

such as a splinter under a fingernail. AAR suggested that injury be the trigger where it "*requires* emergency medical treatment at an emergency medical facility" [emphasis supplied]. AAR indicated that this approach would excuse testing in the great majority of injury-causing train accidents for which the only injuries are bruises, sprains and strains. A railroad suggested that testing should be required only where it is necessary to hospitalize the employee for treatment.

There were some complaints that determining the extent of damage and other triggers on the scene of an accident would be difficult. Some railroads, in particular, feared being penalized for failing to test in a case where damages turned out to be higher than originally known. The converse was also raised, with the implication that FRA should protect the railroads from good faith "overtesting."

Grade crossings. NTSB urged that the rule require tests of (at least) front end crew members after fatal rail/highway grade crossing accidents, since overspeed operation, failure to use whistles, and the like could contribute to such accidents. Two other commenters agreed. BLE opposed testing after grade crossing accidents, arguing that such testing would exacerbate the trauma experienced by engineers after these accidents without producing any concrete benefits. But a local BLE officer thought there should be testing where there is a fatality to a train crew member or motorist.

One railroad thought that testing should be required after grade crossing accidents only where there is reasonable suspicion that an employee is impaired.

One commenter thought the exclusion of rail/highway grade crossing accidents from the proposed program of testing was based on a desire to shield the railroads from liability. This commenter and another commenter who was critical of the rulemaking as a whole argued in favor of inclusion of grade crossing accidents but without any expressed rationale.

Employees covered. Some commenters thought persons other than Hours of Service employees should be tested after accidents. NTSB would test "all employees directly involved in an accident," including any supervisor riding in a locomotive cab. BLE and some local union representatives urged that carrier officers, maintenance-of-way employees and others be tested. BLE cited the example of a maintenance-of-way gang placing an approach sign "on top" of a stop sign, thereby making it impossible for the train crew to slow before the work area. A UTU local representative cited yardmasters, road foremen of engines and others as candidates for testing. A consultant with experience in establishing industrial drug abuse programs suggested that tests should be administered only after human factor accidents; and only those employees known to have been involved in the cause would be tested.

A freight railroad thought that members of the public who are involved in an accident should also be required to submit to testing. A second freight railroad thought motorists involved in grade crossing accidents should be required to be tested.

Joint operations. A railroad suggested that the host railroad should be responsible for getting the samples in a joint operation accident/incident. AAR thought the railroad required to report the accident should be responsible.

Logistics. Several railroads stressed the logistical difficulties associated with post-accident testing. Amtrak objected to holding loaded passenger trains during testing. AAR thought the costs of the program would be "substantial," but did not directly address FRA's economic evaluation. Western railroads, in particular, cited the long distances over which they operate and stressed the difficulty and time delay associated with transporting crews to locations where samples can be taken. One of those railroads, however, said it was prepared to proceed despite the problems, noting that the program can be modified in light of experience gained through its implementation.

Amtrak and the AAR suggested that the rule should preserve the option to use mobile medical units in which samples could be collected.

The AAR and other commenters thought FRA should shoulder a major part of the responsibility of notifying medical facilities of the requirements of the rules and dealing with those facilities in cases where employees have sustained fatal injuries or are unconscious and thereby unable to affirm consent to testing. It was suggested that FRA establish an 800 number to assure 24-hour contact in these situations and where medical facilities decline to cooperate even in the face of contemporaneous consent.

At the technical conference, a pathologist argued for a non-centralized post-accident system, citing potential chain of custody problems and difficulty with transportation of laboratory personnel for litigation. Another pathologist urged that FRA designate centers at which samples would be collected, so that collection and chain of custody techniques would be of uniform quality and in order to avoid the non-cooperation problems of dealing with a random selection of hospital emergency rooms. An EAP director noted that physicians in small communities may be particularly reluctant to take samples from subjects whom they treat on a regular basis.

Several other parties also noted the difficulty of enlisting the cooperation of medical facilities in obtaining samples, even when employees are alert and willing to affirm their consent to provide samples. The railroads urged an active role for FRA in acquainting the medical care community with the requirements of the rules.

Integrity of system. Labor witnesses stressed the importance of safeguards to ensure reliable results and avoid carrier tampering with samples. There was objection to any system that might permit carrier officers to handle the samples after they were taken.

Consent. The consent form proposed to facilitate post-accident testing elicited significant objections. The UTU thought the form was unnecessary and might provoke assistance. BLE thought the consent requirement itself would infringe on the rights of employees who have no history of alcohol or drug-related problems.

The railroads thought it would be very difficult to produce the form at medical facilities across their systems. However, one railroad suggested that it could be photocopied and reduced to a wallet card that the employee could be required to carry.

The American Hospital Association (AHA) thought the form would not be effective in persuading hospitals to draw samples since they might face potential liability in subsequent litigation. AHA advocated forming a "panel of medical and legal experts to assess the minimize the liability of medical facilities and personnel." Some of the railroads also predicted that medical facilities would not honor the prescribed consent form or said that it was "unnecessary."

Representatives of a large urban medical center said that any consent would have to be in writing and would have to include authorization to release the sample or test results, as appropriate. The commenter suggested annual re-execution to avoid the appearance of staleness. The same commenter noted that reports of post-accident tests might include mention of drugs administered after an accident. The representative noted that this could result in unnecessary suspicion by the employer unless the consent to the test included release of information of

therapeutic drugs administered during treatment of injuries incurred in the accident or incident.

Objections were also raised to § 218.105(g), which would have prohibited assignment of an employee in covered service where the employee refused to sign the consent form. Commenters were confused by the phraseology, believing that the provision preserved a right for an employee to return to covered service after some months during which the employee had refused to execute the form.

Timely reports. AAR and several railroads asked that FRA provide results of post-accident toxicological analysis within 72 hours of the accident. They cited numerous agreement provisions that require them to charge employees with rule violations within very short periods after the events in question. One railroad wanted to be able to retain sufficient samples to conduct its own analysis, permitting the railroad to bring charges (or close out its investigation) promptly.

A local BLE organization urged that a copy of the toxicology report be sent to the union local chairman and suggested that the employee's copy could be provided at the employee's work location. A railroad suggested that the appropriate division superintendent and the employee should be notified of the results. A public commenter urged that toxicology results not be released until they are in final form and all relevant analysis has been undertaken.

Disqualification. The 6-month disqualification requirement for employees refusing tests elicited heated responses. Several railroads wanted FRA to mandate a sanction of dismissal or indefinite disqualification. Others thought discipline could be left to the railroad. In testimony at the Washington hearing, NTSB said a 1-year disqualification was more realistic, since it more closely approaches the sanction likely to be applied by the railroad in the event of a positive test. In its filing for the docket, NTSB indicated that the sanction should be the same as for a Rule G violation, *i.e.*, dismissal from employment.

AAR and three railroads suggested deletion of the hearing requirement, since procedures for disciplinary hearings are already in place on the railroads. One railroad would permit the carrier investigation to be merged with the hearing required by regulation. BLE thought that the hearing should consider the employee's basis for refusing to provide samples, as well as the fact of refusal. One railroad said retention of the hearing requirement would require FRA to address whether appeals from railroad decisions are to be handled under section 3 of the Railway Labor Act or through the Federal courts. (Comments on legal issues attendant to disqualification and hearing are discussed below.)

Miscellaneous comments. AAR asked that FRA determine the status of time used in travel to the medical facility, taking the samples, and returning employees to their homes or reporting point. AAR contends such time would not be "on-duty time" under the Act. The AHA said the provision should emphasize non-interference in emergency medical treatment and should specify the party responsible for paying medical facility charges.

c. Final Rule (Subpart C)

FRA believes the concept of post-accident toxicological testing is critical to a national program intended to prevent alcohol and drug-related accidents and injuries on the railroads. There are at least five independent, if related, bases for mandating post-accident testing.

First, post-accident testing is needed to guide FRA enforcement efforts under these new rules. FRA believes that the program of testing prescribed will capture a sufficient number of events to indicate the persistence, or emergence of alcohol and drug problems on individual railroads, particularly on the Class I railroads that provide the great bulk of rail transportation services.

Second, post-accident testing is necessary to the process of regulatory development. Enlightened and proportional regulation will only be possible if the true causes of major human factor accidents are known. Results of post-accident testing will be essential to guide review of this final rule and may indicate the need for further alcohol and drug countermeasures. Better information on alcohol and drug involvement may also provide guidance on the need for more generalized measures designed to maintain train separation, better train handling or safer yard operations. Conversely, the success of a well-tailored regulatory program directed at alcohol and drug abuse may obviate or mitigate the need to introduce other countermeasures that may be less effective and more costly.

Third, post-accident testing will permit the NTSR and FRA to determine with greater precision the causes of major accidents of interest to the public. Such accidents threaten public confidence in the national rail system and can lead to legislative and private sector responses that, if based on erroneous assumptions, can actually be counterproductive. Post-accident testing will fill a major gap in the knowledge customarily available after such events.

Fourth, post-accident testing will help to deter employees from using alcohol and drugs on the job. FRA recognizes that many substance-dependent employees are unlikely to be deterred from bringing their problems to work for the sufficient reason that they may be unable to abstain. However, it appears likely that at least half of the alcohol and drug-impaired employees involved in accidents and injuries on the railroads become impaired volitionally. Over a period of years, the rule will result in the testing of several thousand employees, many of whom may be found to be impaired. The disciplinary actions that will result from this program will be vivid examples to other employees who may be tempted to bring alcohol or drugs onto the railroad.

Although it is true that drinkers and drug users often believe that they have sufficient control over their behavior to avoid mistakes on the job—and thus will not expect to be the cause of accidents, as such-nevertheless, any railroader knows that the occurrence of accidents is largely unpredictable from the point of view of the employee reporting for work. Post-accident testing, like the authorization for breath testing described below, will increase the odds that the frequent drinker or drug user will be caught. In FRA's judgment, any perceptible increase in those odds will contribute directly to deterrence of job-related alcohol and drug use.

Finally, post-accident testing is necessary as a means of keeping the alcohol and drug problem squarely before the railroad industry. Historically, both public and private sector efforts have been less than fully vigorous, and less than fully effective, because those who have the capacity to take responsive action have not been confronted on a regular basis with fresh evidence of a substantial, continuing problem. Alcohol and drug involvement has not been fully documented and, even where documented, has often not been reported.

By contrast, in the field of aviation, regular testing after fatal accidents (a high percentage of aviation accidents) has had the effect of sensitizing aviators to the hazards of alcohol and drugs. This continuing testimony to the importance of fitness has, in the judgment of the Federal Aviation Administration, significantly reinforced the moral impact of the Federal regulations.

In the last two years a combination of several major alcohol and drug-related accidents and increased public attention

have spurred the railroads and rail labor to undertake significant initiatives that could contribute to a long-term change in attitudes among supervisors and employees. However, the history of anti-drinking efforts in other modes is that major initiatives often wane in effectiveness after showing initial favorable results. One important means of ensuring that progress is sustained over the long term is to document and publicize the continuing or recurring safety consequences of alcohol and drug abuse habits. Regular and effective documentation will never be possible, however, without a routine, mandatory procedure for obtaining toxicological data.

General objections to program. Countervailing considerations do not offer a sufficient basis for forgoing this important component of the proposed regulatory program. Some of most vigorous objections to the program came from a minority of railroads that viewed post-accident testing as an undue burden. Commenters thought that testing in some of the cases proposed for inclusion would be fruitless, time consuming and costly. FRA has reviewed carefully the comments of these railroads and others who opposed the proposal. Those comments have helped FRA to achieve a more precise focus for the testing program, as described below.

FRA believes that mandatory testing is fully warranted in certain circumstances. By contrast, a system that permitted the railroads unfettered discretion in selecting events for testing would run afoul of considerations such as those discussed in the NPRM (NPRM at 146–148; 49 FR 24289). A brief summary of the considerations requiring post-accident testing is set forth below:

1. Detection of alcohol and drug use is difficult even for highly trained professionals. Railroad supervisors could be expected to detect only the most obvious cases (*e.g.*, where the employee has the odor of an alcoholic beverage on the breath or exhibits extreme agitation or unresponsiveness). Yet alcohol and drugs can have substantial effects on human performance, particularly divided attention skills and judgment in responding to unusual situations, as well as general attention to duty, without the presence of significant outward manifestations.

2. The causes of many railroad accidents, including high damage accidents, fatalities in train incidents, and hazardous materials accidents, are difficult to determine in their immediate aftermath. Multiple causes are often involved, and determination of those causes may not be possible until a field investigation is complete.

3. Local supervisors responding to the scene may perceive reasons why it may not be in their interest, or the company's interest, to pursue indications of alcohol and drug use. For similar reasons, employees are unlikely to be forthcoming.

4. Samples for testing must be obtained quickly if they are to provide optimal information, since appreciable levels of some common drugs are eliminated from blood within a matter of minutes or (at most) a few hours. A clear articulation of specific, mandatory testing requirements provides clear and unwavering guidance that makes it more likely samples will be obtained during the period immediately after the accident or incident when they best reflect on the relative fitness of the employee.

In sum, the actual role of alcohol and drugs in railroad accidents will be determined only if testing is mandated for a significant number of appropriate cases.

Cooperation of medical facilities. Even some of the railroads that supported the mandatory testing provision believed that obtaining the cooperation of medical facilities in taking samples would present major problems in some localities. FRA is sensitive to this problem, but does not believe it presents an insuperable obstacle. The railroads will find that multiple resources are available in most communities, such as:

1. Public hospitals that will generally be responsive when the public safety purpose of the program is made clear.

2. Public and private clinics.

3. Physicians' offices, including those of physicians that already perform physical examinations for railroad employees on a fee-for-service basis.

FRA is also working with the Federal Aviation Administration to identify those Aviation Medical Examiners (AMEs) who would be willing to assist the railroads in obtaining samples. AMEs are private physicians who are qualified to perform examinations for FAA medical certificates. Many AMEs also assist FAA in conducting aviation accident investigations. FAA has indicated its willingness to include the FRA program in its orientation and training sessions for AMEs.

FRA believes that many railroads will establish ongoing contractual relationships with medical facilities to facilitate urine testing as authorized by Subpart D (discussed below). Many of these facilities should also be available for post-accident testing purposes.

FRA will distribute the final rule to major organizations representing the medical and health care community, requesting their assistance in publicizing the program and soliciting the cooperation of their members. FRA staff will also be available to contact individual facilities by telephone, as necessary, to explain the purpose of the program and endeavor to overcome any apparent obstacles.

Section 219.201 (§ 218.105(b) of the NPRM) describes the train accidents and train incidents for which testing is required. As a result of the cogent comments received in response to the NPRM and FRA's own continuing concern over the utility and reasonableness of the post-accident testing program, FRA has substantially reduced the number of events and redefined the types of events that will trigger the requirement of testing.

The proposed rule would have required testing after approximately 550 accidents or incidents each year. The NPRM proposed to select events almost totally on the basis of severity. The commenters are generally correct in stating that severity is not necessarily a good predictor of alcohol or drug involvement, although severity may be a good indication of the public's interest in accurate determination of cause.

In particular, the NPRM would have required testing after a significant number of derailments that involved either an injury or property damage of at least $150,000. As a class, most of these events have historically been reported as track or equipment-caused; and, in fact, a large number of them are unlikely to involve alcohol and drugs as significant causal factors.

The final rule seeks to focus the post-accident testing requirement on events that fall into three categories. First, *§ 219.201(a)(1)* lists those events that are of substantial public interest. They include train accidents resulting in a fatality, release of hazardous materials (accompanied by an evacuation or by an injury resulting from release of product), or damage to railroad property of $500,000 or more. These are also accidents for which, based on FRA's experience, causal determination is often extremely difficult. Indeed, such accidents often involve two or more contributing elements.

The damage threshold of $500,000 is stated as damage to railroad property because it will be necessary for the railroad supervisor to assess the damage. Often assessment of damage to lading or damage to third party property will be difficult, if not impossible, for the supervisor on the scene. The

approximate cost of damage to locomotives, freight cars, and fixed railroad facilities is much more readily determinable.

Second, *§ 219.201(a)(2)* requires testing after an "impact accident" that results in a reportable injury or damage to railroad property of $50,000 or more. The term "impact accident" refers generally to collisions, but the new term is employed to avoid problems of categorization deriving from the use of the term "collision" in FRA's accident/incident reporting system. (Section 219.5 defines "impact accident" to mean a head-on collision, a rear-end collision, a side collision (including a collision, at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post.)

A very high percentage of impact accidents result from human performance failures. Railroad rules and signal systems are carefully designed to ensure that undesired impacts will not occur. If we are to determine the extent to which alcohol and drug use affect safety, it is crucial that testing be undertaken after these accidents. Nevertheless, FRA recognizes that burdens on employees and the railroads should be subject to reasonable limitations. Therefore, FRA has required that an impact accident meet one of two severity tests—reportable injury or damage of at least $50,000.

Third, *§ 219.201(a)(3)* requires testing after any fatality involving an on-duty railroad employee in a train incident. These are events involving the movement of railroad equipment that do not result in property damage meeting the current FRA reporting threshold ($4,900 in 1985) but do result in a casualty. A substantial portion of these deaths are never adequately explained, but where autopsies are available on the deceased (even with questionable or very limited toxicology), about one in six of the victims is found to have appreciable levels of alcohol or drugs. (See NPRM at 22–24; 49 FR 24265–24266.) The distinct possibility exists that additional fatalities are caused by the performance failures of other members of the crews on which the fatally-injured employees work.

This requirement is also scaled-down from that contained in the NPRM. Testing would only be required in the case of fatalities, not loss of eye or limb. While these events are relatively few in number, they present particular difficulties. Eye injuries, for instance, happen somewhat unpredictably. Amputations are immediately followed by intensive medical treatment that will normally involve blood tranfusions and other procedures that can affect toxicological findings.

Further, only fatalities to on-duty railroad employees would trigger the requirement. This has the effect of excluding fatalities to trespassers, as was the case in the proposed rule. It also excludes fatalities to non-trespassers (such as passengers attempting to board moving trains or falling from moving trains). FRA's review of those incidents suggests that very few involve the possibility of human failure on the part of the railroad employees responsible for the movement.

Total accidents. FRA estimates that a total of approximately 150 to 200 accidents or incidents will be subject to testing each year based on the criteria stated above. All of these events will be of significant public interest, involve circumstances likely to include human failure, or be important to the safety of railroad employees.

FRA recognizes that this reduction of the number of events subject to post-accident testing is facially inconsistent with the position of GAO, which recommended that testing be undertaken after all reportable accidents. However, FRA believes that GAO's concerns with deterrence and data collection are adequately addressed by the final rule as a whole. The authorization for testing on reasonable cause, described below, will permit the railroads to conduct breath and urine tests after reportable accidents and incidents not subject to the mandatory post-accident testing requirements. The enumeration of data elements required in Part 217 reports (efficiency tests and inspections) will capture the results of all Rule G observations, including those that are accompanied by breath or urine testing.

Until the role of alcohol and drugs in railroad accidents and casualties is better defined, a broader mandatory program would not be warranted. Mandatory testing will involve not insignificant costs for each event. Were this mandate extended to all reportable train accidents, the railroads and their employees would be subject to substantial inconvenience, and railroad operations could be disrupted. Viewed from the point of view of prospective costs and benefits, FRA does not believe a mandatory testing program of that magnitude could be justified.

Section 219.201(b) excepts rail/highway grade crossing accidents from the requirement for testing. FRA has carefully considered the suggestion of NTSB and others that at least those grade crossing accidents that involve fatalities be subject to testing. However, FRA has concluded that such a course would be costly and relatively unproductive. The total number of fatalities in grade crossing accidents has been cut in half over the past decade through better protection of crossings, grade separations, and educational campaigns. But there are still almost 400 collisions each year between trains and motor vehicles at rail/highway crossings that result in one or more fatalities and roughly 40 events that involve fatalities ot pedestrians. A significant number of the train/vehicle collisions (almost one quarter) actually involve the motor vehicle driving into the side of the train, an accident modality that may be confirmed only after investigation and that virtually never would involve fault on the part of the train or engine crew. In the vast majority of the remaining accidents, the crew of the train has little or no chance to avoid the impact because of the very long stopping distances involved and the fact that it is the motorist (or pedestrian) who has placed himself or herself in a position of danger.

FRA recognizes that the acts and omissions of engine crews and train crews may at times contribute to grade crossing accidents to some extent. However, in the vast majority of cases railroad employees can only be viewed as additional victims of these tragedies, since they have no real opportunity to avoid them. Measures directed at the reduction of alcohol and drug use in railroad operations will, of course, tend to reduce the possibility that employee performance at grade crossings may be impaired. In FRA's judgment, no compelling case has been made for the major expansion in the post-accident testing program that would be required if rail/highway grade crossing accidents were to be included.

In addition, under Subpart D of the regulations (discussed below), the railroads will have discretion to conduct breath and urine tests after rail/highway grade crossing accidents where there is a reasonable suspicion that the employee is impaired or that the employee's conduct contributed to the occurrence or severity of the accident.

Section 219.201(c) provides that the railroad shall determine the existence or nonexistence of the factual conditions that require testing. Railroad officials are almost always the first to respond to the scene of an accident/incident. They must be relied upon to determine the facts if timely testing is to be carried out.

The railroad representative is required to make reasonable inquiry into the circumstances and consequences of the accident/incident

in order to determine whether testing is required. That is, the railroad representative determines what the facts are. Has anyone been killed or injured? Is there substantial property damage? If so, how much? Release of hazardous material? Evacuation? Injury from release of product? Is this an impact accident? How do these facts fit the requirements of § 219.201(a) and the exclusion in paragraph (b)? The section requires that, after such inquiry, the railroad representative must make a "good faith judgment" as to whether testing is required by the rules.

This paragraph does *not* give the railroad license to waive the mandate of the regulations nor (knowingly) to extend it. It does not excuse ignorance of the regulatory requirements. It does provide latitude to find the facts quickly and in the midst of what may be a difficult environment.

This provision is intended to be responsive to the concern of the railroads that they might be penalized for a good faith error or lack of information on the accident scene. The paragraph excuses good faith estimates of damage that ultimately prove to be too high or too low. Likewise, it excuses testing where an injury is not manifest on the accident scene (as in the case of exposure to toxic substance that produces illness the following day). It does not excuse a failure to make a good faith estimate of damage, a failure to inquire as to the condition of persons who may have been affected, or ignorance of the regulations.

If proper inquiry has been made and a good faith judgment has been rendered, then the decision to test or not to test is consistent with the regulations and the test is authorized. Employees must cooperate. It is not practicable to convene an arbitration panel to sort out the facts on the scene. Employees who are impaired and thus reluctant to be tested should not be invited to refuse in the hope that actual damages may come out $1 shy of the threshold. By the same token, if a railroad representative should imagine the existence of facts that have no basis in reality, the hearing procedure required by § 219.213 will provide ample opportunity to set the matter right.

Section 219.203 describes who is to be tested and how it is to be accomplished. *Paragraph (a)* states that samples shall be obtained from "all covered employees of the railroad directly involved". FRA has considered the suggestion of some commenters that non-covered employees should also be subject to testing. Certainly there may be situations in which it would be desirable to test maintenance-of-way personnel on the scene, a car inspector who performed an air brake test, or a supervisor riding in the cab of a locomotive. However, as a practical matter these occasions will be few and infrequent when compared to the situations where testing of covered employees is indicated.

FRA recognizes that at a future date it may be desirable to expand the scope of testing and continues to welcome the submission of any information pertinent to such a requirement. The performance of the present testing criteria and testing program will undoubtedly offer important information with respect to the expansion of the class of those subject to testing.

Paragraph (a)(2) provides that all crew members of trains (as defined in § 219.5) are to be tested. All train crew members have important safety functions, including the responsibility to monitor speed, inspect the train enroute through visual observation, report violations of safety rules (including Rule G) and (often) to communicate train orders and other information and perform brake tests at intermediate points. This requirement will shed light on the performance of the entire crew, including the fitness of the working supervisor and other crew members who may have participated in social drinking or drug use with an employee at fault. Note that this testing mandate is categorical and thus broader than the limited discretionary authority for urine and breath testing in § 219.301. The relatively broad mandate for testing of train crews reflects the fact that operating employees are most often at fault in alcohol and drug-related accidents and that some alcohol and drug-caused accidents in the past have involved apparent sequential or simultaneous failures of performance by two or more crew members. It also reflects the extreme difficulty of distinguishing fault and degrees of fault immediately after the more substantial accidents subject to this section.

Other covered employees directly and contemporaneously involved in the circumstances of the accident/incident must also be tested. For instance, a signal maintainer who was working on the controlling circuits of the territory at the time of a collision would also be tested. A dispatcher involved in a collision in train order territory would be considered to be directly involved unless the railroad determines in good faith that one of the trains was in noncompliance with a train order providing proper protection. These cases will require the exercise of some judgment, and the only alternative to the application of such judgment is to require testing of all such personnel, even when there is no possibility that their acts played a role.

Paragraph (a)(3) provides limited exclusions from testing. In the case of an "impact accident" or "fatal train incident" (but *not* a major train accident) even train crew members may be excused from testing if it is immediately determined that they had no role in the direct cause(s) of the accident. For instance, after a collision it may be determined that a signal malfunctioned. Similarly, in the case of a train incident it may be known that the victim occupied a position of obvious peril on the track structure despite the maintenance of normal communications by the crew handling the movement. The railroad must be able to support its determination to exclude employees from testing under the circumstances specified. Because the potential exists for misuse of the exclusion, the ruled does *not* contain any exception for an erroneous determination made in good faith.

Special rules apply where non-covered employees are involved in an accident or incident. Although surviving non-covered employees are not subject to testing, samples must be obtained from the remains of a non-covered employee killed in a train incident or train accident.

Paragraph (b) requires that every reasonable effort be made to assure that samples are provided promptly. The paragraph recognizes certain situations in which it may be necessary for employees to complete certain duties prior to testing.

Paragraph (c) states that samples are to be collected at an independent medical facility. Blood is to be drawn only by competent personnel. If an employee is injured and goes to a medical facility for treatment, that facility should be requested to obtain the samples.

Paragraph (d) sets forth a procedure to follow if the treating hospital or other facility is reluctant to cooperate. It requires the railroad to make reference to the specific requirements of these regulations, if necessary to obtain the cooperation of the medical facility. (The regulations do not govern the conduct of the medical facility, as such. However, the fact that a test procedure is conducted in compliance with a Federal safety mandate will be persuasive to most administrative and medical personnel of these facilities.) If the injured employee is unconscious or otherwise unable to evidence consent and the medical facility declines to obtain a blood sample after being

acquainted with this part, the railroad is required to contact FRA through the National Response Center.

Paragraph (e) recognizes the discretion of a physician to determine whether blood can be drawn with safety from an employee who is injured or suffers from any condition providing a contraindication to the procedure.

Section 219.205 sets forth general requirements for obtaining, sealing, marking, and shipping the samples. Technical procedures applicable to this process are contained in the Field Manual currently in preparation. The Field Manual will be available for the implementation conferences described in the introductory material to this notice. It may be revised from time to time in order to address emerging problems and assure that the procedures are efficient.

FRA has included a requirement for information sheets to be shipped with the samples. The railroad representative will be required to complete one information sheet per kit (usually one per accident). A separate sheet is to be completed for each employee. This information required on the forms is limited to that necessary to accomplish the toxicological analysis and to provide notice of the results of the analysis.

The final rule also states that the railroads are responsible for shipping samples prepaid. Although FRA will absorb the cost of toxicological analysis and notifying the railroad and the employee of results, the cost of shipment should properly be borne by the railroad, since it is a cost avoidable only through the actions of the railroad.

Section 219.207 makes special provision for obtaining samples in the case of fatalities. The railroad is required to make immediate contact with the custodian of the remains to request samples, providing a kit for shipping and, as necessary, arranging for shipment by air freight. Where cooperation is not forthcoming the railroad is to notify FRA at a designated telephone number. FRA will then contact the custodian and take appropriate action to obtain the samples.

A qualified person who obtains necessary samples is the delegate of the Secretary of Transportation within the meaning of section 208 of the Federal Railroad Safety Act of 1970.

The Field Manual contains details concerning sample selection and handling of samples.

Section 219.209 deals with notifications to FRA when tests are conducted and when required tests are not conducted. When tests are conducted, notification is to be provided to FRA by telephone. This will permit prompt coordination of the FRA field investigation with toxicological analysis by CAMI.

If the railroad is unable to obtain one or more samples as required by this section, the railroad is required to append a short narrative description of the reason for such failure to its accident/incident report filed under Part 225, consistent with instructions in the Reporting Guide. FRA is revising the Reporting Guide to permit computer identification of this data element.

Section 219.211 describes FRA's actions on receipt of samples. Analysis is undertaken as quickly as possible, consistent with the need to achieve scientifically valid results and relate them, preliminarily, to the circumstances of the accident or incident. (For instance, in some cases positive findings may be made for drugs administered after an accident or for drugs taken under a doctor's care for which a well regulated regimen can be established. In such cases, public release of incomplete information could materially prejudice the employee.)

The employee is permitted to respond to the test results prior to the development of any final FRA investigation report. The toxicology report and any response are also made available to the NTSB (with respect to an event investigated by that agency).

During public proceedings on the NPRM, AAR and certain railroads pointed out that some of the collective bargaining agreements require the railroads either to charge, or commence investigations, for violation of railroad rules within established periods. Although some of these periods begin to run only when the violation becomes known, others begin to run on the date of the violation. The railroads therefore requested that FRA make available the results of the toxicological analysis within 72 hours. Although it may be possible to provide such results within a very limited time period for events that involve negative findings on all screening tests or only blood alcohol levels, in other cases, particularly those involving drug use, considerably longer periods of review may be required.

FRA believes that the integrity of the testing program is best served by providing whatever time CAMI requires to achieve valid and complete results. Further, it must be noted that CAMI also serves its parent organization, the FAA; and it is not uncommon for aviation and railroad accidents to occur in quick succession of one another, followed by periods of light activity. Obviously, accommodation must be made to the laboratory's need to deal with periods of heavy activity.

Nevertheless, the prohibition of alcohol and drug use on the railroads will not be respected if employees can escape normal disciplinary consequences solely as a result of agreement provisions that do not mesh well with the cycle of toxicological analysis following significant accidents. Therefore, *paragraph (c)* of § 219.211 provides that agreement periods with respect to charging employees and conducting investigations are tolled during the period between the accident or incident and receipt of the results of toxicological analysis, solely with respect to violations of Part 219 or the railroad's alcohol and drug rules. Where the railroad does obtain information sufficient to charge, it must do so. If the employee is held out of service during the waiting period, the employee must be advised of the reason.

This provision does not authorize holding any employee out of service pending receipt of test results, except to the extent it tolls the agreement periods. Nor does the section restrict the railroad from holding an employee out of service for other rule violations growing out of the accident or incident.

Railroad disciplinary proceedings after accidents and incidents normally address all conduct relevant to the event in question (charges are consolidated for investigation). It is important that the minor procedural adjustment required by the regulation not produce duplicative investigations that could prove detrimental to both the employee and the railroad. Therefore, the rule tolls the maximum agreement periods with respect to all matters growing out of the accident or incident.

Paragraph (d) states that FRA retains all samples for at least six months after the accident or incident for its own purposes (*e.g.*, to permit reanalysis of a sample if another laboratory reported detection of a substance not tested for in the original procedure). However, the samples may be produced for litigation purposes, consistent with the notice provisions contained in the regulation and the lawful order of a court of competent jurisdiction.

Collateral proceedings. FRA wishes to stress that the purpose of this Subpart is not to fix blame (or determine liability) in any civil or criminal proceeding but to promote the reduction of accidents and casualties caused by alcohol and drug use. FRA/CAMI facilities and personnel may not be used as consultants by parties engaged in private litigation growing out of an event subject to this Subpart. In no case will such personnel

be permitted to give expert testimony in such litigation. (*See* 49 CFR Part 9.)

Section 219.213 deals with the problem of employees who unlawfully refuse to provide blood and urine samples. The emphasis here is obviously on refusal. An employee who in not asked to provide samples or is unconscious clearly can neither affirm the required consent nor make the decision to refuse.

The regulation, which has the same effect as Federal statutory law (unless restrained or enjoined in its operation by a reviewing court), both implies and requires consent (sec. 219.11) to the taking of samples. The employee who does refuse to cooperate does so unlawfully (the employee has the power to refuse, but not the right). In no case will any type of physical coercion be used to effect cooperation.

The disqualification requirement is based on two concerns, either if which is sufficient in FRA's judgment to support the requirement. First, it must be known that a refusal will give rise to an unacceptable consequence if testing is to be accomplished on a uniform basis. Any disqualification actually applied is therefore intended to have a future deterrent effect, both particular and general. Second, most refusals will be by employees who know that they are impaired by alcohol and drugs. These individuals should be removed from covered service for a reasonable period to permit them to achieve control over their substance abuse problems and to reflect on the consequences of noncomplying conduct. Again, the purpose is not to punish but to foster safe conduct.

If an employee does refuse, the regulation requires that the employee be disqualified from covered service for a period of nine (9) months. FRA continues to believe that setting a regulatory benchmark is necessary to ensure fair and equitable treatment. FRA cannot and does not restrict any discretion available to the railroad to apply sterner discipline for the refusal as an act of insubordination. However, it is important that the railroads (and arbitrators) know what is required to effect the purposes of the regulations. Employees should not be subject to more drastic sanction solely because the employer believes that FRA will view a lesser action as a violation of its duties under the regulation. By the same token, employees of different railroads should know know that they will receive equal treatment with respect to the violation of the Federal regulation—no better, no worse.

Some of the railroads wanted FRA to prescribe dismissal as the sanction for refusal. This is simply not possible. FRA has no jurisdiction to terminate employment relationships; nor would it be useful to do so, since the railroad would be free to reinstate the employee at will (eliminating the uniformity of treatment sought in the first instance).

FRA agrees with the concern raised by some commenters that the 6-month disqualification period proposed in the NPRM may not be of sufficient duration to produce the desired effect—compliance with the testing requirement. Virtually all railroads, upon establishing a Rule G violation in connection with a significant accident, would take the action of dismissing the employee; and few would consider reinstatement in such a case until the passage of at least 9 months to a year. Accordingly, paragraph (a) extends the minimum period to 9 months in order to create an incentive to testing that more nearly approaches the disincentive created by the prospect that the Rule G violation will be detected.

Paragraph (b) of § 219.213 is devoted to procedural requirements for hearings called to determine the facts with respect to an alleged refusal. The provision requires notice and an opportunity for a prompt hearing. Where the provisions of a collective bargaining agreement govern such hearings ("investigations," in railroad parlance), compliance with the collective bargaining agreement (and attendant procedures for adjustment of disputes) satisfies the requirements of the rule. The agreements have consistently been construed to require adequate notice of the changes and a full hearing on all factual issues. Further, by virtue of their procedural provisions, the collective bargaining agreements define the extent of the employee's contractual right to exercise seniority to occupy a position in covered service. Compliance with the agreements thus provides its own measure of the process due with respect to any property interest that may be alleged to be abridged by the disqualification. An agreement employee also enjoys the right to have an unresolved dispute adjusted by a neutral arbitrator (under section 3 of the Railway Labor Act). No purpose would be served by requiring a separate "Federal" hearing, and no such redundancy is intended by the rule.

FRA intends that burden of proof be governed by the applicable agreement (if any). In the absence of an agreement, the railroad should bear the burden of establishing the existence of facts requiring the test (or giving rise to the good faith judgment that testing was required), the fact that a request was made, and the fact of the refusal. The employee would then be required to counter the railroad's presentation (or to demonstrate that the refusal to provide blood was based on competent medical advice, if such is contested).

Paragraph (c) endeavors to describe the issues that must be resolved in determining whether a disqualification is required and draws on the comments of the ACLU. The employee can contest whether there was a refusal, whether the accident or incident required testing (or whether, in a marginal case, the railroad representative made a good faith determination that it did), and whether, in a case where blood was refused based on health concerns, the refusal was made in good faith and based on medical advice. Commenters have not suggested additional situations in which a refusal might be excused, and FRA is unable to craft futher excepting language that would not be subject to misinterpretation and uneven application. Therefore special circumstances (if any) will have to be left to case-by-case review.

3. Authorization to Test for Cause

a. Summary of Proposed Rule (§ 218.109)

The proposed rule would have granted the railroads authority to require employees to submit to testing of breath and urine samples on reasonable suspicion of current impairment, after reportable train accidents and incidents, and after certain rule violations involving the potential for train accidents (criteria deemed to constitute "just cause"). The practical effect of the rule would have been to displace the effect of the NRAB ruling on random breath testing and to preempt any state laws limiting the ability of the railroads, as employers, to implement a testing program of the kind proposed to be authorized. Employees would have been required to submit to testing as a condition of employment in covered service.

The categorical situations in which testing was proposed to be authorized contained a number of limitations. For instance, testing on reasonable suspicion was limited to the personal observations of the supervisor, in contrast to reliance on second-hand information. Testing after accidents/incidents and rule violations was limited to employees directly involved in those events. A rule violation involving overspeed operation would have served as a basis for testing only if the violation was at least 10 miles an hour over the maximum allowed. On the other hand, the rule violation criterion contained a general authorization to test after a

"violation of any other operating rule . . . or other written directive of the kind which directly affects safety movement of a train, switching movement or lite engine in a way that could result in a train accident. . . ."

The proposed rule limited the number of tests to three in any 12-month period and two in any 30-day period.

Certain safeguards were contained in the proposed rule. Breath testing devices were to be evidential quality and were to be used only by a qualified operator. "Replicate" tests at 20-minute intervals were required to ensure that the device accurately measured deep lung air. Finally, any test result of less than .02 percent was to be deemed a negative test.

Safeguards were also proposed for urine tests. Samples were to be collected at a place of reasonable privacy, subject to the presence of a person of the same sex to ensure that the sample presented was actually that of the employee tested. The sample was to be marked and sealed in the presence of the employee; and the railroad was to maintain a controlled chain of custody and take precautions to maintain sample quality. Confirmation testing was required in the case of a sample found positive for a drug other than alcohol. Any test result convertible to an estimated BAC below .02 would have been deemed a negative result.

In the case of a positive breath test or a urine test, the employee would have the right to demand a blood test at an independent medical facility or laboratory.

Finally, the proposed rule provided that an employee who tested positive for a "material quantity" of alcohol or a drug in a urine test and who was offered and declined the opportunity to provide a blood sample, could be presumed to have been impaired by the substance detected.

b. Public Comment

As expected, the authorization for breath and urine testing on "just cause" was the most hotly contested proposal in the NPRM. NARUC, the AMA, NTSB, the Louisiana State Police, five railroads, and one local labor representative supported the provision. Another railroad specifically said that it welcomed the right to test, but not the obligation. A BLE general chairman approved testing with some qualifications, including the requirement that supervisors administering tests be certified. Another local BLE officer favored testing if the railroad utilize it in a way that respects employee rights and if bypass and companion agreements are put in place.

The RLEA, UTU and several local labor representatives strongly disapproved. BLE strongly objected to testing in the absence of "compelling probable cause," by which it meant "lack of coordination, incoherence in speech, and other recognized visual evidence of intoxication." BLE thought that this "concession to testing," together with implementation of prevention programs, would be "the most effective way to deal with the overall problem." A locomotive engineer saw the proposal as vague, abitrary and inviting abuse. A small freight railroad thought that testing on reasonable suspicion should be authorized, but disagreed with the other two prongs of the just cause testing authority (testing after accidents/incidents and rule violations).

The National Industrial Traffic League, AAR, and five railroads urged that the railroads be granted the authority to test without specific cause (so-called "random testing"). But the AAR and most commenting railroads nevertheless appeared eager to obtain the limited authority proposed, if that were the only authority they could obtain.

Deterrence. The purpose of the proposed testing authorization was to enhance the ability of the railroads to detect job-related alcohol and drug use (and immediately remove unfit employees from service) and to deter such use by increasing the perceived risk of detection. A consultant filed comments indicating doubts concerning the deterrent value of the authorization, as proposed, and recommending use of "random testing" on the model used by the United States military. (In general, the military services test to determine drug use, not drug impairment.) A freight railroad thought that the proposed testing authority was of little use, because of the safeguards and restrictions imposed. The railroad said that it already offers employees the right to a test at a local hospital where a Rule G violation is charged.

Another freight railroad said the proposed authorization for testing is ineffective because it comes into play too late. Amtrak said it did not object to reasonable safeguards but questioned the deterrent value of the proposed rule. But the majority of railroads appeared to view the proposed authority as useful, particularly if one or more conditions were to be removed. A major freight railroad said that the provision was necessary and would have the desired deterrent effect.

Random testing. AAR and several major railroads continue to believe that unannounced spot testing of all personnel found at particular locations is the most effective means of deterring rule violations. Comments on random testing received in response to the NPRM do not differ materially from those received in response to the ANPRM and analyzed in the NPRM. Colloquies in the hearings indicated that those railroads advocating "random testing" also want the ability to focus on individual locations presenting compliance problems, as well as the authority to do system-wide programs of testing. AAR said it would not object to a two-level review process for testing operations under which a high-level railroad officer would have to pre-approve the use of this authority. During the hearings, "random testing" was also called testing "on a controlled random basis" or "patterned basis," and "periodic unscheduled testing."

Although most commenters favoring "random testing" relied upon its superior deterrent effect, one freight railroad noted that this tool would be useful in detecting persons at lower BACs whose judgment (in the commenter's view) might be affected but who might not appear to be impaired.

Amtrak cited its special responsibility for the transportation of passengers as a basis for "random testing," but did not ask for special treatment. Like other "random testing" advocates, Amtrak relied upon its potential deterrent value in urging FRA to include an authorization in the final rule. Unlike other advocates, Amtrak appeared to have given some thought to the frequency with which the tool would be applied, at least in certain settings.

The Washington Legal Foundation agreed that there is justification for deferring a decision on "random testing," but said that FRA should review the effectiveness of the final rule for one year and reconsider random testing in light of the results of the approach contained in the NPRM.

One of the railroads said it would recede from its request for random testing if FRA would grant the proposed authority without the following limitations: the 3-test limit, the 10 m.p.h. requirement for testing after speed violations, and the requirement that BAC readings below .02 percent be disregarded.

Terminology. One commenter, a consultant who has served as head of a Federal law enforcement agency, expressed reservations with the term "just cause testing." He viewed it as having legal connotations and said that the real question is whether a given employee is fit for duty. In the commenter's view, the supervisor should

not attempt to "diagnose" the employee's condition, only use testing as a means of determining whether drug use may be at its root.

Congressional comments. FRA received several Congressional comments that appeared to be directed most specifically at the proposed authorization to test for cause. Rep. Jack Fields (Texas) stated his opposition to mandatory testing provisions of the rule, favoring Operation Red Block as an appropriate approach to the alcohol and drug problem. Rep. Tom Leoffler (Texas) wrote to support "reasonable measures which effectively increase railroad safety for employees and the traveling public." However, he also urged that FRA consider the "rights and interests of . . . employees" as expressed by their representatives in the process of public participation. A comment by Rep. Nick Joe Rahall II (W. Va.) is reported below.

Coverage. BRS and some other labor commenters asked that employees be given the right to demand testing of supervisors under the same conditions agreement employees are required to submit to testing. The railroads appeared to agree that officers could be tested, but wished to reserve to management the determination as to when such testing would be done. A local BLE officer suggested that car inspectors be subject to testing, and other commenters raised similar concerns (noted above) with respect to the general coverage of the proposed rules.

Reasonable suspicion. BRS found the authorization to test on reasonable suspicion "very subjective," advocating corroboration by a second person. RLEA said the corroboration should come from a person who is not a company official. AAR suggested that the railroads be given the right to test based upon receipt of information from persons who have observed an employee drinking immediately prior to going on duty or while the employee is on duty.

Two labor commenters thought supervisors should be trained to identify the signs of alcohol and drug impairment before they sought to employ the authority to test on "reasonable suspicion."

In discussing testing on reasonable suspicion, commenters noted that supervisors might mistake fatigue or illness for signs of alcohol or drug impairment. The AAR responded that supervisors know the working conditions of employees and thus are able to apply appropriate standards to evaluation of the need for testing.

Reportable accident/injury. There was a remarkable lack of comment specifically addressed to this prong of the proposed just cause authority.

Safety rule violation. RLEA asked for deletion of the authority to test after a safety rule violation, seeing it as "additional potential for harassment and abuse." BLE objected on the ground that there are many instances when engineers "are instructed by their supervisors to violate rules." Several local labor representatives thought that § 218.109(b)(iii)(F) ("violation of any other operating rule . . . which directly affects safe movement of a train . . . in a way that could result in a train accident . . .") needed further refinement to make it more definite. The commenters apparently meant to suggest that very minor violations would be used as a pretext for selective enforcement.

Overspeed. The most frequent comment on the safety rule violation prong of just cause testing related to the provision on overspeed operation. The propose rule would have permitted testing after any overspeed at least 10 m.p.h. greater than that authorized. AAR and most of the commenting railroads advocated that testing be authorized after any overspeed. They believed that use of a testing threshold greater than authorized speed would indicate to employees that speeding is acceptable. (No such implication was intended.) Some railroads noted that a few miles an hour could make a difference with respect to operations of trains on jointed track in the critical speed range. It was also noted that loading operations involving bulk products are conducted at very low speed and that very slight variations could be indicative of a serious human performance problem. The railroads also cited the yard limit rule (*see* 49 CFR 218.35), on the one hand, and high speed operation of high tonnage trains, on the other, as factors requiring careful compliance with speed limitations.

One railroad would permit testing after operation of a train at an "unreasonable speed." Another railroad suggested that retention of the 10 m.p.h. rule would suggest approval of speed violations below that figure.

RLEA, on the other hand, specifically singled out this testing criterion for criticism, apparently believing that its inclusion would result in abuse even with the 10 m.p.h. requirement.

Restrictions; general comments. AAR and a commuter railroad said that the proposed rule was encumbered by conditions and limitations "which severely restrict the ultility of the provision." Otherwise, said the communter railroad, it would be a "most effective tool for deterrence." Another commuter railroad wanted the ability to obtain blood samples, as well as urine and breath, and to require employees to submit to testing while "subject to duty," as well as during duty hours. A major freight railroad also wanted not to be limited to breath and urine.

AAR asked that FRA include explicit rule language affirming that the testing authority proposed to be conferred does not limit the railroads' discretion to make their Rule G cases on the basis of supervisory observations (as is the case today).

RLEA thought the standards for testing were "too vague" to be meaningful limitations on the railroads' authority to test. A local BLE officer believed testing on reasonable suspicion was essentially the same as "random testing" and thus likely to produce incidents of harassment. The commenter believed supervisors should be trained to be familiar with the symptoms of impairment and should be acquainted with any employee evaluated for testing. Apart from these suggestions, however, labor representatives did not suggest specific means by which the proposed authority could be appropriately limited, assuming it were to be retained in the final rule.

BRS did suggest that persons operating breath devices should be certified and that equipment should be calibrated at least once each week. BLE urged that urine containers should be sealed in the presence of the employee with a tamper-proof seal and that the specimen be analyzed by a "neutral" laboratory.

A railroad asked that the term "qualified operator" be clarified.

A consultant indicated that the option on the part of employee to obtain a blood test weakens the testing system, because the psychoactive substance may be out of the employee's blood by the time a blood sample can be drawn.

Harassment fears. UTU and several labor organizations thought just cause testing authority would result in unchecked harassment of individual employees who might be in disfavor with railroad management or who might be involved in efforts to advance a specific labor interest (such as retention of cabooses). One labor commenter thought railroad management would use testing as a response to employee complaints concerning unsafe equipment. The nature of this harassment appeared to fall into two categories: (1) repeated testing of fit employees; and (2) selective enforcement against employees with small quantities of alcohol (or drugs) in their systems. Commenters complaining

of potential harassment generally failed to explain why the safeguards built into the NPRM would not avoid or mitigate the harassment potential with respect to alcohol or drug-free employees.

A conductor feared repeated testing under circumstances where there might be no witness. He believed employees would have difficulty in refusing tests beyond the limit imposed.

In the hearings, it was noted that supervisors already have the practical ability to "harass" employees by a variety of means other than requiring them to submit to breath testing. FRA attempted to determine the nature of employee concern in this regard. One employee witness said that the qualitative difference between existing management powers and the proposed authorization to test was that the sanction for a Rule G violation is dismissal.

3-test limitation. The proposed rule would limit the railroad to two *negative* tests of any individual in a month or three in any 12-month period. One labor organization commented favorably on these limitations, while eleven railroads opposed them.

The objections to the limitations fell into three categories. First, the railroads found this limitation unworkable from the point of view of the supervisor confronting a crew in a situation such as the following: the crew is away from its home division on an interdivisional run; the site is remote; it is the middle of the night. In the railroads' view making an accurate determination of the number of prior tests for a particular employee would be very difficult.

Second, a commuter railroad objected to the record keeping necessary to monitor the tests.

Third, the railroads saw the 3-test system as an invitation to abuse. It was predicted that some employees would deliberately call attention to themselves in order to exhaust the three tests, after which they would be free to use alcohol and drugs without fear of detection. A major railroad called this approach a "prescription for disaster." Another railroad called the limitation a "license to imbibe." The railroads did not explain why employees found to be clearly under the influence could not be disciplined based on the same type of evidence currently used (supervisory observations of behavior, demeanor and body odors).

Fourth, some railroads thought record keeping to monitor the limitations would be burdensome.

A major freight railroad presented a notable contrast to the position of the other railroads, saying it would plan to handle each test up to headquarters level, keeping records on the results of each test and the follow-up action. This commenter would consider using the timetable notification system to determine status in the field. However, the commenter recommended that the limitation be three tests in any quarter, rather than three tests in any 12 months.

One commenter also objected to the bar on further breath testing in a particular duty tour after a breath sample tests negative, evidently on the dual grounds that (i) it would be difficult to determine if the employee had been tested at a different location on the same day and (ii) adequate grievance procedures are available to address any case of harassment.

Finally, a freight railroad that had commented to the effect the proposed rule would not be effective nevertheless took the trouble to comment that any pre-employment drug screen should not be counted against the limitations on number of tests under the instant provision.

Urine collection. Rep. Nick Joe Rahall II and a West Virginia BLE officer objected to the observation of urination by a railroad supervisor. The commenters believed that collection should be done at a doctor's office or other medical facility. Rep. Rahall expressed the view that standards of decency require collection at the medical facility. Neither commenter provided a technical rationale why collection could not be undertaken as proposed. However, the labor commenter did indicate concern that the railroad could tamper with a sample collected on the property. The commenter said he did not object to providing samples, only to the method proposed for collection.

Below .02. The proposed rule provided that breath and urine test involving an estimated BAC below .02 percent would be deemed negative tests. The NPRM said that the purpose of the provision was "to avoid controversies over the presence of alcohol in patent medications, mouthwash, and the like." The notice went on to request comment on how the dismissal of low readings could be reconciled with the appropriateness of retrograde extrapolation for employees who might show low BACs 8 or 10 hours into their duty tours.

Seven railroads and the AAR objected strenuously to this provision. AAR thought it was "a clear statement that a little bit is okay," but conceded in response to an FRA question that in most cases an employee would not be fired for having "just one beer" prior to duty under current practices (roughly equivalent to a BAC of .02 percent for the average subject within an hour after consuming the beverage). A major freight railroad said the adoption of the provision would emasculate "the industry's most important rule" while "sending a clear message to employees that it is permissible to be "just a little bit under the influence." Railroad commenters noted that mouthwash which is not ingested is cleared from the mouth within the 20-minute interval between breath tests. A major freight railroad expressed concern with both rising and falling BAC levels, since a .015 percent reading, for instance, might represent the early stage of the absorption curve.

Some employees appeared to be concerned that trace levels of alcohol detected by a breath device (or otherwise) might be used as a basis for discipline. A local UTU union officer, for instance, called attention to a July 1984 incident in which a railroad dismissed an employee for a measured BAC of .01 percent (blood), apparently suggesting that the railroad may have influenced the outcome of the test. In order to evaluate the comment, FRA obtained the carrier investigation of the incident. In that case, the railroad had requested a re-analysis of a blood sample that tested negative in a hospital laboratory. The sample was sent to a laboratory that performs forensic work, and the laboratory reported a BAC of .01, which was not inconsistent with the report from the hospital, given the different sensitivities of the techniques. The railroad relied upon the perceived odor of an alcoholic beverage and the blood test as a bases for disciplinary action.

Other comments were directed at the capabilities of the breath testing devices themselves. Some of the commenters indicated approval of the under-.02 provision in those cases where there is reliance upon a breath device. The Chairman of the NTSB said that the Board would not want to see discipline at the .02 level based on a breath test. He continued, "I think we can fairly conclusively say that .01 would not affect performance and at .02 percent there is some latitude in the [breath testing] system and in some of the laboratory analyses of blood." Both NTSB and a toxicologist who supervises a commercial laboratory said that alcohol can be found at trace levels in any individual. (There appears to be lingering dispute among scientists whether trace levels often detected in subjects thought not to have consumed alcohol are the result of naturally occurring alcohol or merely reflect problems with equipment or technique.) One railroad disagreed with this

premise, contending that breath devices can accurately measure BAC at any level.

In its written comments the NTSB said that a test result of .02 or below "should not be rejected if other evidence shows alcohol was ingested while on duty."

Concern over the usefulness of low BAC readings was not limited to breath testing. A railroad commenter noted that estimating BAC readings from urine alcohol concentration is more difficult and less precise than use of breath testing.

Presumption of impairment from positive in urine. The proposed rule states that the presence of a "material quantity" of alcohol or a drug in the urine may be used as the basis of a presumption of impairment, if the employee decline the opportunity to provide a blood sample. This presumption is particularly critical to the proposed shape of the regulations, since many drugs and their metabolites can be detected in urine for several days after use (and usually for periods longer that any expected performance decrement from their use). Despite the novelty of the proposed presumption and its criticality to the regulatory scheme, it drew comments from only three parties.

Three railroads thought the requirement of a "material quantity" was ambiguous and undefined. One major freight railroad said the presumption should be mandatory, presumably to avoid the situation in which an arbitrator might endeavor to overturn the railroad on the facts.

Labor representatives did note that urine is not an acceptable fluid for determining impairment. Several of the labor spokesmen suggested that the railroads and FRA have no right to govern off-duty drug use. However, labor commenters did not directly challenge the logic of relying upon a non-invasive sampling technique while permitting a presumption of impairment to attach where the employee does not volunteer to provide a blood sample.

Discipline, negotiation and regulation. Closely related to the issue of testing is the matter of fact finding in disciplinary proceedings and subsequent arbitrations. A local BLE officer questioned the use of railroad-administered testing on the apparent ground that the railroads are likely to be unfair in the discipline that they assess and that the process of arbitration under section 3 of the Railway Labor Act does not involve sufficient procedural protections.

The same commenter urged that any tests should be conducted by an independent facility—again suggesting lack of confidence in the railroads. But the commenter also said FRA rules would frustrate the process of negotiation under the Railway Labor Act, apparently indicating that the commenter believes accomodation on these issues is possible.

Another local BLE officer also suggested that FRA should not interfere in what he viewed as a matter for collective bargaining. But the commenter indicated that any rule adopted should provide a grievance procedure under which an employee could appeal being required to be tested for a "minor infraction."

c. Final Rule Provision (Subpart D)

The primary weakness of the current system of rules compliance on the railroads is the detection of violations. According to the REAP Report, at least partly because the vast majority of violations is not reported, fewer than 1 of 200 violations actually leads to dismissal. Infrequent detection fosters lax compliance among the minority of employees who lack a sense of responsibility, as well as permitting the substance dependent employeee to go undetected. There are at least two reasons for this. First, the railroads operate over extensive territories. Supervisors cannot possibly monitor employee conduct continuously. Indeed, in a minority of cases it is possible for crews to report for duty, perform their responsibilities, and go off duty without coming into contact with a supervisor. FRA does require the railroads to have programs for monitoring compliance with their operating rules (including Rule G) (49 CFR Part 217), but these observations often are not sufficient to deter Rule G violations.

Second, as discussed above, detection of alcohol and drug use is difficult, at best. The odor of certain alcoholic beverages may be detected if the employee has not masked it with tobacco or used a deodorizing agent. The occasional social drinker who exceeds his or her "limit" can be detected by speech or behavior. But the employee with a moderate BAC, the regular drinker, the habituated alcoholic, and most drug users can successfully conceal their impairment, at least for the short periods needed to withstand the scrutiny of the supervisor.

Coverage. As with other provisions of the rule, there was disagreement among the commenters with respect to those persons who should be subject to any breath or urine testing requirement. FRA recognizes that supervisors and managers play an important role in the safety of the railroads. However, there is no reason to authorize testing of non-agreement employees by Federal rule. In general, the railroads are already free to require management employees to submit to testing at will. Nor would the interest of safety be served by giving employee representatives the power to demand tests of management employees. These rules do not sanction a game of mutual reprisals but a limited program of testing to determine fitness.

Random testing. Several participants in this rulemaking continue to contend that the appropriate response to this problem is "random" testing, which generally is used to mean testing without cause or prenotification, but with the hope of creating an atmosphere of general deterrence. Apart from the arguable inefficiency of this approach, FRA has rejected it because it does not appear to be fair to subject the majority of sober employees to testing in the absence of some reason to question their fitness. *See* MPRM at 80–85; 49 FR 24276–24277. While a programmatic style of random testing might avoid some of the potential constitutional issues regarding "random testing" (*see* Legal Issues, below), it is by no means clear that the railroads are willing to limit themselves to a strictly random approach. Indeed, some of the railroads clearly wanted to be able to target specific locations. Comments received in response to the NPRM generally did not evidence careful thought concerning how such authority would be implemented or at what cost.

FRA believes that more measured responses deserve a trial before any decision is made to authorize random testing.

Arguments opposing "just cause" testing. FRA is equally unpersuaded by the arguments of the labor organizations that limited in-service testing authority will somehow create a "police state" and chill employee enthusiasm for cooperative prevention programs. Most employees appear to agree with the proposition that job-related alcohol and drug use cannot be tolerated, and they will welcome the leverage provided by appropriate testing authority. Like employees in other industries, many railroad employees who have substance abuse problems will not seek help until they perceive that it is necessary course to avoid exceedingly adverse consequences. The pincer movement created by active employee involvement, on the one hand, and strict enforcement augmented by enhanced detection capability on the other, should help to provide the necessary incentives to seek help. FRA believes that over the long term employees will recognize and approve of this beneficial effect.

The railroads that have entered into bypass agreements and other cooperative ventures have not simultaneously eschewed the disciplinary approach. In some cases, they have redoubled their supervisory observations or have employed other tools. The experience on these properties has tended to demonstrate that prevention and enforcement reinforce one another, rather than acting at cross purposes.

The nature of the testing process should also be considered. The final rule authorizes only breath and urine testing. Neither is invasive or painful. Breath testing can be accomplished on the railroad property without any embarrassment and with little disruption in the work day. As described below, the final rule avoids any perceived embarrassment by requiring that urine be collected at a medical facility under the supervision of personnel of that facility.

Neither breath nor urine testing need be performed in an accusatory fashion. To the contrary, the position of the supervisor should be simply that company policy requires testing in certain situations, consistent with the authority made available by the regulations. Cooperation in testing is merely one more effort required of employees in the interest of their safety and the public safety.

Unlike chemical tests used in the enforcement of drunk driving laws, tests authorized by this final rule will not be accompanied by arrest, detention, or other deprivation of liberty. Testing authority is granted to assist the railroads in fulfilling their obligation to the public safety by maintaining good rules compliance among their employees.

Harassment. Employees and managers on the railroads already have the ability to harass one another, if it is their desire to do so. To their credit, they seldom take advantage of these opportunities. Instead, they recognize that it is in their mutual interest to provide safe and efficient transportation services, meet the intermodal competition, and to maintain reasonably sound labor-management relations in aid of those objectives. Nevertheless, disputes do arise and they sometimes involve charges of harassment.

FRA has consistently sought to understand the frequently expressed concerns of labor representatives concerning their perception that testing authority would materially increase the ability of management to harass employees. FRA's bewilderment at this contention has been particularly acute since FRA has on its staff scores of people who have decades of service in the railroad industry. It cannot be doubted, of course, that the stresses of labor management relations and ordinary interpersonal relationships could give rise to ulterior motives for use of the testing authority—just as it could give rise to any variety of other instructions that might prove irritating to the employees involved. Nothing in the final rules would sanction such abuse. But it must be asked what the real concern of employees is. Is it that employees may be asked to provide breath or urine samples? This would appear to be a fairly mild form of harassment, compared to leaving a crew waiting for transportation for several hours after the expiration of their statutory duty period, or requiring a road crew to yard its train in contravention of an agreement, or punishing an employee severely for a technical violation of one of the literally hundreds of rules contained in carrier rule books—all of which, and more, are available to the (alleged) unscrupulous supervisor.

FRA believes that the answer to this question is the one given by one of the employee witnesses cited above, who indicated that the big difference between current tools available for harassment and the proposed testing authority related to the finality of the sanction. The employee indicated a particular concern that drug use during a vacation might be detected by a urine test, resulting in dismissal. However, the employee agreed that, if adequate notice and opportunity for treatment were provided, it would not be unreasonable for the railroad to maintain such a policy. This suggests that at least some labor opposition relates to the potential for detection of alcohol or drug use (albeit potentially on a selective basis), rather than the subjective discomfort associated with tests that prove negative.

Indeed, much of the labor testimony before FRA was characterized by this same apparent ambivalence. Labor spokesmen said Rule G was a good rule and clearly wanted to get alcohol and drugs off of the railroad. At the same time, they tended to resist the very measures that could be most effective (from an enforcement standpoint) in accomplishing this end. FRA does understand the apparent concern of labor that an overzealous management might undertake frequent use of testing authority without adequate consideration of the manner in which those who test positive will be handled. However, FRA rates this possibility as extremely unlikely. Sound business judgment, public policy, and arbitral law will conspire to prevent any such outcome.

Numerical limitations. The proposed rule contained a limitation of one test procedure in any day, two tests per month or three in any year. These arbitrary limitations were intended to respond to the apparent concerns of employees regarding excessive use of the proposed authority. Almost all labor participants in the rulemaking ignored this provision and continued to contend that the rule, as proposed, created the potential for harassment. On the other hand, the railroads offered a number of persuasive arguments for its deletion.

FRA has concluded that arbitrary numerical limitations on testing are not necessary, would involve significant record keeping costs, and would face significant implementation problems, without providing the intended reassurance to employees. Therefore, the provision has been deleted. It should be noted, however, that this decision provides no license for testing without cause. Section 219.9 continues to make unlawful any requirement that an employee submit to testing in reliance upon this rule without observance of the conditions and safeguards provided in the rule. FRA has authority to address such situations, should they arise.

Authorization vs. mandate. FRA has chosen to implement a limited, categorical authorization for the railroads to undertake compulsory breath and urine testing. No commenter suggested, and the final rule does not mandate, that such tests be conducted in every case, or even that a railroad make use of the authority conferred. This approach has been chosen in light of the hard, practical realities of railroading and the likelihood that the need for such testing will vary from location to location and over time.

It would not be feasible to require the railroads to conduct breath or urine testing in each of the situations where testing might, on a categorical basis, be indicated. The cost would be prohibitive, and in certain locations on certain railroads the benefits would likely be negligible. By contrast, at other times and locations, this testing authority will likely prove essential because other approaches will fall short.

An authorization for testing permits the railroad to balance use of this tool with the range of additional tools available to foster rules compliance, including intensive prevention programs, employee participation, effective use of periodic physical examinations, supervisory observations, and the like. As strides are made in controlling alcohol and drug use, enforcement can

be further restrained in the interest of economy and efficiency.

Approach of the final rule. The final rule contains numerous revisions responsive to concerns expressed in the public comments. In general, FRA has attempted to frame a testing authority that is available where there is reasonable cause to question the fitness of an employee engaged in a safety-sensitive function. Clearly, it will seldom be possible for supervisors to determine with certainty that employees are impaired by alcohol or drugs. But supervisors can observe performance and judge whether it is up to standard. Indeed, that is what they are trained to do. Further, in some cases supervisors will reasonably suspect drug or alcohol impairment. FRA believes that focusing the use of breath or urine testing on these kinds of situations meets the tests of fairness and effectiveness.

FRA has not adopted the AAR suggestion that the railroads be authorized to compel testing where an employee is reported to have consumed alcoholic beverages prior to duty or while on duty. Obviously, if the supervisor or another willing witness observes such conduct, it would provide a basis for discipline under Rule G (if the employee was on duty or "subject to duty"). FRA does not believe that testing based on third party observations is warranted, since such an approach could encourage unreliable reports from sources that may have collateral reasons for seeking to have the emloyee tested.

Of course, if a supervisor is motivated to observe an employee based on such a report, and the observation provides an independent basis for testing, then the test would be within the scope of the authority conferred.

Section 219.301 addresses the situations in which a railroad may require an employee to participate in breath or urine testing. *Paragraph (a)* states that cooperation in testing may be made a condition of employment in covered service. This provision does not create a Federal disqualification for failure to cooperate in an authorized breath or urine test, but merely removes any impediment to the railroad's enforcing such a condition. In particular, the regulation supersedes any provision of a collective bargaining agreement, or arbitration award construing such an agreement, and preempts any State law limiting the ability of an employer to require testing.

This does not mean that a railroad may not enter into collective bargaining agreements relating to conditions under which tests may be conducted. The railroad may do so and is free to observe, as a matter of practice, any constraints contemplated by the agreement, so long as the railroad is not inhibited from effective enforcement of these regulations. However, the railroad may not divest itself of the authority conferred by this section nor negate the consent required by section 219.11. The authority conferred here is conferred for the purpose of promoting the public safety, and a railroad may not shackle itself in a way inconsistent with its duty to promote the public safety.

The provision also states that Subpart D applies only when, and to the extent that, the test in question is conducted in reliance upon § 291.301. An example will illustrate this point. A railroad could enter into an agreement with its employees under which it could conduct random testing of employees. Employee representatives might insist, in exchange, that the railroad handle all first offenders under a suspension policy with requirement of treatment for those who need it. Such an arrangement, if effective in preventing violations of these regulations, would be unexceptionable from the point of view of the regulations. Further, the tests conducted under the agreement would not be subject to this Subpart, since they were not conducted in reliance upon it.

The more obvious example is the case of the employee who is requested to participate in testing but is affirmatively advised that he is not required to do so. Although the railroad might elect to follow common procedures for such voluntary test and tests authorized by this final rule, it would not be required to do so by the regulations.

In short, the objective of Subpart D is not to regulate the conduct of breath and urine tests by railroads, as such. Rather, the objective is to provide a detection and deterrence capability in the interest of safety, accompanied by such conditions as may be necessary to ensure fairness and effectiveness and to promote employee respect for the Federal safety regulatory program. The fact that a railroad may be at liberty to conduct other breath or body fluid testing does not mean either that such testing is "authorized" by the regulations or that the conditions imposed by the regulations would apply.

Paragraph (b) outlines the circumstances under which compulsory breath testing is authorized. First, testing is authorized where the supervisor has a reasonable suspicion that the employee is currently under the influence of or impaired by alcohol (or alcohol in combination with a drug), based upon specific, personal observations that the supervisor can articulate concerning the appearance, behavior, speech or body odor (including breath odor) of the employee. The common experience possessed by virtually all railroad supervisors will clearly be sufficient to inform this kind of judgment in the cases where the signs of drinking are manifest. Obviously, not every reasonable suspicion will be vindicated by a positive breath test. An employee may be perceived to have slurred speech or unresponsive pupils for reasons other than alcohol. Indeed, a person under the influence of a depressant drug may display signs similar to those found with alcohol intoxication. However, the breath test can indicate quickly whether alcohol use should be treated as confirmed or excluded, and the supervisor can determine whether further inquiry (such as medical attention or a urine test) is required.

FRA has considered requiring observation by a second supervisor as a predicate for breath testing, but believes it would be impractical, particularly in operating territories with long distances between terminals and during early morning hours—precisely the conditions under which greatest vigilance may be required. Requiring a second observation under certain stated conditions has also been considered. However, any formulation of such conditions is likely to foster protracted disputes over whether calling a second supervisor may have been "feasible" or "practical." Breath testing is a quick and non-invasive procedure that can be accomplished with little or no disruption of the normal work day and little or no loss in efficiency. Imposing more extensive conditions will discourage its intelligent use without vindicating any substantial or legitimate employee interest not already protected under the rule.

Second, testing is authorized after a reportable accident or incident where the supervisor has a reasonable suspicion that the employee's performance contributed to the occurrence of severity of the event. This test is more strict than the test found in the NPRM because it limits the events authorizing testing to those that may have involved a human factor as the cause (or a contributing cause) and restricts the persons tested to those who are suspected of being responsible for that failure. While there is no better indication of inadequate performance than the fact that such performance produces property damage or an injury, it frequently is not possible to determine the genesis of an accident in its immediate aftermath. Again, the latitude should be present to require that testing

be conducted where there is a reasonable suspicion that a failure by a particular individual was responsible.

Third, testing is authorized where the employee has been involved in a rule violation of the kind specified. The final rule departs from the NPRM principally by the deletion of the provision contained at § 218.109(b)(1)(iii)(F). That provision authorized testing after a "violation of any other operating rule, bulletin order, or other written directive of the kind which directly affects safe movement of a train, switching movement or lite engine in a way that could result in a train accident . . . ." This proposal was obviously a broad one, and FRA was concerned that it might be interpreted too broadly. During the public comment cycle, FRA invited witnesses to provide more specific language to address the variety of rule violations that might warrant use of the testing authority. Although several commenters criticized the provision, none offered substitute language. Accordingly, FRA has, through review of accident data and application of its experience in safety regulation, crafted a more complete enumeration of specific unsafe practices that warrant testing. Each of these practices involves the potential for a serious train accident or grave personal injury, or both. More significantly, each is an objective event and a clear indication of a material deviation from safe practice suggesting the real possibility that the employee is not fit. The quoted provision has been deleted.

In the place of the proposed provision, FRA has included a limited number of additional items that were subsumed in the broader statement. *Paragraph (b)(3)(i)* lists violations of train orders, signal indications and similar guidance that, very simply stated, involve a train being in the wrong place. Train separation is crucial to safety on the railroad because stopping distances very commonly exceed the sight distance ahead. *Paragraph (b)(3)(v)* deals with the failure to apply or stop short of a derail. Derailing devices are necessary safety devices that are often applied on industrial sidings and other auxiliary tracks near the point where they enter a main line. If a crew fails to fix a derail after placing cars at the industry, the failure of hand brakes, careless handling at the industry, or vandalism can result in the cars rolling free and striking a train on the main line. Failure to stop short of a derail can, of course, result in derailment of the train or switching movement itself (but may not, in a particular case, produce sufficient damage to make it a reportable accident). Either action is indicative of human failure. *Paragraph (b)(3)(vi)* deals with failure to set hand brakes on detached cuts of cars. Such failures are responsible for significant numbers of accidents/incidents each year. *Paragraph (b)(3)(vii)* is included to address performance failures by dispatchers and block operators who control train movements by issuance of train orders, manipulation of traffic control (signal) systems, or by manual operation of signals. Many such errors are discovered before they result in collisions or other serious consequences. Others are not. This provision is intended to operate only where the railroad has imposed a specific duty on the employee performing the functions and the employee is clearly acting in a manner inconsistent with that duty and applicable railroad rules and instructions.

Another controversial element of the proposed rule was the provision that authorized testing only if a crew exceeded the authorized speed by at least ten (10) miles per hour. It was suggested that such a provision would send a message to employees that speed limitations may be exceeded with impunity. FRA obviously had no such intention. Observance of speed limitations is crucial to safety. However, it is not every overspeed operation that is indicative of a potential fitness problem on the part of the crew operating the train. Situations do exist in which experienced engineers may vary from posted speed, particularly on undulating terrain during the early portion of a run, as the engineer learns the feel of the particular train. These problems may be accentuated if the railroad assigns insufficient power to the train, or if a locomotive unit ceases to function en route. Although FRA does not sanction overspeed operation (particularly at any speed in excess of those permitted by track condition or signal protection), it must be recognized that some overspeeds are often attributable to factors other than the performance of the train or engine crew. Therefore, FRA has retained the speed provision in *paragraph (b)(3)(iii)* but has modified it in response to the comments. The final provision permits testing in the case of any overspeed operation of ten (10) miles per hour or more over authorized speed, or fifty (50) percent over authorized speed, whichever is *less*. FRA believes that this standard provides a reasonable basis for the exercise of judgment while avoiding the extremely complex formulations that would be necessary to anticipate all operating contingencies.

Paragraph (c) governs the circumstances under which urine tests may be required. In general, the same conditions that warrant breath testing also warrant urine testing. Tests may be required after accidents/incidents and rule violations under the conditions prescribed for breath testing. Analysis of urine can detect both alcohol and drug use and provides some degree of quantitation with respect to alcohol. Therefore, in these situations limiting the railroad to a single type of test is not indicated.

Urine testing on reasonable suspicion presents a somewhat more complicated problem. The final rule provision does authorize compulsory urine testing for suspected alcohol and/or drug impairment. Again, the supervisor must base the requirement on specific, personal observations. However, in the case of "reasonable suspicion" urine testing, two further conditions apply. First, such a test may not be required unless two supervisors concur in the judgment (the initiating supervisor and a second supervisor) that testing is indicated. Second, if the determination is based on a suspicion that the employee is impaired by a drug (rather than alcohol), at least one of the supervisors making such determination must have received at least three (3) hours of training in the signs of drug intoxication consistent with a program of instruction on file with FRA under Part 217. The program must provide information on the effects of the major drug groups on the controlled substances list. Such training is necessary in order to provide a foundation for reasonable judgments with respect to urine testing.

Paragraph (d) states that breath testing is the preferred method of testing when only alcohol impairment is suspected. The railroad is required to use a breath test in such a case unless doing so would not be feasible. Breath tests provide a more accurate reflection of current blood alcohol levels than is possible with urine. The provision is intended to provide guidance and govern the conduct of railroads within reasonable parameters. It is not intended to provide the basis for rejecting urine test results in any disciplinary proceeding.

Paragraph (e) states that compulsory urine tests may not be required in any case subject to mandatory testing under Subpart C (post-accident toxicological testing). The railroad may require employees to submit to breath tests on the scene of the accident or incident if conduct of the tests does not materially impede the collection of samples under

Subpart C. FRA believes that, as a general matter, testing after accidents/incidents subject to mandatory testing should be limited to collection of samples for analysis by FRA, limiting burdens on employees and ensuring that samples received for analysis by CAMI are of adequate quantity. However, conduct of breath tests at the scene of the accident/incident may be warranted to avoid the loss of evidence if, as will sometimes be the case, delays in obtaining FRA samples are likely to ensue on account of transportation time and administrative preparation at the medical facility. Such tests may also assist in sharpening the focus of the accident/incident investigation and assist in obtaining other evidence before it becomes stale or responses become formalized or rehearsed.

Paragraph (f) limits the time within which breath or urine testing may be done. In no case may a test be required more than eight (8) hours after the observation or event giving rise to reasonable cause. Ordinarily, of course, such tests should be conducted immediately. However, the exigencies of railroad operations, injuries sustained in accidents/incidents and other factors may make testing difficult in certain settings. The NPRM proposed a 12-hour limitation. Despite the dearth of comments going to this point, FRA believes that an 8-hour limitation is more appropriate.

FRA is familiar with the difficulty associated with estimating previous alcohol and drug levels from specimens obtained some time later. In view of these difficulties, a given sample taken more than an hour or two after an event or observation (specifically including a urine test accompanied by the optional blood test) could be essentially meaningless (depending on the substance, time of last dosage, etc.)—at least in the absence of clear behavioral evidence. In other situations, however, meaningful data may be obtained. For instance an employee who is detected with alcohol on his breath early in his duty tour and who tests at .03 percent some hours later can be shown to have achieved a BAC well in excess of the *per se* limitation contained in this final rule.

Paragraph (g) is intended to allay the fears of some railroads that the availability of testing authority will somehow affect the ability of the railroads to proceed with Rule G disciplinary actions in the absence of such tests. The availability of testing authority may not be construed to limit the use, or question the sufficiency of, other evidence.

However, FRA notes that some railroads do pursue a policy of providing the opportunity for a blood test or other test when an employee is charged with an offense under Rule G. FRA views this as good practice.

Section 219.303 sets forth procedures and safeguards for breath tests. *Paragraph (a)(1)* states that the devices themselves must be selected from among those listed on the National Highway Traffic Safety Administration (NHTSA) Conforming Products List. NHTSA maintains this list based on rigorous laboratory testing of the devices to determine if they meet strict performance standards. The most recent publication of this listing (and the performance standards) was in the Federal Register of December 14, 1984 (49 FR 48854–48864).

Paragraph (a)(2) requires that each device be properly maintained and calibrated with a calibrating unit on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers (49 FR 48865–48872; Dec. 14, 1984). Calibration must be effected with sufficient frequency to ensure that the device is accurate within the normal range for use of such devices (plus or minus .01 percent of true value), but not less frequently than provided in the manufacturer's instructions. The frequency with which calibration should be effected depends on the type of device and frequency of use. The Field Manual will contain good practice recommendations for calibration of the testing devices.

Paragraph (a)(3) requires that tests be conducted by a trained and qualified operator. The railroad is required to submit its training program to FRA in conjunction with its filing under § 217.11. The training program must include training in the operation of the particular device(s) selected by the railroad and must include practical experience in operation of the device and use of the calibrating unit. It is the responsibility of the railroads to qualify operators for the devices.

Paragraph (a)(4) deals with conduct of the tests themselves. In general, the procedure for the test will depend on the type of device.

Paragraph (a)(5) requires that any test that is positive be replicated. In order to avoid a false positive or artificially elevated reading associated with alcohol in the mouth, a waiting period of at least 15 minutes must be observed before the replicate test. FRA has reduced this interval from the 20 minutes proposed in the NPRM because the shorter period is fully adequate to ensure that the mouth will be purged of alcohol.

Paragraph (b) provides that an indicated reading of less than .02 percent shall be deemed a negative test. In response to the NPRM, several railroad commenters criticized FRA's stated reason for this provision, *i.e.*, that BACs below .02 are *de minimis* for safety purposes. FRA recognizes the validity of this criticism, particularly in relation to rising and falling BACs. However, in reviewing whether the below-.02 provision should be deleted, FRA had to consider the state of existing technology, keeping in mind that there have not been frequent forensic applications of breath test readings in this very low range. Based on the capabilities of existing devices, FRA believes that the requirement to treat indicated readings of less than .02 as negative should be retained in the final rule.

This decision is no way excuses or immunizes BAC levels below .02. The railroads may still take any action within their discretion where other evidence is available to establish alcohol use. Obviously, a "negative" breath alcohol test will have no significance for the railroad disciplinary proceeding, except to establish that there was no detection of alcohol at or above the .02 percent level.

Paragraph (c) states that in any case where a breath test is intended for use in the railroad disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory (a laboratory not owned or operated by the railroad). The purpose of this provision is to avoid any possible situation in which a poor test procedure or a manipulated test procedure might give rise to a false positive test. A fair process will foster employee confidence in the system. Obviously, it will not be in the interest of the impaired employee to provide a blood sample, since that result will merely tend to provide further documentation. FRA believes that the railroads will administer testing progams in a competent manner and this option on the part of the employee will seldom be used.

Paragraph (d) deals with screening test, in contrast to paragraph (a), which sets out conditions for all other tests under this authority. In order to make efficient use of increasingly inexpensive and compact testing devices, the railroads may wish to make them available to supervisors for use under less than ideal conditions. Some of the

devices currently being manufactured can be used with reasonable reliability by following simple directions. Although BAC readings may not be precisely on the mark if the device has not been recently calibrated, the device can indicate presence or absence of alcohol.

In some cases it may be in the interest of both the supervisor and the employee to perform a preliminary screening test (under the circumstances authorized under section 219.301) rather than transporting the employee to a place where a qualified operator is located with a currently calibrated device and reference standard (calibrating device) for routine quality checks. If the preliminary test is negative, the employee can continue the assignment without interruption. If the test is positive, the supervisor can then take the employee to a place where a follow-up test can be conducted. This procedure is similar to the use of preliminary breath test devices on the highways of some States (albeit with none of the potential for eventual criminal sanctions). By "removal from covered service," FRA means to refer only to the temporary suspension of the employee's assignment. Whether the employee remains in pay status is a matter for determination under the collective bargaining agreements. (Without questions, the employee would be entitled to any lost wages if the screening test is shown to have indicated the presence of alcohol when none was, in fact, present.)

FRA believes it would be useless to impose extensive restrictions on a preliminary screening test. The business of the railroads is moving freight and passengers, and any unnecessary interruption in crew performance means a loss of time and money. Considerations of efficiency will compel the railroad to maintain devices in good working order. In any case, the employee is entitled to have an evidentiary-quality breath test before the employee could be subject to discipline.

Note that the below—.02 provision applies to any screening test. A reading of less than .02 percent will end the procedure. Further, the fact that the railroad must provide an evidentiary-quality test in order to obtain a useable reading does not in any way affect the employee's right to demand a blood test.

Section 219.305 prescribes procedures and safeguards for urine tests. *Paragraph (a)* provides that urine shall be collected at an independent medical facility under the supervision of employees of that facility. This approach will avoid objections concerning observation by a railroad supervisor. The rule does not require observation of sample collection, but observation is the most effective means of ensuring that the sample is that of the employee and has not been diluted. If collection is observed, only personnel of the medical facility should be present.

Paragraph (b) requires procedures to ensure positive identification of each sample and accurate reporting of results. There are a variety of ways to accomplish this end, including regularized procedures and chain of custody documentation.

Paragraph (c) states that a urine test procedure may include the provision of not more than two samples from the same employee. Two samples (separated by 20 or more minutes) may be desirable to better estimate on-duty blood alcohol concentration, particularly for an employee who has just reported for duty. Similarly, in the case of suspected drug use, obtaining a second sample several hours after the event may help in determining recency of use (depending on the time of collection of the first sample, the particular drug, and other factors). FRA believes that use of this authority will be appropriately selective.

Paragraph (d) secures the right of the employee to demand a blood test in any case where a urine test is required. The purpose of this option in relation to the urine test is significantly different from the same provision with respect to the breath test. The employee's interest in the neutrality of the urine test is already established by virtue of the situs of the collection and use of an independent laboratory. Here the employee is assured that, if the option is exercised, that a more complete factual record will be developed regarding the extent and timing of the employee's drug use.

As further discussed below (section 219.309), the employee who has not abused drugs will have no reason to fear a urine test and can assume that the report (which may take several days) will be negative. Similarly, the employee who has made an appropriate medical use of a drug, as authorized by a physician (and who, if required by the railroad, has notified the railroad of such use or obtained approval), will have nothing to fear—and no reason to claim a blood test. However, the drug abuser will know that the test will be positive. The abuser will likely claim the right to a blood test in order to produce a more precise record on the levels at which the drug is present and recency of use.

Paragraph (e) states that nothing in Subpart D restricts any discretion available to the railroad to request or require additional body fluid testing. That is, while Subpart D does not confer additional authority, it does not stand in the way of the exercise of any such authority.

Section 219.307 lays down standards for urine tests or "assays." *Paragraph (a)* provides that the independent laboratory must be proficient in analyzing urine for drugs of abuse. A laboratory that performs confirmatory procedures (discussed below) is required to be a participant in an external quality control program. Such programs are essential to avoid inter-laboratory variations and to detect deviations from sound technical practice. This requirement is particularly critical in view of the fact that there is no general-purpose certification program at either the Federal or State level for laboratories undertaking this work (although certain laboratories may be certified or approved by certain clients or for particular purposes.

Paragraph (b) provides that each sample shall be initially analyzed by a method that is reliable within known tolerances. Immunoassay techniques have been developed over the past few years that are very sensitive and reasonably specific for a variety of drugs of abuse. As a practical matter most laboratories will use these tests for initial screening (though no particular technique is required).

However, screening tests generally carry the potential for a known percentage of "false positive" results. In some cases it appears that these false positives are genuine—no drug is present. In other cases, confirmation may not be possible for a variety of reasons. In any event, scientific opinion seems well settled that where important economic or legal consequences flow from a test result, confirmation by another method is essential.

The rule requires confirmation by a method specific to the substance detected in the initial screen. The result must be quantitative. The regulation says that an immunoassay (including a radio immunoassay) is not an acceptable confirmatory test. This statement should not be construed as in any way derogatory, since these assays have a legitimate and useful role in the testing process.

FRA heard testimony that confirmation by gas chromotography/mass spectrometry (GC/MS is the current state of the art with respect to confirmation of drugs of abuse. FRA agrees that this is generally the case. *See, e.g., GC/MS Assays for Abused Drugs in Body Fluids*, Research Monograph Series No. 32 (National Institute on Drug Abuse 1980). GC/MS

confirmation by a competent laboratory using an appropriate technique will provide an extremely high level of confidence in the test result. Indeed, CAMI will be using GC/MS assays to confirm and quantitate drugs found in blood and urine in the course of the post-accident testing program. FRA has not specifically required GC/MS confirmation in every case under this section because such a requirement would tend to usurp the role of the scientific community in establishing the reliability of existing assays and development of new assays. A confirmatory test is acceptable under the regulation if it meets the test of specificity.

Paragraph (c) requires that laboratory reports provide enough information so that they can be reviewed and evaluated by (or on behalf of) persons representing an employee in any disciplinary action or arbitration. Most laboratory reports are notably deficient in this respect. The laboratory is required to report as negative any positive screen that cannot be confirmed. Although FRA may not regulate the laboratories, it can insist that the railroads use their market power as consumers of services to ensure these procedures are followed. A legible copy of the laboratory report must be made available to the employee.

Section 219.309 relates to the presumption of impairment from a positive urine test. If an employee's urine sample has tested positive for a controlled substance (or its metabolites) and the employee was afforded the opportunity to have a blood test, but declined to do so, then the finder of fact in a disciplinary case may presume from the presence of the substance that the employee was impaired within the meaning of § 219.101. The presumption is permissive and rebuttable.

This presumption is no mere afterthought. An understanding of this provision is crucial to an understanding of the urine testing authority. The reader must keep in mind that a "urine test" is actually a series of procedures involving the least two separate assays (screening and confirmation) that takes place over a period of several days. Thus, at the time the employee presents a sample, the report of the test is not immediately available. (Portable testing kits for on-site testing are available, but this rule does not contemplate use of this relatively new and technically limited approach.)

The second point that must be remembered is that a urine sample, by itself, will almost never, if ever, be sufficient to establish that the employee was impaired at the time of collection (let alone at the time the decision to test was made). Urine is sufficient to establish that a drug has been used by the subject, but because most drugs are eliminated from the body over a period of hours, days, or even several months, urine levels are only rough indicators regarding recency of use. (This problem is particularly acute with respect to marijuana, the drug of abuse that is statistically most prevalent.)

Why, then, is urine selected for testing? It is selected because it can be obtained with no discomfort to the employee and no invasion of the body. It is an excellent fluid for screening purposes and can clearly indicate whether the person in question is using one or more controlled substances. It is also the best choice among the alternatives.

Breath is not presently a useful sample for detecting drugs other than alcohol, although there is some potential for its use in detecting certain drugs. Saliva also has promise as a fluid for evaluating recency of use for marijuana, but both the research and experience in practical application are presently so limited as to make it useful only for preliminary screening. Its potential for other applications is not known. Other samples are clearly not available from the surviving subject.

Blood was disfavored for several reasons. First, even if blood were to be routinely obtained on reasonable cause, it would be desirable to obtain urine, as well, because of its utility as a screening medium and its "memory" of substances that may be found in the blood at only very low levels (at the time the blood sample is drawn). That is, urine results can be used to guide work on the blood sample. Second, drawing blood is invasive. Effective detection of drug use on the railroads will be possible only if the testing authority can be employed with respect to a wide variety of human failures. FRA is reluctant to require blood tests on so wide a scale, even though it might be possible to do so.

In FRA's view, employees should be required to provide blood only where no reasonable alternative exists. Post-accident toxicological testing is obviously such a case. Requiring the provision of a blood sample is also reasonable where (1) it is reasonably suspected that the employee presents a safety risk or has contributed to an unsafe act and (2) it is known that the employee uses drugs of abuse without legal or medical authorization. This is what the presumption effectively accomplishes.

Though formally a substantive presumption, in operation the presumption is a *procedural* presumption that is intended to shift to the drug abuser the burden of producing the best physical evidence (veinous blood) bearing on that employee's fitness. Note the selective effect of the presumption:

1. The employee who does not abuse drugs can expect to have a negative urine test and will neither be burdened by the presumption nor required to provide blood.

2. The employee who has abused drugs and carries acute effects into the workplace will probably elect not to provide blood but will justly suffer the consequences of the presumption.

3. The employee who abuses drugs but believes he or she is blameless with respect to any current acute effects of the drug will elect to provide blood and will be judged on the best evidence available—*i.e.*, the presumption will have no effect.

Is it reasonable to require the drug abuser to submit to blood testing in order to be judged on the best evidence available? FRA believes that the answer to this question is obvious from the context. Railroad employees have elected to work in an industry that presents inherent hazards to the worker and the public alike. That peril is controlled, with great effectiveness in most cases, by the careful observance of safety rules and instructions, as well as by costly safety systems. Distribution of drugs on the controlled substances list is tightly controlled, and in the case of Schedule I drugs effectively prohibited, because those drugs have serious adverse health effects and varying dependency potentials. The drug abuser is self-selected as a member of a population that presents a higher risk to safety than those who are not members of that population. Therefore, FRA has no reluctance whatsoever in making the judgment that the presumption of impairment from urine, coupled with the option for a blood test, is an eminently fair method to approach detection of drug use.

Use of the presumption also greatly limits the need to obtain blood from non-abusers in the variety of situations where fitness is at issue but alcohol and drugs may not be, in fact, at the root of the performance failure. It provides the alternative to a requirement for both blood and urine.

Paragraph (b) complements and effectuates the presumption. Railroads that elect to employ urine testing authority are required to provide effective notice to their employees of the right to a blood test and the effect that will be given to the presumption if that

right is not claimed. The paragraph does not require ritualized notice each time a urine test is required, although some railroads will find that this is a convenient means of providing notice. However, a railroad can satisfy this requirement by including a statement similar to the one suggested in *paragraph (b)(2)* in its book of rules or other reference source with which employees are required to be familiar. FRA has no doubt that, once published, the blood test option and the presumption will become well known among those who abuse drugs, particularly those who use illicit substances.

FRA has deleted from the presumption the words "material quantity of" modifying "drug" (controlled substance) at the suggestion of commenters. This phrase was intended to refer to acceptable detection levels for the purpose of screening out false positive results, but FRA agrees that it would be subject to misinterpretation. The provisions of § 219. 305 will adequately deal with this problem. FRA has also deleted alcohol from the operation of the presumption, since its inclusion cannot be justified by reference to the line of reasoning set forth above and the railroad will have available to it breath testing authority that can be employed to obtain a reliable blood alcohol reading.

Paragraph (b)(3) says that a railroad which has a policy forbidding off-the-job use of drugs must include in the notice required by paragraph (b)(2) a statement concerning any additional consequences of a positive urine test. FRA can neither restrain nor authorize disciplinary action where full toxicology reports, in concert with other evidence, indicate abuse of controlled substances but fail to establish any direct and immediate relationship to job performance. FRA believes that the railroads will follow a measured and appropriate course in dealing with this problem.

Fact finding. FRA does not Federalize railroad disciplinary proceedings through this rule. Such an intrusion is not required, nor would it be prudent. FRA notes that it disagrees with comments suggesting major deficiencies in the procedures provided for in collective bargaining agreements. Railroad investigations follow reasonably formal procedures and include written transcripts. If adjustment of a dispute is not accomplished on the railroad, arbitration is available under section 3 of the Railway Labor Act; and the neutral arbitrator is empowered to order back pay and other benefits. This system has long been recognized by the Supreme Court as necessary and appropriate to the maintenance of labor peace on railroads engaged in interstate commerce. FRA sees no reason to disrupt this institutional structure in relation to ongoing railroad enforcement of Rule G.

4. Identification of Troubled Employees

a. Summary of Proposed Rule (§ 218.111)

The proposed rule would have required each railroad to adopt, publish and implement two policies designed to (i) identify for treatment those employees who need help with their alcohol and drug problems and (ii) elicit the assistance of all employees in enforcing restrictions on alcohol and drug use. FRA deemed these policies necessary to assist in preventing the job-related use of alcohol and drugs and thus promote safety.

Both policies were stated as minimum standards for railroad programs and were not intended to limit the discretion of the railroad to provide more humanitarian treatment, consistent with the railroad's responsibility to prevent accidents.

The term "EAP counselor" was defined in § 218.101(f) of the proposed rule and was used in the paragraphs describing both of the proposed policies (§218.111 (b), (c)). This term was intended to describe a person with appropriate qualifications who could evaluate employees' substance abuse problems, provide information on treatment resources and alternatives and—most critically—render judgments with respect to the fitness of recovering employees to return to covered service. It was not intended that the "EAP counselor" necessarily be a salaried employee of the railroad, but it was recognized that such person owed a duty to the railroad to evaluate the employee's condition.

The first policy was designed to promote voluntary referrals of troubled employees to employee assistance programs and similar mechanisms provided by the railroads. The policy would encourage troubled employees to seek help before they are involved in life-threatening situations by protecting the confidentiality of referrals, requiring that leaves of absence be provided for treatment, and providing that such employees be returned to service when they have achieved sufficient progress in recovery. The policy would not have required the railroad to provide treatment, since treatment must be provided by the health care community. Instead, the policy was intended to ensure that the employee is provided the opportunity to seek treatment without endangering the employment relationship.

The second policy was designed on the model of the bypass agreements. It was intended to help dissolve the "conspiracy of silence" among employees concerning job-related alcohol and drug use. Historically, co-workers have been reluctant to report Rule G violations because the sanction for such violations is dismissal. The "co-worker report policy" was designed to provide co-workers with an alternative to working with an impaired employee. The policy provided that where a co-worker reported to the railroad that an employee was unsafe to work with, the railroad would evaluate the employee and determine if the employee was in violation of Rule G or the proposed Federal rules. If the employee was found in violation, he would be removed from service and given an option to contact the EAP counselor. If the employee contacted the counselor for assistance, disciplinary action would be held in abeyance (and eventually terminated). If the counselor found that the employee was not affected by a treatable condition of alcohol or drug dependence or abuse, the employee would be returned to service. Such an employee could be required to participate in an education and awareness program at the option of the railroad. If the employee was found to require treatment, the railroad would provide a leave of absence. The employee would be returned to service when the employee had achieved sufficient progress in recovery.

Both the voluntary referral and co-worker report policies contained one-time limitations. That is, the employing railroad would be required to provide the opportunity for treatment, *or* a bypass of discipline, on only one occasion per employee. An employee who had completed treatment voluntarily would not be eligible for a bypass of discipline after a co-worker report, nor would that employee who had elected the bypass be eligible for later voluntary treatment. These restrictions on the regulatory mandate would not limit the discretion of the railroad to provide more liberal treatment in appropriate cases or under standing policies or agreements.

The proposed rule contained a provision on construction (218.111(d)) that indicated the limitations of the mandate. The rule was not to be construed to (i) require payment of compensation for any period an employee was out of service, (ii) require the railroad to adhere to the prescribed

policy in a case where a referral or report was made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by the railroad representative, or (iii) limit the railroad's ability to adopt any policy or agreement consistent with the minimum requirements of the proposed rule. The rule also provided that it did not limit the discretion of a railroad to dismiss or otherwise discipline an employee for (i) other rule violations or (ii) the commission of a criminal offense on railroad property or during duty hours.

b. Public Comment

The comments on § 218.111 presented many rich nuances of relative support and/or disapproval. NARUC offered support based on the consensus of its members. AMA also supported the rule. National labor representatives supported the proposed rule as a necessary adjunct to other rules (should they be adopted), but emphasized that employee assistance programs, peer referral systems, and bypass mechanisms could be fully effective only if implemented on a voluntary basis. A major freight railroad that has been an innovator with respect to voluntary programs also stressed the value of active employee involvement as represented by collectively bargained agreements and the establishment of employee committees.

A BLE local officer said that rules will destroy the "foundation of trust" between management and labor associated with an effective EAP and bypass agreement. But some of the other local BLE representatives participating in the rulemaking favored this section.

Two major railroads supported the section with AAR-recommended changes and (in one case) a further change noted below. One of these railroads emphasized that the proposal would be much less effective in the absence of strong discipline where management detects the violation. The railroad, a major freight carrier, said its statistics show that "dimissed employees" recover at a rate twice as high as voluntary referrals and have lower mortality rates. The railroad stressed that substance-dependent employees must be confronted with clear choices if they are to be assisted toward rehabilitation. Amtrak also supported the rule with qualifications noted below. A major freight railroad thought the section should be redrafted to be more general, so as not to inhibit the ability of the railroad to enter into agreements with its labor organizations covering the same subject matter.

EAP counselors/qualifications and roles. The question of who would make crucial decisions concerning adequacy of treatment resources and return-to-service elicited some comment. AMA thought that the "EAP counselor" should be a "psychiatrist or other qualified health professional." The RLEA said the rule should contain a mimimum counselor training program administered by FRA, should require counselors to be certified, and should specify a mimimum counselor/employee ratio.

The railroads' comments are discussed below.

Voluntary Referral Policy. This portion of the rule drew support from NARUC, AMA, NTSB, UTU, RLEA, Amtrak, two freight railroads and two commuter railroads. However, a major freight railroad made a specific point of its opposition.

Five railroads, including Amtrak, urged that return to service be conditioned on approval of the chief medical officer, as well as the "EAP counselor." A major railroad pointed out that alcohol and drug abuse can cause mental and physical disorders requiring separate evaluation.

Two major freight railroads offered revisions of the voluntary referral paragraph that would impose confidentiality even in the case of a supervisory referral.

RLEA urged that the final rule should contain a counselor training program sponsored by FRA. Under the program, counselors would be required to be certified and each railroad would have to conform to a minimum counselor/employee ratio.

One railroad stressed the importance of § 218.111(b)(6) of the proposed rule, which required that the employee report to the EAP counselor either during non-duty hours or while unimpaired and otherwise in compliance with the railroad's alcohol and drug rules.

Co-worker report policy. This element was specifically supported by NARUC, the New York Department of Transportation, NTSB, the major unions, and three passenger carriers. Two major freight railroads were also generally favorable to the proposal. A third favored the agreement approach but did not oppose a rule, while a fourth opposed any rule by indicated its willingness to consider execution of a bypass agreement. Another major freight railroad entered a formal "no objection." On the other side, five freight railroads and a commuter railroad offered more or less vigorous objections. One of them expressed the objection as based on the ground that supervisors should act consistently as to all employees.

The national labor organizations (RLEA, BRS, UTU and BLE) argued that the bypass option should be available even after a (first offense) rule violation detected by management, a position not echoed by the railroad participants. BLE urged that this "universal bypass" was appropriate because of the fact that the so-called "conspiracy of silence" extends to the ranks of line supervisors, who know employees personally and are reluctant to take action that could endanger their livelihood. NTSB said it could not support the universal bypass concept. RLEA and BRS indicated that final rules should clarify the interrelationship between the policies required by regulation and bypass agreements in effect on some railroads.

A local UTU representative expressed concern that the co-worker report provision could be misused by malicious or mistaken employees.

One of the railroads disapproving the co-worker report or "limited bypass" described it as a "substantial, unwarranted intrusion into the rights of management to . . . adopt those policies that best serve their railroad." Another of the railroads objecting to the proposed policy said it already has a qualified bypass policy already in effect (involving suspension, rather than dismissal, of most first offenders). However, the railroad vehemently protested the inclusion of a right to bypass in Federal regulations. The railroad said that a "bypass" may not be appropriate with respect to particularly egregious violations indicating that the employee needs to experience severe consequences in order to set the stage for rehabilitation. The railroad also noted that its large EAP program gets only 4% of its referrals from employees and 8% from the labor organizations, in contrast to 24% from supervisors, despite what it regards as a liberal policy.

Another objecting railroad noted that the co-worker report would not, by definition, work in a second offense situation and "presupposes" that an employee who has been forced into a program can be successfully treated.

At least one commenter urged that the co-worker report policy apply only at the time the employee reports for duty and a second appeared to concur in that position. Otherwise, it was indicated, employees could circumvent normal discipline.

By contrast, the railroad objecting to the policy on the ground that the supervisor should act consistently as to all employees advocated a revision that

would permit an employee to voluntarily mark off without penalty (and report to a counselor within five days) if the employee had been persuaded to do so by a co-worker. The railroad thought that this approach would be superior to involvement of the supervisor. Another freight railroad suggested a similar "mark off" option in addition to the co-worker report as proposed.

Decision-making after co-worker reports. A major freight railroad thought the chief medical officer should control the initial evaluation of the employee to determine whether formal treatment is necessary, in consultation with the EAP counselor (a position consistent with the latitude provided by the proposed rule to designate "EAP counselors" from among the ranks of qualified persons).

A railroad commenter suggested that the employee be referred for treatment only if there was a "clinical dependency" based on "documented evidence." The commenter did not explain how this standard might differ from the one proposed or whether the language was offered for the purpose of simplicity or clarity.

Another major railroad chose to focus on return-to-service, indicating that a top-level supervisor should determine when the employee is ready to come back (with the benefit of the EAP counselor's recommendation), with the supervisor's decision to be evaluated on an "arbitrary or capricious" basis. A commuter railroad also thought that an employee should be returned only with the approval of the "department head," and a major freight railroad liked the term "designated company official." Another commuter railroad would have the chief medical officer serve as final arbiter.

Two major freight railroads would require completion of an education program as a condition of returning the volitional user to service.

Time periods. AAR expressed the concerns of the railroads with respect to the time periods contained in the proposed co-worker report policy. The proposal required the employee to report for evaluation within 5 days of being removed from service. If the employee was found not to require treatment, the employee would be required to be returned to service within 15 days (15 days after removal from service). If it was determined the employee needed treatment, a leave of absence of 45 days was to be granted (from date of evaluation). The railroads thought these time periods were excessively short.

AAR suggested that the 5-day period should operate only against the employee—as a requirement that the employee step forward—and not against the railroad. AAR and other commenters noted that EAP counselors often have many clients and very busy schedules; and it was suggested that FRA cannot control their schedules by regulation. AAR and other commenters also suggested that the 15-day period begin to run after the evaluation is complete, since the evaluation might involve multiple interviews and a medical consultation. One railroad agreed that some of this could be speeded if more EAP counselors were available. A commuter railroad (perhaps misunderstanding FRA's intent) questioned the requirement that a 45-day leave of absence be granted for treatment. The commenter would have the decision made by the EAP counselor and department head. On the other side, RLEA apparently thought the 45-day period was mandatory as to any person requiring treatment; RLEA wanted the counselor to be able to return the employee to work more quickly in an appropriate case.

Follow-up testing/treatment. A major freight railroad urged modification of the rule to make explicit the ability of the railroad to require a recovering employee to submit to breath or body fluid testing to ensure the employee has not suffered a relapse. Amtrak wanted the EAP counselor to have the ability to require follow-up treatment for employees returned to service on completion of primary treatment.

Short lines. The American Short Line Railroad Association (ASLRA) cited the comment of one member road that it could not hold a position open while a person is being rehabilitated. The commenter said EAP counseling is generally available for employees on short lines, but not through salaried personnel. Adequate health insurance coverage is available to ensure treatment (as is the case with Class I and II railroads).

Construction. AAR and a major freight railroad objected to the scope of § 218.111(e)(2), which indicated that the proposed rule was not intended to limit the railroad's existing discretion to discipline employees for criminal conduct "on railroad property or during duty hours." The commenters thought the quoted phrase should be deleted, since the railroads reserve the right to discipline employees for certain types of off-duty conduct that may adversely reflect on the business reputation of the company or fitness of the employee.

c. Final Rule Provision (Subpart E)

The final rule includes the voluntary referral and co-worker report policies substantially as proposed, but with important clarifying changes suggested by the commenters. Employees throughout the railroad industry are entitled to know that they will be able to seek help for their substance abuse problems without the threat of losing their jobs. Only if this is the case can we expect employees to step forward to get help before they pose a detected safety problem (or actually cause an accident or casualty). Co-workers of employees who bring their problems to work must be provided with the leverage to avoid working with unsafe employees without being responsible for their losing their employment. Achieving these objectives will directly benefit public safety, while providing an important means for employees to avoid the potentially harsh consequences that could flow from enhanced detection capabilities provided by this final rule.

Employee reservations. Employee representatives stressed that inclusion of these policies in Federal regulations will be less effective than active employee involvement in prevention activities including similar elements. FRA agrees that this may be the case, but does not view this as an "either/or" choice. FRA will continue to affirm and promote employee involvement in prevention activities. Securing minimum arrangements for assistance of employees who need help should in no way blunt the thrust for full employee involvement.

FRA has not adopted detailed qualifications for EAP counselors or a minimum counselor/employee ratio (concepts advanced by RLEA). The record of this rulemaking does not provide an adequate basis for such determinations, and these are issues better suited for action by the National Planning Committee.

Railroad objections. Most of objections from the railroad pertained to the co-worker report policy, which would soften the general rule that on-duty alcohol or drug use or impairment will result in discipline. The railroads did not effectively counter FRA's contention that this mechanism would encourage voluntary referrals, as well as providing for identification of Rule G violations that otherwise would not come to management's attention. However, they did raise important objections regarding whether the policy would be viewed as creating inconsistent treatment by supervisors or a precedent that could (in the railroads' view) further weaken Rule G.

FRA has considered the railroads' objections very carefully, but is persuaded that they do not carry sufficient weight to warrant forgoing the

benefits of the co-worker report policy. FRA believes that where bypass agreements have been implemented respect for Rule G has likely increased, rather than been diminished. While the rule will not involve collective labor involvement of the kind represented by an agreement, it will be based on the same concerns and operate in much the same manner. Obviously, should the provisions prove counterproductive, FRA would not hesitate to terminate its operation after appropriate notice and opportunity for comment. In the end, employees will determine whether it survives. If employees attempt to use the co-worker report as a device to immunize rule violators in anticipation of detection, it will have a short life. If, on the other hand, it is used as an important supplementary tool to ensure employee fitness and safety, it will enjoy the long life FRA expects and intends.

Section 219.401 contains the basis requirements for complying policies that will assist in identifying employees troubled by alcohol or drug dependencies and preventing alcohol and drug violations by other employees. The final rule provides the railroad with the option of following the minimum Federal standards for such policies (with whatever additional, consistent provisions the railroad desires) or obtaining employee approval of alternate arrangements directed toward the same end. This flexibility is intended to be responsive to the emergence of programs such as Operation Red Block that stress employee involvement coupled with formal agreements addressing of variety of contingencies, including some not addressed in these rules.

Paragraph (a) states the purpose of the subpart. *Paragraph (b)* requires the railroad to adopt, publish and implement complying policies. *Paragraph (c)* makes clear that this may be done by alternate means provided in the subpart. *Paragraph (d)* requires that polices implementing the Federal standards must be available to FRA for inspection and copying.

Paragraph (e) contains revised versions of certain cautions with respect to construction of the subpart. It should be noted that *paragraph (e)(3)* may not be used to excuse pretext discipline of an employee who has taken advantage of a voluntary referral or who has been identified by a co-worker report. For instance, a user of Schedule I controlled substances who turned himself in on a voluntary referral could not be dismissed for conduct unbecoming an employee or supposed criminal possession solely because he admitted to illicit drug use. That would defeat the purpose of the provision. On the other hand, should the same employee be arrested for trafficking in illicit drugs or other notorious conduct affecting the reputation of the company, nothing in the rules would prevent the railroad from taking action based on that conduct (or sanction such action).

Section 219.403 describes minimum standards for voluntary referral policies. *Paragraph (a)* defines the scope of the section and indicates that railroads are free to implement more extensive policies consistent with the minimum standards.

Paragraph (b) provides the benchmarks for a voluntary referral policy. Such a policy protects the employment status of the employee who steps forward, or is referred by another employee (including a collective bargaining representative). The railroad may provide that certain referrals from supervisors will be handled under the policy, but this is not required. In general, the referral and subsequent treatment are handled on a confidential basis. This means, in part, that the employee's co-workers and supervisor will be told only that the employee is on leave of absence. If necessary to meet initial treatment needs, the railroad must grant a leave of absence. The 45-day period provided in the regulation is the minimum leave the railroad is required to afford if it is required for initial treatment. In consultation with a treatment provider and/or the railroad's medical officer, the EAP Counselor may determine that the employee needs no leave at all (but can be handled on an outpatient basis without interruption of employment), needs a leave of less than 45 days, or needs a leave of more than 45 days (in which case the railroad is encouraged to grant it, but is not required to grant any portion beyond 45 days).

The employee is returned to service on recommendation of the EAP Counselor, and approval may not be unreasonably withheld. The railroad may provide in its policy that the employee can return to work at any time, with or without EAP Counselor approval. (If the railroad does not provide for a waiver of confidentiality under paragraph (c) where the employee fails to complete initial treatment, the railroad is effectively required by its own formulation of the policy to return the employee to service on demand.)

Paragraph (c) notes certain provisions that may be adopted at the option of the railroad. The listing is not intended to be exclusive, but illustrative of the concerns raised by the commenters. *Paragraph (c)(1)* says the policy may provide for a waiver of confidentiality where the employee refuses to cooperate in a recommended course of counseling or treatment or where the employee is involved in a subsequent rule violation involving use of alcohol or drugs (in which case the prior treatment might be relevant to the discipline assessed).

Paragraph (c)(2) provides that successful completion of a return-to-service medical examination may be required. As pointed out by the commenters, alcohol and drug abuse can produce other physical and mental conditions that may have to be treated before the employee can be restored to service with safety.

Paragraph (c)(3) permits the railroad to limit application of the policy to a single period of treatment and to exclude its application to an employee who has been afforded the opportunity for treatment under a co-worker report policy. Of course, a railroad could also limit treatment to once in any 5 or 10-year period or in any other way consistent with the section and its duty to prevent violations of section 219.101.

Paragraph (c)(4) permits the railroad to include a provision requiring that the employee report to the counselor while off duty or while unimpaired. The policy is not intended to shelter the job-related conduct of an employee who may fear imminent detection.

Section 219.405 deals with the co-worker report policy. *Paragraph (a)* defines its scope and notes that the railroad is free to provide more favorable treatment. *Paragraph (b)* states the basic protection for the employment relationship but limits it to first offense situations.

Paragraph (c) states generally applicable conditions and procedures. The rule operates when a co-worker calls attention to the condition of the employee. The supervisor then independently determines whether a Rule G violation has occurred. (If the supervisor has a reasonable suspicion of impairment based on personal observations, the supervisor may require a breath or urine test to confirm.) The offending employee is removed from service. In order to claim the benefit of the policy, the employee must elect to waive investigation the Rule G charge and must contact the EAP Counselor within a reasonable period specified by the policy. (The proposed rule contained a 5-day period; but a railroad might wish another period, taking into consideration the availability of the counselor and other factors.) In

any case, it is intended that the employee be free to contact the counselor immediately.

The counselor is required to see the employee and complete the evaluation within 10 calendar days of the date on which the employee makes initial contact. However, if further evaluation is required (e.g., by a treatment provider or medical officer of the railroad), the 10-day period may be extended by as much as an additional 10 days.

FRA recognizes the concerns of the railroads regarding availability of counselors and agrees that FRA cannot set their schedules. Accordingly, the time periods have been lengthened and somewhat extended. However, the basic point remains that the railroad has full control over counselor availability by virtue of the number of persons it employs (or contracts with) to perform that function. One of the great weaknesses of some existing employee assistance programs is the inadequacy of staffing. Current staffing problems on some railroads should not be an excuse for avoiding prompt handling under this policy.

It should also be noted that actual co-worker reports are not expected to be numerous. The policy will accomplish its purpose if it fosters voluntary referrals and deters alcohol and drug use by those capable of leaving these substances at home. When a *bona fide* co-worker report does occur, the railroad should make every possible effort to provide prompt and sound handling of that case, because it is by that experience that the good faith of the railroad will be judged in the minds of its employees.

Two railroads suggested that the "bypass" embodied in the policy either include, or be limited to, situations in which the offending employee is persuaded by co-workers to "mark off" voluntarily (and thereafter report to the counselor). FRA agrees that such an element could logically be included in a railroad's co-worker report policy; and nothing in the final rule inhibits a railroad from so acting. FRA has not required a voluntary mark off component because the co-worker report policy is mandatory and because FRA believes that there was not adequate discussion of this concept during the public comment cycle. Such a provision is arguably more susceptible to attempted abuse by the offending employee than the policy proposed by FRA, and its inclusion without full discussion appears not to be warranted.

Paragraph (d) describes the required procedure when the employee is determined to need treatment. Again, a leave of absence of up to 45 days must be provided, if needed. In the case of some cases of alcohol or drug addiction, the railroad may wish to accommodate an even more extended course of treatment. The employee has to agree to treatment and successfully complete it. Obviously, it is intended that the required treatment be reasonable and appropriately responsive to the condition treated. But the EAP Counselor, on behalf of the railroad, is the judge of its adequacy.

The employee is returned to service on recommendation of the EAP Counselor and, if desired, after successful completion of a medical examination. Approval to return to service may not be unreasonably withheld.

Follow-up treatment may be required for not to exceed two years. This provision was included in response to the comments and in recognition of the fact that the EAP Counselor will be encouraged to return the employee to service if it is known that the employee will be continuing in treatment. Alcohol and drug dependencies, in particular, require continuous treatment, in some cases for the duration of the alcoholic's or addict's lifetime. The two-year period is selected because it is a generally-accepted minimum time for effective follow-up in the treatment community.

Paragraph (e) deals with the employee who is determined not to require treatment. It provides that the employee shall be returned to service within 5 days after completion of the evaluation. The railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

FRA did receive comments suggesting that such training be made mandatory on the railroads. FRA believes that education and awareness efforts directed at the rule violator can be helpful in preventing future non-compliance. However, there is no documented record to establish the marginal usefulness of such efforts, and FRA does not believe it is appropriate to mandate this expenditure of time and resources at this time.

Section 219.407 provides for satisfaction of the railroad's obligation through adoption of alternate policies having the concurrence of employee representatives. The concurrence must be explicit and in writing. Any alternate policy must be filed with FRA, and advance notice must be provided of any amendment or revocation.

FRA recognizes that this provision may produce a quilt effect, with certain crafts subject to policies meeting the minimum Federal standards and others subject to special arrangements. Indeed, a single craft on a railroad could be subject to a policy under section 219.403 and a bypass agreement substituting for the policy described in section 219.405. However, FRA is not willing to take any action at this stage in the evolution of approaches to the substance abuse problem that would unnecessarily chill or choke off innovation. The industry, labor and management, should be free to develop new approaches and test them in the laboratory of everyday life.

Note on the "EAP Counselor." As discussed above, the term "EAP Counselor" is defined in section 219.5. The "EAP Counselor" is actually a function, rather than an identified person. But the rules do require that the function be performed by a person or persons qualified in relation to the demands of that function. The term "EAP Counselor" is chosen because it will be recognized by many employees of the railroads and evokes the professionalism and concern for employee welfare which the employee assistance programs represent. Use of the term in no way restricts a railroad from assigning evaluation or counseling or follow-up monitoring in any way that is responsible. For instance, a railroad that employs recovered alcoholics to evaluate and counsel persons suspected of having alcohol dependencies might elect to have a qualified medical officer handle a similar function with respect to employees affected by abuse of other drugs (or provide its alcoholism counselors with training in other substance abuse problems).

FRA has not adopted the suggestion of the AMA that the "EAP Counselor" be required to be a psychiatrist or other health professional. Persons from a variety of disciplines may be useful and well qualified for the counseling of substance abusers. Certainly a psychiatrist would be well qualified by virtue of training for such a function. However, not every practicing physician would necessarily be so qualified by virtue of the physician's limited training in substance abuse patterns and treatments and lack of experience in dealing with such problems. Evaluations of treatment methodologies do not indicate that any of the alternate approaches is necessarily superior to other approaches, and it may be argued that the same principle likely applies to the evaluation, counseling, and treatment referral functions of EAP counselors. *See, e.g., The Effectiveness and Costs of Alcoholism Treatment,* Health Technology Case Study 22 at 4, 23–32, 43–53 (Office of Technology Assessment 1983).

FRA disagrees with the contention of the railroads that the railroad should be free to designate a non-qualified person to make return-to-service decisions. Permitting a non-qualified person to make the decision simply to uphold the institutional prerogatives of a particular railroad officer would merely invite that officer to act on the basis of factors not related to the employee's prognosis for continued sobriety. If it is intended that that officer act solely on the basis of advice from qualified persons, then the officer is performing a redundant function.

5. Pre-employment Drug Screens

a. Summary of Proposed Rule (sec. 218.107)

The proposed rule mandated that each applicant for a position in covered service be tested for the presence of alcohol or drugs. It was intended that samples be collected in connection with routine pre-employment physical examinations.

The rule would have required that applicants be advised at least 7 days prior to the examination that the urine sample would be tested for alcohol and drugs. If an applicant declined the test, the railroad would keep no record of the declination.

The proposed rule specified certain substances for which drug screening should be done, required confirmation of positive samples, and provided that applicants should be notified of the results and be afforded to provide an explanation for the finding before any action was taken on the application for employment.

The rule further provided that test records should be kept for two years and that annual reports should be submitted to FRA concerning the findings and handling of employees who tested positive. Railroads employing 15 or fewer employees in covered service would be excepted from the proposal.

b. Public Comments

Mandatory pre-employment drug screens drew support from five individuals or organizations, eight railroads, and two labor representatives. The UTU, RLEA and ATDA indicated they had no objection. One local labor representative and the ACLU opposed the provision. Two railroads thought the concept of pre-employment drug screens could best be implemented by individual railroads without the strictures of Federal regulations. One of these railroads was the pioneer in use of the technique in the industry and the other indicated it intended to implement a pre-employment testing program whether or not regulations were issued.

Growth of pre-employment screening. At the time the NPRM was prepared FRA had identified only one railroad that was actively utilizing urine drug screens. Comments received in response to the NPRM indicate that four additional railroads have instituted pre-employment programs. Further, two major freight railroads (including the railroad mentioned above) said they were about to begin their own programs. Other railroads appeared to be waiting for a resolution of this rulemaking before determining what their policy would be.

Effectiveness. A consultant with expertise in drug abuse said that pre-employment screening could effectively reduce the proportion of active drug users if there is good follow-through. There was no direct challenge to FRA's expressed rationale for the screens. However, one local labor commenter said that the 60-day probationary period for new employees, evidently in use by his employer, provides adequate opportunity to screen out those with serious drug abuse problems.

Events covered. Amtrak advocated expansion of the mandate to include periodic examinations of employees already on board. A commuter railroad wanted to have the prerogative to test at the time of periodic physicals (but not the obligation). The AAR and several railroads wanted a mandatory screen for any employee transferring into covered service from other railroad work. Three freight railroads recommended mandatory screens on return from furlough and on transfer, as well as pre-employment. A major freight railroad, taking the same position expressed by Amtrak, wanted the mandate to reach periodic physical examinations; but neither appeared willing to accept FRA prescription of the intervals between examinations.

In general, the railroads did not offer clear reasons why FRA should require them to undertake drug screens for current employees, athough one major freignt railroad did say it currently does not have the right to require exams of employees returning from short furloughs. (See further discussion under "Medical Disqualification" below.)

Alcohol. AAR and a major freight railroad advocated elimination of alcohol from pre-employment screens. This is apparently an objection based on the cost of the additional procedure and the assumption that the assay would pick up trace (immaterial) levels. The railroad said that the screens should concentrate on detecting those who use illicit drugs. On the other hand, a consultant who had performed a study for NIDA on drugs not detected at the time of hospital admissions urged that alcohol be included, since it may indicate a polyabuse pattern and provide more complete data for the examining physician.

7-day notification. The requirement of seven-day notice for pre-employment drug screens met with almost universal disapproval, with only ACLU contending for its retention. The railroads and others argued that prior warning would permit many drug users to temporarily discontinue their habit or pattern of use and reduce the effectiveness of the screens. Some railroads said that they sometimes would not have sufficient time to afford the required notice. None of the railroads expressed objection to a system under which notification would be provided on the day of the examination but before the sample is collected.

Analysis and confirmation. The AAR and two railroads suggested that the duty to screen should end when the first drug abuse is detected. Several commenters misinterpreted the disjunctive requirement to confirm positives "by another laboratory, or by another method . . . ." They evidently believed that two laboratories would have to be involved and objected to this requirement as unnecessary.

Six railroads advocated that the requirement that positives be confirmed (by a second test on the same sample) should be removed or made permissive. Two railroads would not confirm except on request of the applicant. The AAR and at least two railroads would conduct confirmatory testing only at the applicant's expense. One railroad suggested that the sample might be insufficient for a second test.

Medical disqualification. AAR urged adoption of a specific declaration that a positive test result or refusal to submit to a test "shall be sufficient cause for refusal to employ an applicant or transfer an employee to covered service." That is, the railroad could elect to refuse employment, but would not technically be compelled to do so. The AAR comment was supported by several railroads, but two railroads wanted the rule to mandate disqualification of applicants testing positive.

One railroad tempered its comments by agreeing that a single positive should not disable a person from being hired at a later date (after "rehabilitation"), and another said that the disqualification for present employees should last only until

the employee ceases use of the drug as demonstrated by clean urine specimens.

A major freight railroad suggested that AAR develop uniform testing methods and identify the drugs for which tests will be conducted. In the commenters view, uniformity of industry practice would avoid any later charge of discrimination by one or more rejected applicants.

BLE questioned the value of a pre-employment screen in the absence of clear standards upon which hiring determinations would be made. BLE feared that information concerning drug use would be used to "blackmail" employees after they are hired.

A major freight railroad said FRA should forbid the return to service or continuation in service of an employee in whose urine proscribed substances are detected until the employee is able to provide a urine sample that is negative for those substances.

Notification of results; opportunity to explain results. One railroad thought notifying applicants of positive results was unnecessary ("an idle exercise"), while another demurred to notification for negative results. AAR and several railroads objected to providing an applicant with an opportunity to explain the presence of a detected drug. They noted that physical examination forms routinely ask whether the applicant has recently taken any drugs and that honesty in such responses is an important means of evaluating the applicant. One railroad would permit the applicant a maximum of 7 days within which to respond.

Applicants rejected on other grounds. One railroad pointed out that the drug screen should not be required of an applicant who is rejected on other grounds. The railroad believed the proposed rule should be clarified to excuse a drug screen in such a case.

Records and reporting. BLE wanted drug screen results to be treated confidentially, comparing them to medical and personnel records. Other labor commenters worried that detection of therapeutic drugs might reflect adversely on applicants' reputations. A major railroad objected to keeping records on applicants not hired, saying that they are not required for safety.

Amtrak wished to maintain records of positive tests on persons not hired because of the widely separated locations at which they hire.

AAR and several railroads opposed the annual report requirement as unnecessary and burdensome. The railroads appeared willing to retain information for FRA review, but did not wish to tabulate and report the information solely for the purpose of generating national statistics.

c. Final Rule Provision (Subpart F)

The final rule retains the pre-employment drug screen requirement in order to ensure that all subject railroads will utilize this technique. Given present knowledge and assays, urine is the sample of choice. The purpose of the screen (by which is meant a reasonably comprehensive series of tests) is to determine whether the applicant is using drugs of abuse or abusing therapeutic drugs. Armed with this information and other results of the pre-employment examination, the railroad can then make an enlightened hiring decision.

It is neither necessary nor practicable to specify employment outcomes in the wide range of situations that will arise after positive tests. Depending on the drug, degree of abuse or dependence, and the honesty of the applicant in reporting drug use habits, the railroad might elect to reject an application outright, reject with an invitation to resubmit at a later date, or keep the application pending until the applicant can show that use has been discontinued.

Section 219.501 requires that the railroads institute pre-employment drug screens within 120 days of the effective date of the rule. Only final applicants need be screened. Whenever feasible, the sample is to be obtained in connection with a pre-employment physical examination. The applicant must be advised that a drug screen will be performed prior to the collection of the urine sample. If the applicant decides not to cooperate, the applicant may withdraw the application for employment and the railroad is barred from retaining any record of the declination.

FRA has not included the proposed requirement for a 7-day pre-notification of the drug urine screen. FRA agrees that such a requirement would tend to reduce the usefulness of the screens and is not necessary to protect the privacy of the applicant. Notification prior to collection of the sample provides adequate protection for any privacy interest.

Samples are to be tested for opiates (narcotics), cocaine, barbiturates, amphetamines, cannabis (marijuana), phencyclidine (PCP), and other drugs identified by the railroad. The railroad may elect to test for alcohol, but is not required to do so. If the first test of a sample is positive, the sample is to be tested a second time by another method specific for the substance detected.

Section 219.503 requires the railroad to notify the applicant of the results of any test that is positive (on confirmation) for any drug. FRA sees no purpose in requiring separate notification for the majority of tests that will be negative. The applicant must be permitted to explain the finding, unless the railroad has previously provided the opportunity to report any recent drug use. (Most railroad forms routinely provide for questions going to drug use.)

The railroad must keep records of tests conducted under this section for at least 2 years and make them available to FRA for review. The rule provides that the test records need not reflect the identity of applicants who were not hired.

Section 219.505 states the obvious proposition that an applicant who has refused a drug urine screen cannot be hired for a position that involves covered service based upon the then-pending application. This rule does not prevent the person from submitting a subsequent application to the same railroad or a different railroad and being hired after providing the urine sample for analysis.

Reporting. At the request of several commenters, the requirement for annual reports on the results of pre-employment drug screens is not included in the final rule. FRA agrees that such data would be of limited usefulness, given the growing awareness within the railroad industry of the drug abuse problem.

6. Improved Accident Reporting

a. Proposed Rule (§ 225.17(d))

The NPRM proposed to amend FRA's regulations for accident/incident reporting to require that the railroads make specific inquiry into alcohol or drug use or impairment in the circumstances of train accidents (§ 225.17). The railroad would be required to report any information developed in the course of the investigation, whether or not the railroad deems it relevent to cause. Where alcohol or drug use was alleged or confirmed but the railroad did not report such involvement as related to cause, the railroad would be required to provide a short explanation for its determination.

b. Public Comment

The commenters generally supported the proposal for improved reporting. One railroad suggested that a separate code be made available where alcohol or drugs are not implicated in the cause of the accident.

c. Final Rule (§ 225.17(d))

The final rule substantially follows the language of the proposed rule, but

also includes a cross-reference to the requirement of § 219.209 (§ 218.103(f) of the proposed rule). The amendment will improve the existing accident/incident reporting system by emphasizing the importance of inquiring into fitness considerations after train accidents. FRA is modifying the Guide for Reporting Accident/Incident Reports to provide multiple codes from which the railroads may select to report with greater specificity the role of alcohol and drugs in train accidents. FRA is also modifying portions of the Guide relating to injuries in order to gather information concerning alcohol and drug involvement in personal injuries in train and non-train incidents. These measures, together with post-accident toxicological testing and authority for testing on reasonable cause, should provide an adequate basis for quantifying and measuring trends in the control of alcohol and drug use.

In making these changes, FRA emphasizes to the railroads their obligation to file late reports providing corrected or updated information on events previously reported (49 CFR 225.13). Analysis of toxicology reports and the conduct of railroad disciplinary investigations will often develop information that establishes, or excludes, the involvement of alcohol or drugs. These issues may not be fully resolved during the period prior to submission of the monthly report. Railroads should take care to supplement or correct incomplete or erroneous reports. FRA will undertake enforcement action where this obligation is not fulfilled.

Administrative Provisions (Miscellaneous Amendments)

The final rule makes miscellaneous amendments that are necessary because of the decision to create a new subpart and for various other reasons.

State participation. FRA's regulations for the State Safety Participation Program (49 CFR Part 212) are amended to provide appropriate references to the new Part 219 and thereby facilitate State participation in enforcement of the new rules. (*See* NPRM at 193; 49 FR 24298.) FRA will provide training for both FRA and State inspectors charged with this responsibility.

Operational tests. FRA's regulations for filing of Railroad Operating Rules and reports of efficiency tests and inspections (49 CFR Part 217) are amended by adding a new paragraph (d) to § 217.13. Under the proposed rule, inclusion of alcohol and drug rules in Part 218 would have automatically required inclusion of the results of related observations, tests and inspections in the Part 217 reports (§ 218.11). Indeed, Rule G observations and inspections are already within the purview of Part 217.

However, during development of this final rule FRA has noted that railroad compliance with the reporting requirements of Part 217 has been notably uneven and imprecise with respect to Rule G activities. Further, FRA has identified the need to determine the number of breath and urine tests, and optional blood tests, administered by the railroads, and the results of those efforts. This information collection objective is particularly important in view of the deletion of the 3-test limitation and the need to monitor railroad activities to ensure that use of this authority is both measured and effective.

Accordingly, the final rule makes more explicit the specific data elements that FRA will expect to see in section 217.13 annual reports.

Part 218 is renamed "Railroad Operating Practices" to avoid confusion with Part 217.

Legal Issues

Comments raising jurisdictional or constitutional objections to provisions contained in the NPRM were rather limited in number. One employee representative believed that the post-accident testing would violate an employee's privilege against self-incrimination. It will not. *Schmerber* v. *California*, 384 U.S. 757 (1966) (hereinafter cited as *Schmerber*). A second employee representative argued any testing without "probable cause" was an unreasonable search under the Fourth Amendment, an issue discussed below. The Washington Legal Foundation reviewed the proposed rules and found them consistent with the Federal Constitution and laws.

The most pointed legal challenge to the rules was mounted by the American Civil Liberties Union (ACLU), which both appeared before FRA in a public hearing and submitted a filing for the docket. FRA is indebted to the ACLU and other commenters for joining the legal issues during the rulemaking process. The protections of the Constitution are vital to every citizen and are the most fundamental limitation on executive action, including the rulemaking function. The comments made by the ACLU, in particular, have contributed to FRA's analysis of final rule decisions and to the process of regulatory refinement that has produced the final rule. Nevertheless, FRA's own judgment concerning the constitutional issues, particularly the application of the Fourth Amendment, is considerably at variance from the position articulated by the ACLU.

Post-Accident Testing. The ACLU objects to post-accident testing as violative of the Fourth Amendment because searches could be conducted with less than individualized probable cause. At some points in its submission ACLU uses the term "individualized suspicion of impairment" interchangeably with "probable cause." Reasonable suspicion (we assume an unreasonable suspicion is not intended) is a test clearly short of traditional criminal probable cause. The ACLU submission appears not to recognize the distinction until page 10, at which ACLU says "probable cause rather than reasonable suspicion is the required standard." FRA assumes ACLU intends to refer to traditional criminal probable cause, which in the case of alcohol impairment probably requires more than a mere suspicion (however reasonable) to warrant arrest (though not detention).

FRA recognizes that searches authorized under the post-accident testing provisions must conform to the requirements of the Fourth Amendment, since the provision is mandatory on railroads and employees alike and since blood tests are searches within the ambit of the Fourth Amendment. *See Schmerber*, 384 U.S. at 767.

Generally, the Fourth Amendment requires that a search be conducted only pursuant to a warrant. However, the ACLU concedes post-accident testing is a clear exception to the warrant requirement. Courts have sanctioned warrantless searches where the delay inherent in seeking a warrant might lead to the destruction of the evidence. *See, e.g., Schmerber* (upheld a compelled, warrantless blood test, reasoning that the rapid dissipation of alcohol in the blood after drinking was tantamount to a threatened destruction of evidence). The warrant exception also exists where the search is pursuant to a regulatory scheme or is a search of a closely regulated business. *See Donovan* v. *Dewey*, 452 U.S. 594, 600 (1981). Railroading is such a business.

Ordinarily, a search must be based upon probable cause to believe a violation of law has occurred. *Katz* v. *United States*, 389 U.S. 347, 357 (1967). However, probable cause is not an absolute requirement for a valid search. The fundamental command of the Fourth Amendment is that searches be "reasonable". To determine the standard of reasonableness governing any specific class of searches requires a court to balance the intrusiveness of the search against its promotion of legitimate government interests. *See*

Hudson v. *Palmer*, 104 S.Ct. 3194 (1984) (determining whether an expectation of privacy is "legitimate" or "reasonable" necessarily entails a balancing of interests); *New Jersey* v. *T.L.O.*, 105 S.Ct. 733, 743 (1984) ("Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard.")

The Supreme Court has in several contexts recognized the legality of searches based on suspicions which, although "reasonable", do not rise to the level of probable cause. Customs officers may stop and subject persons to a "border search" on the basis of mere suspicion alone, restricted only by the requirement that the search be reasonable. *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 562 (1976), (upholding warrantless, routine border patrol stops of vehicles at fixed checkpoints). Airport pre-boarding security procedures, including searches, may be conducted on mere or unsupported suspicion. *United States* v. *Skipwith*, 482 F.2d 1272, 1276 (5th Cir. 1973) (standards for initiating search of person at boarding gate should be no more stringent than those applied in border crossing situations). *See also Sec. & Law Enforcement Emp., Dist. C. 82* v. *Carey*, 737 F.2d 187, 204–05 (2d Cir. 1984) (reasonable suspicion standard governs warrantless strip searches of correction officers); *Hunter* v. *Auger*, 672 F.2d 668, 674 (8th Cir. 1982) (reasonable suspicion standard governs the strip searches of visitors to penal institutions).

In administrative search situations, a lesser showing of suspected reason to search is used, often referred to as administrative probable cause. Administrative probable cause requires that a search satisfy specific neutral criteria embodied in a reasonable administrative plan. *Donovan*, supra, 452 U.S. at 601; *Camara* v. *Municipal Court*, 387 U.S. 523, 538 (1967).

Another exception to the probable cause requirement is the search based upon consent. *See United States* v. *Mendenhall*, 446 U.S. 544 (1980); *Schneckloth* v. *Bustamonte*, 412 U.S. 218 (1973). *See also, United States* v. *Sihler*, 562 F.2d 349, 351 (5th Cir. 1977) (where defendant prison guard knew that all persons entering the prison were subject to search, search of defendant made after he entered prison for work was made with his consent).

These currents of Fourth Amendment law converge in the present matter. Any "search" will clearly be administrative and not in aid of a criminal investigation. The rule provides clear guidelines as to when post-accident testing is required; and the system of inspection is carefully regulated as to time and manner of testing. The public interest is compelling, and the degree of intrusion is limited. Employees can reasonably be required to consent to testing on the basis of notice provided in this final rule. It is not surprising, therefore, that the only Federal appeals court that has ruled on a similar program has found it without constitutional defect. *Div. 241 Amalgamated Transit U.* v. *Suscy*, 538 F.2d 1264 (7th Cir. 1976), *cert. denied*, 429 U.S. 1029 (1976).

Suscy involved a rule instituted by a public employer requiring bus drivers and train operators to submit to blood and urine tests. In *Suscy* the court found that the state's paramount interest in protecting the public by ensuring that bus and train operators are fit to perform their jobs outweighed any individual interest in refusing to disclose physical evidence of intoxication or drug use. 538 F.2d at 1267.

The ACLU considered this case, but misconstrued it. The ACLU argued that *Suscy* requires a finding of individualized probable cause, since the regulation required the concurrence of two supervisory employees that an employee gave grounds for suspicion of impairment before post-accident testing could be ordered. In fact, the Chicago Transit Authority policy considered in that case required *either* a particularized suspicion *or* the occurrence of an accident in order to operate. 538 F.2d at 1266. It is true that the concurrence of two supervisory employees was necessary to order the tests in either of those two situations (a condition presumably intended to check individual discretion under a program that was permissive as to management action, rather than mandatory), but it does not appear from the Seventh Circuit or district court opinion that specific suspicion of alcohol or drug use was necessary following an accident. Consequently, the court never held individualized probable cause was required. To the contrary, the court cited *Camara* v. *Municipal Court*, 387 U.S. 523, 539 (1967), for the existence of "probable cause." *Camara* is, of course, a case articulating the administrative probable cause test. The court also specifically noted that because of the substantial public safety interest, bus and train drivers could have no reasonable expectation of privacy with regard to submitting to blood and urine tests. 538 F.2d at 1267.

The final rule differs somewhat from the proposed rule in a respect material to the ACLU line of argument. The ACLU contended that the proposed criteria for post-accident testing "bears not even a rational relationship to the drug or alcohol caused impairment of a railroad employee, and thus adds nothing to any showing of probable cause." For reasons related to program effectiveness, FRA has substantially reformulated the criteria for testing, focusing more heavily on those events that are likely to involve human failure (as well as retaining events that involve substantial public interest). Further refinement of the system is not possible, consistent with the objective of documenting the kind of alcohol and drug impairments that are escaping documentation at the present time.

FRA also disagrees with the ACLU contention that use of damage thresholds adds a large element of discretion to the testing program. Although a railroad will have the practical ability to exercise limited judgment at the margin, FRA has focused on railroad damage costs, which is a reasonably objective and determinable criterion, and the best available for the purpose. If the dollar limitations of the rule were deleted, hundreds of additional accidents would be required to be included, a result presumably not consistent with the common aim of FRA and the commenter to limit intrusions to the minimum necessary. Indeed, the categorical approach of the rule avoids the kind of discretionary action that may run afoul of constitutional protections. *Delaware* v. *Prouse*, 440 U.S. 648, 654–55 (1979) (police stop for license check violates the Fourth Amendment when police may exercise 'unbridled discretion'; but road block-type stop might be permissible).

FRA has previously addressed the quality of the hearing required after an employee's wrongful refusal to be tested and acknowledges the ACLU's contribution to its final formulation.

Authority for breath and urine testing on reasonable cause. ACLU likewise found fault with the proposal for testing on "just cause," the antecedent of Subpart D of the final rule, asserting that such testing would be warranted only in the case of probable cause.

The threshold issue with respect to application of the Fourth Amendment to Subpart D is whether the actions of the railroad supervisor in requiring the employee to submit to testing at a particular time and place constitute Federal action. The rule merely authorizes testing in a limited subset of situations where railroads would test, were they not constrained by union agreements (and perhaps one State

statute). From the inception of the railroad industry, the individual railroads have exercised control over alcohol and drug use by employees. Until this final rule, by contrast, the Federal Government has never exercised jurisdiction over railroad employees' use of drugs or alcohol; and this rule does not Federalize railroad disciplinary actions that may follow from the test procedures in question. Action of a private party does not constitute state (or Federal) action unless there exists a close nexus between the state and the action in question. *Jackson* v. *Metropolitan Edison*, 419 U.S. 345 (1974); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972). Neither pervasive government regulation, nor the fact that the action was taken pursuant to state authority, are by themselves sufficient to create the necessary nexus. *Jackson*, 419 U.S. at 358. Indeed, the fact that a function is mandated by Federal regulation may not be sufficient to create Federal action if administration is wholly private. *Blum* v. *Yaretsky*, 457 U.S. 991, 1008–1010 (1982) (no state action though Federal regulations required reviews in question). The government's mere encouragement of private conduct has been consistently held not to convert private action into state action. *See Flagg Bro's, Inc.* v. *Brooks*, 436 U.S. 149, 164 (1978).

Accordingly, FRA is persuaded that railroad actions to require breath or urine tests under authority of Subpart D would not constitute Federal action.

Assuming, *arguendo*, that Fourth Amendment protections apply, the post-accident analysis above, which demonstrates that no warrant or (traditional criminal) probable cause is required, applies to the reasonable cause testing situations. Indeed, provisions of the rule that authorize testing on "reasonable suspicion" directly respond to the ACLU concern that suspicion be particularized. In the final rule, FRA requires training of supervisors to ensure the reasonableness of suspicion with respect to drug use.

The categorical portions of the rule are specifically designed to limit discretion in the field. Again, the nature and scope of the search is strictly limited to serve the legitimate governmental interest for the search. Only breath and urine samples may be required, and the more invasive blood testing procedure is optional with the employee.

Like post-accident testing, the context is civil, and the search, if any, is best described as administrative. The provisions of the rule are analogous to search authority contained in regulations upheld by the Supreme Court and meet the requirements for search authority outlined in those cases. *See Donovan* v. *Dewey*, 452 U.S. 594 (1981) (upheld statutory provisions allowing routine inspections of mines because the statute provided (1) statutory criteria for the search and (2) tailored the scope of the inspections to the particular safety concerns of the regulated business); *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970) (upheld search based on suspicion of violation of federal liquor laws where search of regulated industry limited in time, place and scope.); *United States* v. *Biswell*, 406 U.S. 311 (1972 (upheld statute authorizing officials to enter at their discretion the premises of licensed gun dealers during business hours to inspect records, firearms and ammunition). *Compare Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978) (warrant required for searches under a statutory scheme that (1) failed to tailor the scope and frequency of inspections to the particular health and safety concerns where search authorized any place where work is performed by an employee, and (2) failed to provide any standards to guide inspectors in the exercise of their authority to search where only limitation was that searches be reasonable).

Under the rule the decision to test is made in response to either a reportable accident or injury or one of several enumerated rule violations that are indicative of a serious performance failure. The rule specifically outlines the criteria which invoke testing and the procedures to be used. The presence of some degree of discretion on the part of decision makers is inevitable. The mere presence of such discretion does not subject the testing authority to question. *See United States* v. *Skipwith, supra*, 482 F. 2d at 1276 (discretion involved in applying anti-hijacking profile, but criteria for search upheld.

Finally, it should be noted that FRA does not authorize, and could not legitimately be implicated in, any wrongful requirement for testing under color of the regulation. Indeed, the railroad would be subject to penalty for any such excess. The rule itself defines the parameters within which it may be used.

In crafting the final rule, FRA has further limited the ability of railroads to require tests after accident/incidents and rule violations, ensuring that the action taken by the railroad is rationally related to the development of fitness information in cases where the fitness of the particular employee is in doubt. This approach limits the discretion of the railroad supervisor to the extent practicable consistent with the effectiveness of the tool conferred. Were FRA to require a specific individualized suspicion of alcohol or drug impairment with respect to each employee involved in the denominated accidents/incidents and rule violations, the utility of the rule as a tool of detection and deterrence would be substantially diminished.

Beyond these limitations FRA cannot go, consistent with the need to promote public safety. FRA does not believe that the reasonableness test of Fourth Amendment need be read to put the public at risk.

Pre-employment drug screens. The ACLU's treatment of the pre-employment drug screen proposal is summary in nature. FRA simply disagrees that the relationship between use of drugs of abuse and future impairment is attenuated. The issue of drug abuse goes directly to fitness, and applicants for employment may reasonably be required to have their fitness evaluated. There is no physical intrusion required beyond existing urine collection procedures normally employed for other purposes. FRA retains the requirement that the applicant provide a valid and knowing consent to the test.

Alternative methods. In its comments and filing made at the end of the second public comment cycle in this rulemaking, ACLU suggested that alternate means could be developed for determining employee fitness that would presumably not require any "search" within the meaning of the Fourth Amendment. FRA wishes it were that simple. The human organism is the most complex known creation in the universe. Creating an adequate battery of tests that could measure present fitness and predict future fitness (as alcohol or drug levels might rise or fall) with benchmarks that would be generally recognized as fair and appropriate is a task that could be accomplished only over the very long term. Indeed, various methodologies and devices have been tried in the highway mode, but have thus far failed of general acceptance.

Techniques have been developed, or are under development, that can serve as a predicate for a breath or body fluid test, but they generally require a significant amount of training and practice. It is not realistic to suppose that railroad supervisors, who are already required to know massive amounts of information in order to discharge their responsibilities properly, can be turned into expert evaluators of alcohol and drug impairment.

Today we do have simple, painless and reliable means of detecting and confirming alcohol and drug use (and impairments) that do not offend the dignity of the individual and do not require significant cost or inconvenience. Lives and limbs are being lost in the short term and will be lost in the mid-term unless we use the tools available to use now. FRA began this rulemaking process with an ANPRM that invited all interested parties to identify options for regulatory action and has pursued the most reasonable and effective means identified through that process. To be diverted now by unspecified techniques that have not yet been developed would be both tragic and senseless.

Implementation of the Rule

Petitions for Reconsideration

Petitions for reconsideration of the action announced in this final rule may be filed under the FRA Rules of Practice (49 CFR Part 211), not later than October 1, 1985. FRA will endeavor to act on any such petition prior to the effective date of the rule.

Phased Implementation

The new Part 219 will be implemented in phases beginning with the effective date, which is November 1, 1985. Compliance with Subpart C (post-accident toxicological testing) is required beginning December 1, 1985, but a railroad is authorized to commence testing in compliance with the regulation on the effective date of the part. Compliance with Subpart F (pre-employment drug screens) is required beginning on March 1, 1986, but compliance is authorized on and after the effective date. Additional time is provided to commence testing under Subparts C and F because those provisions are mandatory and will require some logistical preparation. Amendments to existing rules are effective on November 1, 1985, except the amendment to Part 225 (Accident/Incident Reporting), which is effective January 1, 1986.

Implementation Conferences

During the interval between publication of this final rule and the effective date, FRA will hold a series of regional implementation conferences for the purpose of explaining the final rule to employee representatives, railroad managers and supervisors, and other interested persons. At those conferences FRA will introduce the Field Manual and provide suggestions for addressing the practical problems that will be occasioned by initial implementation. The dates and times of those conferences will be announced shortly. Those wishing to attend the conferences are requested to contact Mr. Walter Rockey at the Office of Safety, FRA (address and telephone shown above under "**FOR FURTHER INFORMATION CONTACT**") indicating the location chosen, number of persons attending, and the address and telephone number at which a representative of the person or group can be reached.

Further Rulemaking

FRA will monitor the experience of the railroads under these rules and private sector actions taken to address the problem of alcohol and drug use in railroad operations. In particular, FRA will carefully review the results of the post-accident testing program, data from the improved system of accident/incident reporting, reports filed under Part 217, and field investigations under this final rule to determine whether modification of these requirements, or additional regulatory initiatives, may be indicated. FRA will take particularly careful notice of the efforts of the railroads and employee organizations to address the safety dimensions of alcohol and drug use among employees not subject to the coverage of the Hours of Service Act whose functions may, nevertheless, impact on safety. Such employees may include persons in supervisory ranks, maintenance-of-way employees, car and locomotive department personnel, on-board passenger service personnel, and non-covered yardmasters. FRA believes that the models provided by this rule could help form the basis for private sector actions that would obviate the need for more extensive regulation.

Although FRA is not presently announcing further rulemaking, FRA nevertheless welcomes communications relevant to the implementation of the final rule, in particular, and the control of alcohol and drug use on the railroads, in general. When sufficient experience has been gained under the final rule, FRA will set this matter for hearing with a view to appropriate further action.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

These final regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. However, they are considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because they initiate a substantial regulatory program.

Consequently, FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of these rules. It may be inspected and copied at Room 8201, 400 Seventh Street, S.W., Washington, D.C., 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the same address.

The economic evaluation identifies total estimated annual benefits from avoidance of accidents and incidents of $18,127,587 and estimated costs of $12,665,573. Both benefits and costs are stated at discounted present value (10% discount factor) for a program life of 20 years, using constant 1984 dollars. The 20-year estimated program life is the term used in the analysis accompanying the NPRM, and FRA believes that it is reasonable given the relatively long tenure of supervisors in the industry (who will require training at start-up), the useful life of apparatus to be purchased in the first year, and the replacement and recurring costs assumed over the program life. On an annual basis, the discounted present value of benefits averages $906,360 and the discounted present value of costs averages $633,279. The benefit to cost ratio is 1.43 to 1.

This ratio is conservative. The estimated benefits rely upon the documented data base, which is undoubtedly incomplete, and do *not* include estimates of undocumented safety consequences. Nor do the estimated benefits include projections for avoidance of the following consequences of alcohol and drug-related accidents: costs of personal injuries in train accidents and incidents (and non-train incidents involving covered employees); non-railroad property damage in train accidents, including lading and improvements to adjacent property; emergency response costs; environmental clean-up costs; and incidental railroad costs such as wreck clearance, train delays, and higher crew costs.

The final economic evaluation, like the evaluation prepared for the proposed rule, does not separately quantify the benefits and costs associated with the provisions on identification of troubled employees (Subpart E). FRA pointed out in the initial evaluation that railroads and other employers that have experience with employee assistance programs find them to be highly cost-beneficial in their own right. Further, many of the benefits that flow from these programs, such as improved productivity, reduced health care costs, reduced absenteeism, and

the like, are not directly relevant to the specific objectives of these rules. FRA believes that the voluntary referral and co-worker report policies will encourage the establishment of employee assistance programs and help to strengthen the programs already in place. FRA has deliberately avoided the kind of detailed procedures and standards that could inhibit the development of these programs or reduce their efficiency.

FRA has refined the economic evaluation employed in connection with the proposed rules to reflect changes incorporated in the final rules and the updated accident data discussed earlier. In making these refinements FRA is relying exclusively on its own research, since the commenters neither challenged nor substantively commented on FRA's initial economic evaluation.

Regulatory Flexibility Act

FRA certifies that these final rules will not have a significant economic impact on a substantial number of small entities. The rules apply only to railroads and, accordingly, will have no direct impact on small units of government, businesses and other organizations. As noted earlier, State rail agencies will be free to participate in the administration of these rules but are not required to do so.

Although a substantial number of small railroads are subject to these regulations the economic impact of the rules will not be significant for several reasons. Only a very few accidents occur each year on these small railroads that will require compliance with post-accident testing provisions of the rule. FRA has excluded very small railroads from the requirements of Subpart C (Authorization to Test for Cause), Subpart E (Identification of Troubled Employees), and Subpart F (Pre-Employment Drug Screens). The remaining small railroads will experience very little impact from the pre-employment drug screen provisions because of the small number of new hires and the low per-unit cost of testing. The authorization to test for cause is, of course, permissive. Satisfaction of the provisions on identification of troubled employees should not present significant problems, since resources for evaluation and counseling of employees are widely available on a fee-for-service or contract basis in the private market; and the American Short Line Railroad Association reports that most small railroads view their substance abuse problems as minimal or nonexistent. In general, small railroads are well situated to satisfy the requirements of these rules because of their limited employee populations, geographically more compact operations and greater capacity to provide close supervision.

Although FRA specifically requested comment on the impact of these rules on small entities, FRA did not receive any comments that directly addressed this issue. The comments that focused on the appropriateness of making certain aspects of the proposed rules applicable to small railroads are discussed above in the context of incorporating further exclusionary provisions in the rule itself.

Paperwork Reduction Act

The rules being adopted in this proceeding contain revised information collection requirements in the following sections: 219.203, 219.205, 219.207, 219.209, 219.211, 219.213, 219.301, 219.303, 219.305, 219.307, 219.309, 219.401, 219.405, 219.407, 219.501, 219.503. Revised information collection requirements are also contained in the amendments to § 217.13 and § 225.17. The Office of Management and Budget (OMB) has approved the information collection requirements in the proposed rule, but has not yet approved the revised information collection requirements of this final rule. FRA is submitting these revised information collection requirements to OMB for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). FRA anticipates that OMB will undertake prompt action on these requests for approval. When OMB has approved these revised requirements, FRA will publish a notice in the **Federal Register** announcing that action. Section 219.21 of the new Part 219 has been reserved to list the information collection sections and the control number assigned by OMB. Compliance with the revised information collection requirements is not required until the approvals have been provided and the control number has been assigned. Any comments on the revised information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and DOT Order 5610.1c. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects

49 CFR Part 212

Railroad safety, State Safety Participation Program.

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping requirements.

49 CFR Part 218

Railroad safety, Railroad operating practices.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use, Reporting and recordkeeping requirements.

49 CFR Part 225

Railroad safety, Accident/incident reporting, Reporting and record keeping requirements.

In consideration of the foregoing, Chapter II, Subtitle B, of Title 49, Code of Federal Regulations is amended as follows:

1. A new Part 219 is added to read as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

Subpart A—General

Sec.

219.1 Purpose and scope.
219.3 Applications.
219.5 Definitions.
219.7 Waivers.
219.9 Responsibility for compliance.
219.11 Consent required; implied.
219.13 Preemptive effect.
219.15 Alcohol concentrations in blood and breath.
219.17 Construction.
219.19 Field Manual.
219.21 [Reserved]

Subpart B—Prohibition

219.101 Alcohol and drug use prohibited.
219.103 Prescribed and over-the-counter drugs.

Subpart C—Post-Accident Toxicological Testing

219.201 Events for which testing is required.
219.203 Responsibilities of railroads and employees.
219.205 Sample collection and handling.
219.207 Fatality.
219.209 Reports of tests and refusals.
219.211 Analysis and follow-up.
219.213 Unlawful refusals; consequences.

Subpart D—Authorization To Test for Cause

219.301 Testing for reasonable cause.

219.303 Breath test procedures and safeguards.
219.305 Urine test procedures and safeguards.
219.307 Standards for urine assays.
219.309 Presumption of impairment; notice.

Subpart E—Identification of Troubled Employees

219.401 Requirement for policies.
219.403 Voluntary referral policy.
219.405 Co-worker report policy.
219.407 Alternate policies.

Subpart F—Pre-Employment Drug Screens

219.501 Pre-employment drug screens.
219.503 Notification; records.
219.505 Refusals.

Appendix A—Schedule of Civil Panalties

Authority: Sec. 202 and 209, Pub. L. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. 91–458, 84 Stat. 974, as amended (45 U.S.C. 437).

Subpart A—General

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 219.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by section 202(k) of the Federal Railroad Safety Act of 1970, as amended), specifically including any entity providing such service as a common carrier engaged in interstate or foreign commerce.

(b) Subparts D, E, and F do not apply to a railroad that employs not more than 15 employees covered by the Hours of Service Act (45 U.S.C. 61–64b).

§ 219.5 Definitions.

As used in this part—

(a) "Alcohol" means ethyl alcohol (ethanol). References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.

(b) "CAMI" means the Civil Aeromedical Institute of the Federal Aviation Administration. References to CAMI are to that organization's Toxicology Research Laboratory.

(c) "Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Parts 1301–1316).

(d) "Covered employee" means a person who has been assigned to perform service subject to the House of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person performs such service.

(e) "Covered service" means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61–64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

(f) "Co-worker" means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent or officer.

(g) "Drug" means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

(h) "EAP Counselor" means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An "EAP counselor" may be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or drug abuse evaluation or counseling. As used in these rules, an EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of the employee.

(i) "Field Manual" refers to the document described in section 219.19 of this subpart.

(j) "FRA" means the Federal Railroad Administration, U.S. Department of Transportation.

(k) "FRA representative" means the Associate Administrator for Safety, FRA, the Associate Administrator's delegate (including a qualified State inspector acting under Part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

(l) "Hazardous material" means a commodity designated as a hazardous material by Part 172 of this title.

(m) "Impact accident" means a train accident consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents: (1) An accident in which the derailment of equipment causes an impact with other rail equipment; and (2) impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.

(n) "Independent" means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

(o) "Medical facility" means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

(p) "Medical practitioner" means a physician or dentist licensed or otherwise authorized to practice by the state.

(q) "NTSB" means the National Transportation Safety Board.

(r) "Possess" means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

(s) "Reportable injury" means an injury reportable under Part 225 of this title.

(t) "Reporting threshold" means an amount specified in § 225.19(c) of this title, as adjusted from time to time in accordance with Appendix A to Part 225 of this title.

(u) "Supervisory employee" means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

(v) "Train," except as context requires, means a locomotive coupled, with or without cars. (A locomotive is a

self-propelled unit of equipment which can be used in train service.)

(w) "Train accident" means a passenger, freight, or work train accident described in § 225.19(c) of this title ("Rail equipment accident"), including an accident involving a switching movement.

(x) "Train incident" means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

§ 219.7 Waivers.

(a) A person subject to a requirement of this part may petition the Federal Railroad Administration for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by Part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§ 219.9 Responsibility for compliance.

(a) A railroad that—

(1) Having actual knowledge, requires or permits an employee to go or remain on duty in covered service while in violation of § 219.101;

(2) Fails to exercise due diligence to assure compliance with § 219/101 by a covered employee;

(3) Willfully and with actual knowledge, requires an employee to submit to testing in reliance on section 219.301 without observance of the conditions and safeguards contained in subpart D of this part;

(4) Fails to adopt or publish, or willfully and with actual knowledge fails to implement, a policy required by Subpart E of this part; or

(5) Fails to comply with any other requirement of this part; shall be deemed to have violated this part and shall be subject to a civil penalty as provided in Appendix A.

(b) For purposes of paragraph (a)(1) of this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(c) The "knowledge" referred to in this section and the penalty schedule (Appendix A) is knowledge of the applicable facts. Knowledge of this part, like other provisions of Federal law, is conclusively presumed.

§ 219.11 Consent required; implied.

(a) Any employee who performs covered service for a railroad on or after November 1, 1985, shall be deemed to have consented to testing as required in Subpart C and D of this part; and consent is implied by performance of such service.

(b) Each such employee shall participate in such testing, as required under the conditions set forth in this part by a representative of the railroad or FRA.

(c) A covered employee who is required to be tested under Subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) An employee required to participate in body fluid testing under Subpart C (post-accident toxicological testing) shall, if requested by the representative of the railroad, FRA, or the medical facility, evidence consent to taking of samples and their release for toxicological analysis under Subpart C by promptly executing a consent form, if required by the medical facility.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad on or after November 1, 1985, shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in Subpart C as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

§ 219.13 Preemptive effect.

(a) Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 219.15 Alcohol concentrations in blood and breath.

(a) In this part, blood alcohol concentration (BAC) is expressed as a "percentage" weight to volume. For example, a BAC of ".04 percent" means that there is .04 gram (four hundredths of one gram) of alcohol in 100 milliliters of whole blood. This is the same quantity as "40 milligrams percent" (40 milligrams in 100 milliliters).

(b) For the purpose of determining blood alcohol concentration through an analysis of the breath, the amount of alcohol in one part of blood shall be presumed to equal the amount of alcohol in 2100 parts of an expired breath sample (by volume).

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under section 208 of the Federal Railroad Safety Act of 1970, as amended; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

§ 219.19 Field Manual.

(a) Technical procedures for post-accident testing required by Subpart C of this part, recommended practice standards for breath and urine testing under Subpart D of this part, and related materials designed to assist the railroads in establishing programs for control of alcohol and drug use are contained in the FRA Alcohol and Drug Field Manual which is revised from time to time by the Office of Safety, FRA.

(b) The Field Manual may be inspected at the Office of the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, D.C.

20590. The Field Manual may be purchased the National Technical Information Service, Order Department, 5285 Port Royal Road, Springfield, Virginia 22161.

§ 219.21 [Reserved]

Subpart B—Prohibitions

§ 219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service;

(2) No employee may report for covered service, or go or remain on duty in covered service while—

(i) Under the influence of or impaired by alcohol;

(ii) Having .04 percent or more alcohol in the blood; or

(iii) Under the influence of or impaired by any controlled substance.

(b) *Controlled substance.* "Controlled substance" is defined by § 219.5 of this part. Controlled substances are grouped as follows: marijuana, narcotics (such as heroin and codeine) stimulants (such as cocaine and amphetamines), depressants (such as barbiturates and minor tranquilizers), and hallucinogens (such as the drugs known as PCP and LSD). Controlled substances include illicit drugs (Schedule I), drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

(c) *Railroad rules.* Nothing in this section restricts a railroad from imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section shall not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor shall it be construed to restrict a railroad from prohibiting such presence under its own rules.

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedule II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties; and

(2) The substance is used at the dosage prescribed or authorized.

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

Subpart C—Post-Accident Toxicological Testing

§ 219.201 Events for which testing is required.

(a) *List of events.* On and after December 1, 1985, except as provided in paragraph (b) of this section, post-accident toxicological tests shall be conducted after any event that involves one or more of the circumstances described in paragraph (a) (1) through (3) of this section:

(1) *Major train accident.* Any train accident that involves one or more of the following:

(i) A fatality;

(ii) Release of a hazardous material accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (*e.g.*, from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of $500,000 or more.

(2) *Impact accident.* An impact accident resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $50,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(b) *Exception.* No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing.

(c) *Good faith determinations.* (1) The railroad representative responding to the scene of the accident/incident shall determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative shall consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgment in making the required determinations.

(2) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required.

(3) A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but its later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present.

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1) Following each accident and incident described in § 219.201, the railroad (or railroads) shall take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA.

(2) Such employees shall specifically include each and every operating employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees shall also be required to provide samples.

(3) An employee is excluded from testing under the following circumstances:

(i) In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) of this subpart (an "impact accident") or § 219.201(a)(3) ("fatal train incident"), if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) of the accident/incident.

(ii) The following provisions govern accidents/incidents involving non-covered employees:

(A) Surviving non-covered employees are not subject to testing under this subpart.

(B) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad shall make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) This paragraph shall not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad shall utilize other employees to perform such duties.

(3) In the case of a revenue passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad shall consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew shall be called to relieve the train crew as soon as possible.

(c) *Place of sample collection.* (1) Employees shall be transported to an independent medical facility where the samples shall be obtained. In all cases blood shall be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad shall request the treating medical facility to obtain the samples.

(d) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a sample under this subpart, the railroad shall, as necessary, make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain a blood sample after having been acquainted with the requirements of this subpart, the railroad shall immediately notify FRA by toll free telephone, Area Code 800–424–0201, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required sample.

(e) *Discretion of physican.* Nothing in this subpart shall be construed to limit the discretion of a physician to determine whether drawing a blood sample is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

§ 219.205 Sample collection and handling.

(a) *General.* Samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this section and the Field Manual.

(b) *Information requirements.* In order to process samples, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative shall complete the information required by FRA Form 6180.73 for shipping with the samples. Each employee subject to testing shall cooperate in completion of the required information on FRA Form 6180.74 for inclusion in the shipping kit and processing of the samples. The railroad representative shall request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74. One Form 6180.73 shall be forwarded in the shipping kit with each group of samples. One Form 6180.74 shall be forwarded in the shipping kit for each employee who provides samples.

(c) *Shipping kit.* (1) FRA and CAMI prepare and make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and the Field Manual. Specifications for kits are contained in the Field Manual.

(2) Kits may be ordered directly from CAMI. The address is Forensic Toxicology Laboratory (AAC–114), Civil Aeromedical Institute, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, Oklahoma 73125.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped by pre-paid air freight (or other means adequate to ensure delivery within twenty-four (24) hours) to the Toxicology Laboratory, Civil Aeromedical Institute, Oklahoma City, Oklahoma 73125. If courier pickup is not available at the medical facility where the samples are collected, the railroad shall promptly transport the shipping kit holding the samples to the nearest point of shipment via air freight or equivalent means.

§ 219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in § 219.201, body fluid and/or tissue samples shall be obtained from the remains of the employee for toxicological testing. To ensure that samples are timely collected, the railroad shall immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue samples. The railroad shall also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad shall immediately notify FRA by toll free telephone, Area Code 800–424–0201, providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue samples from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the Administrator under section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) (but not the agent of the Secretary for purposes of the Federal Tort Claims Act). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under these rules.

(d) The Field Manual specifies body fluid and/or tissue samples required for toxicological analysis in the case of a fatality.

§ 219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which samples

were obtained shall provide prompt telephonic notification summarizing such events. Notification shall be provided to the Office of Safety FRA, at (202) 426-0897 (8:30 a.m. to 5:00 p.m. EST or EDT) during the Federal work week.

(2) Each telephonic report shall contain:

(i) Name of railroad;

(ii) Name, title and telephone number of person making the report;

(iii) Time, date and location of the accident/incident;

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and

(v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a sample and cause it to be provided to FRA as required by this section, the railroad shall make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report shall be appended to the report of the accident/incident required to be submitted under Part 225 of this subchapter.

§ 219.211 Analysis and follow-up.

(a) (1) CAMI undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report.

(2) FRA notifies the railroad and the tested employee of the results of the toxicological analysis and permits the employee to respond in writing to the results of the test prior to preparing any final investigation report concerning the accident or incident. Results of the toxicological analysis and any response from the employee are also promptly made available to the National Transportation Safety Board on request.

(b) (1) The toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of section 4 of the Accident Reports Act (45 U.S.C. 41) (prohibiting use of the report for any purpose in any action for damages).

(c) (1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provisions of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, shall not be deemed to run as to any offense involving the accident or incident (*i.e.*, such periods shall be tolled).

(2) This provision shall not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to receipt of toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(d) Each sample provided under this subpart is retained for not less than six months following the date of the accident or incident and may be made available to the National Transportation Safety Board (on request) or to a party in litigation upon service of appropriate compulsory process on the custodian of the sample at least ten (10) days prior to the return date of such process. It is the policy of FRA to request the Attorney General to oppose production of the sample to a party in litigation unless a copy of the subpoena, order, or other process is contemporaneously served on the Chief Counsel, FRA, Washington, D.C.

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* (1) An employee who refuses to cooperate in providing a blood or urine sample following an accident or incident specified in this section shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months.

(2) The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such disqualification.

(3) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(b) *Procedures.* (1) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. This hearing may be consolidated with any other disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to the disqualification required by this section.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the charged employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(c) *Subject of hearing.* The hearing required by this section shall determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad or an FRA representative. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

Subpart D—Authorization to Test for Cause

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or urine testing, or both, to determine compliance with § 219.101 of this part of a railroad rule implementing the requirements of § 219.101. This authority is limited to testing after observations or events that

occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section.

(b) *Reasonable cause for breath tests.* The following circumstances constitute reasonable cause for the administration of breath tests under this section:

(1) *Reasonable suspicion.* A supervisory employee of the railroad has a reasonable suspicion that the employee is currently under the influence of or impaired by alcohol, or alcohol in combination with a controlled substance, based upon specific, personal observations that the supervisory employee can articulate concerning the appearance, behavior, speech or body odors of the employee;

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under Part 225 of this title, and a supervisory employee of the railroad has a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consist with § 218.37 of this title;

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule or operation of a switch under a train;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes; or

(vii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *Reasonable cause for urine test—*

(1) *Accident/incident and rule violation.* Except as provided in paragraph (c)(2) of this section, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting reasonable cause for breath testing also constitutes reasonable cause with respect to urine testing.

(2) *Reasonable suspicion.* Reasonable cause also exists where a supervisory employee of the railroad has a reasonable suspicion that the employee is currently under the influence of or impaired by alcohol or a controlled susbstance, based upon specific, personal observations that the supervisory employee can articulate concerning the appearance, behavior, speech, or body odors of the employee, subject to the following limitations:

(i) An employee may be required to submit to urine testing for reasonable suspicion only if the determination is made by at least two supervisory employees; and

(ii) If the determination to require urine testing is based upon suspicion that the employee is under the influence of or impaired by a controlled substance, at least one supervisory employee responsible for the decision to require urine testing must have received at least three (3) hours of training in the signs of drug intoxication consistent with a program of instruction on file with FRA under Part 217 of this title. Such program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of the major drug groups on the controlled substances list (narcotics, depressants, stimulants, hallucinogens, and marijuana).

(d) *Preference for breath test where alcohol suspected.* If an employee is specifically suspected only of being under the influence of or impaired by alcohol, breath testing is the preferred means of confirmation. The railroad shall conduct a breath test before requiring a urine test unless to do so would not be feasible because of unavailability of a testing device or other considerations of safety or efficiency.

(e) *Limitation for Subpart C events.* The compulsory urine testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by § 219.201 of this part. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of samples under Subpart C.

(f) *Time limitation.* Nothing in this section shall authorize testing of an employee after the expiration of an 8-hour period from the time of the observations or other events described in this section.

(g) *Construction.* Nothing in this subpart requires a railroad to undertake breath testing as a requisite to any disciplinary action or restricts the discretion of a railroad to proceed based solely on evidence of behavior, personal observations, or other evidence customarily relied upon in such investigations or hearings.

§ 219.303 Breath test procedures and safeguards.

(a) Except as provided in paragraph (d) of this section, the following conditions apply to breath testing authorized by this subpart.

(1) Testing devices shall be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the **Federal Register** from time to time by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation. This listing is also contained in the current Field Manual.

(2) Each device shall be properly maintained and shall be calibrated by use of a calibrating unit listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers (as amended and published and contained in the current Field Manual) with sufficient frequency to ensure the accuracy of the device (within plus or minus .01 percent), but not less frequently than provided in the manufacturer's instructions.

(3) Tests shall be conducted by a trained and qualified operator. The operator shall have received training on the operational principles of the particular instrument employed and practical experience in the operation of the device and use of the breath alcohol calibrating unit (reference standard). A copy of the training program shall be filed with FRA in conjunction with the filing required by § 217.11 of this title.

(4) Tests shall be conducted in accordance with procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

(5) If an initial test is positive, the employee shall be tested again after the

expiration of a period of not less than 15 minutes, in order to confirm that the test has properly measured the alcohol content of deep lung air.

(b) Because of the inherent limitations of the instrumentation, any indicated breath test result of less than .02 percent shall be deemed a negative test.

(c) In any case where a breath test is intended for use in the railroad disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. The railroad shall provide the required transportation to facilitate the blood test.

(d)(1) Under the circumstances set forth in § 219.301, a railroad may require an employee to participate in a screening test solely for the purpose of determining whether the conduct of a test meeting the criteria of paragraph (a) of this section is indicated. If the screening test is negative within the meaning of paragraph (b) of this section, the employee shall not be required to submit to further testing under this subpart. If the screening test is positive, no consequence shall attach except that the employee may be removed from covered service for the period necessary to conduct a breath test meeting the criteria of paragraph (a) of this section or a urine test meeting the requirements of §§ 219.305 and 219.307 of this subpart (consistent with § 219.301(d) of this subpart).

(2) The conduct of a screening test shall not excuse the requirement of paragraph (a) of this section that at least two breath samples be tested, but the requirement that a 15-minute interval elapse between tests shall be deemed to be satisfied if the second test meeting the criteria of paragraph (a) of this section is conducted at least 15 minutes after the screening test.

§ 219.305 Urine test procedures and safeguards.

(a) Urine shall be collected at an independent medical facility. Personnel of the medical facility shall supervise the collection procedure.

(b) The railroad shall establish procedures with the medical facility and the laboratory selected for testing to ensure positive identification of each sample and accurate reporting of laboratory results.

(c) A urine test procedure may include the provision of not more than two samples from the same employee.

(d) In any case where a urine test is intended for use in the railroad disciplinary process, the employee shall be given the opportunity to provide a blood sample at the independent medical facility for analysis by a competent independent laboratory.

(e) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing.

§ 219.307 Standards for urine assays.

(a) *Laboratory standards.* A railroad employing the urine testing authority conferred by this subpart shall ensure that—

(1) Urine testing authorized by this part shall be undertaken only by an independent laboratory (or laboratories) proficient in the testing of urine for alcohol and drugs of abuse.

(2) Each such laboratory that performs a confirmatory procedure under paragraph (b) of this section shall regularly participate in an external quality control program that involves the analysis of samples submitted by a reference laboratory. Quality control samples should include actual body fluid samples previously analyzed by the reference laboratory, and should not be limited to spiked samples. Where practicable, known samples shall be submitted to the laboratory on a blind basis (so that the source of the sample is believed to be a customer of the laboratory).

(b) *Screening and confirmation.* Each sample shall be analyzed by a method that is reliable within known tolerances. If the screening test is positive for a substance other than alcohol, a remaining portion of the same sample shall be retested by another method. The confirmation test shall utilize a scientifically-recognized method capable of providing quantitative data specific to the drug (or metabolite(s)) detected. An immunoassay (including a radio immunoassay) is not an acceptable confirmatory test for this purpose.

(c) *Laboratory reports.* (1) Reports of positive urine tests shall, at minimum, state (i) the type of test conducted, both for screening and confirmation, (ii) the results of each test, (iii) the sensitivity (cut-off point) of the methodology employed for confirmation, and (iv) any available information concerning the margin of accuracy and precision of the quantitative data reported for the confirmation test (or, in the case of alcohol, for the single test procedure). However, in the case of a negative test (either for screening or confirmation), the report shall specify only that the test was negative for the particular substance.

(2) A legible copy of the laboratory report shall promptly be made available to the employee tested.

§ 219.309 Presumption of impairment; notice.

(a) If an employee's urine sample has tested positive for a controlled substance (or its metabolite(s)) in a test authorized by this subpart and the employee was afforded and declined the opportunity to provide a blood sample, the railroad (or a board of arbitration) may, in the absence of persuasive evidence to the contrary, presume from the presence of the identified controlled substance that the employee was impaired by that controlled substance within the meaning of § 219.101 of this subpart.

(b)(1) Each railroad that utilizes the urine testing authority conferred by this subpart shall provide effective notice of the presumption created by this section to each of its covered employees. A railroad is deemed to have provided such notice if it includes a statement similar in substance to the statement set forth in paragraph (b)(2) of this section in its book of rules, timetable, special instructions, or other publication that is made available to each covered employee and with which each such employee is required to be familiar.

(2) The following statement provides the required notice:

Under Federal Railroad Administration (FRA) safety regulations, you may be required to provide a urine sample after certain accidents and incidents or at any time the company reasonably suspects that you are under the influence of, or impaired by, drugs while on duty. Because of its sensitivity, the urine test may reveal whether or not you have used certain drugs within the recent past (in a rare case, up to *sixty* days before the sample is collected). As a general matter, the test cannot distinguish between recent use off the job and current impairment. However, the Federal regulations provide that if only the urine test is available, a positive finding on that test will support a presumption that you were impaired at the time the sample was taken.

You can avoid this presumption of impairment by demanding to provide a blood sample at the same time the urine sample is collected. The blood test will provide information pertinent to current impairment. Regardless of the outcome of the blood test, if you provide a blood sample there will be no presumption of impairment from a positive urine test.

If you have used any drug off the job (other than a medication that you possessed lawfully) in the prior sixty days, it may be in your interest to provide a blood sample. If you have not made unauthorized use of any drug in the prior sixty days, you can expect that the urine test will be negative; and you may not wish to provide a blood sample.

You are not required to provide a blood sample at any time, except in the case of certain accidents and incidents subject to Federal post-accident testing requirements (49 CFR Part 219, Subpart C).

A complete copy of the Federal regulations is available for your review at ————.

(3) A railroad that has a policy that forbids off-the-job use of drugs (not involving a specific proof that the employee is under the influence of the substance or impaired by it on the job) must include in such a notice a statement concerning any additional consequences of a positive urine test.

Subpart E—Identification of Troubled Employees

§ 219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad shall adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter "voluntary referral policy"); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter "co-worker report policy").

(c) A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §§ 219.403 and 219.405 of this subpart or by complying with § 219.407.

(d) If a railroad complies with this part by adopting, publishing and implementing policies consistent with §§ 219.403 and 219.405, the railroad shall make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart shall be construed to—

(1) Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy;

(2) Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by a supervisory employee; or

(3) Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

§ 219.403 Voluntary referral policy.

(a) *Scope.* This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of § 219.101.

(b) *Required provisions.* A voluntary referral policy shall include the following provisions:

(1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad shall specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.

(2) Except as may be provided under paragraph (c) of this section, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential.

(3) The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the EAP Counselor. Approval to return to service may not be unreasonably withheld.

(c) *Optional provisions.* A voluntary referral policy may include any of the following provisions, at the option of the railroad:

(1) The policy may provide that the rule of confidentiality is waived if (i) the employee at any time refuses to cooperate in a recommended course of counseling or treatment and/or (ii) the employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(2) The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service.

(3) The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under section 219.405 of this section (co-worker report policy).

(4) The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either (1) during non-duty hours (*i.e.*, at a time when the employee is off duty) or (ii) while unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§ 219.405 Co-worker report policy.

(a) *Scope.* This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of § 219.101.

(b) *Employment relationship.* A co-worker report policy shall provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under these rules or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

(c) *General conditions and procedures.* (1) The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this part or the railroad's alcohol and drug rules.

(2) If the railroad representative determines that the employee is in violation, the railroad may immediately remove the employee from service in accordance with its existing policies and procedures.

(3) The employee must elect to waive investigation on the rule charge and

must contact the EAP Counselor within a reasonable period specified by the policy.

(4) The EAP Counselor must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the counselor with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the counselor.

(d) *When treatment is required.* If the EAP Counselor determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures shall apply:

(1) The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(2) The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the EAP Counselor.

(3) The railroad must promptly return the employee to service, on recommendation of the EAP Counselor, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be unreasonably withheld.

(4) Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed two years form the date the employee was originally withdrawn from service.

(e) *When treatment is not required.* If the EAP Counselor determines that the employee is not affected by an identifiable and treatable mental or physical disorder—

(1) The railroad shall return the employee to service within 5 days after completion of the evaluation.

(2) During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

§ 219.407 Alternate policies.

(a) In lieu of a policy under § 219.403 (voluntary referral) or § 219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies has the written concurrence of the recognized representatives of such employees.

(b) The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy shall apply in lieu of the policy required by section 219.403, section 219.405, or both.

(c) The railroad shall file the agreement or other document described in paragraph (b) of this section with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad shall file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing and implementing the policies required by §§ 219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

Subpart F—Pre-employment Drug Screens

§ 219.501 Pre-employment drug screens.

(a) On and after March 1, 1986, each applicant who is given favorable consideration for a position with a railroad that involves the performance of covered service shall be tested for the presence of drugs. The test shall be accomplished through analysis of a urine sample. Whenever feasible, the sample shall be obtained in connection with a pre-employment medical examination.

(b) Prior to collection of the urine sample, the applicant shall be notified that the sample will be tested for the presence of drugs. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(c) The railroad shall cause the samples obtained under this section to be identified, preserved, and tested by a competent laboratory for the presence of drugs, including, at a minimum, the following substances: opiates (narcotics), cocaine, barbiturates, amphetamines, cannabis, phencyclidine (PCP), and any other drug of abuse identified by the railroad medical officer as in frequent use in the locality (for which a reliable screening method is available). The railroad may also test the sample for the presence of alcohol.

(d) If the first test of a sample is positive for any drug (or metabolite(s)), the sample shall be tested a second time by another, reliable method that is specific for the substance detected.

§ 219.503 Notification; records.

(a) The railroad shall notify the applicant of the results of any test that is positive for any substance included in the procedure. In the case of a positive result, the railroad shall provide the applicant with an opportunity to explain the presence of the identified substance prior to taking any action on the application for employment. This requirement is satisfied if the railroad has, in connection with the medical examination or sample collection procedure, requested that the applicant provide information concerning all drugs or medications used within the previous 60 days.

(b) Each railroad shall retain records of tests conducted under this section for at least 2 years and make them available to FRA for review. Such records need not reflect the identity of any applicant whose application for employment in covered service was denied.

§ 219.505 Refusals.

An applicant who has refused to submit to pre-employment testing under this section shall not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

APPENDIX A.—SCHEDULE OF CIVIL PENALTIES [1]

Section		Violation	Intentional violations [2]
	Subpart B—Prohibition		
219.101	Employee required or permitted to use or possess alcohol or controlled substance while on duty, or to go or remain on duty while under the influence of, impaired by, or with BAC of .04 percent or more.		$2,500
	With actual knowledge of facts constituting violation.	$2,000	
	Failure to exercise due diligence to assure compliance.	1,750	2,500
	Subpart C—Part-Accident Testing		
219.201	Failure to facilitate conduct of required post-accident toxicological test by making reasonable inquiry and good faith judgments with respect to circumstances of accident/incident, by failing to take all practicable steps to require employee participation, or by otherwise failing to comply with Subpart C such that test cannot be conducted.	1,000	2,500
	Required employee to provide samples in reliance on Subpart C where not required (including failure to make reasonable inquiry or good faith judgment).	750	1,250
219.203(b)	Delay in obtaining samples account failure to make every reasonable effort.	1,000	2,000
219.203(c)	Place of sample collection; by whom.	750	1,250
219.203(d)	Failure to notify FRA of employee injury requiring FRA intervention.	1,000	2,000
219.205	Failure to promptly forward samples.	1,000	2,000
	Failure to provide information sheet(s) with samples.	500	1,000
	Failure to observe other requirements with respect to sample collection, marking and handling.	750	1,250
219.207	Failure to contact custodian and request assistance.	1,000	2,000
	Failure to notify FRA where FRA intervention required.	1,000	2,000
219.209	Failure to provide telephonic report.	250	500
	Failure to provide written report (sample not provided).	750	1,500
219.213	Failure to take action against employee who refuses to provide samples.	1,000	2,000
	Failure to provide timely notice and proper hearing.	1,000	2,000
	Subpart D—Authorization to Test for Cause		
219.301	Required employee to submit to testing without reasonable cause or without observance of procedures and safeguards.		2,000
219.309	Failure to provide effective notice of presumption from positive urine test.	500	2,000
	Subpart E—Identification of Troubled Employees		
219.401	Failure to adopt or publish policy required by Subpart E.	500	2,500
	Wholesale failure to implement policy required by subpart E.		2,500
	Failure to implement as to individual employee.		2,000
219.407	Failure to file agreement or other document or provide timely notice of revocation.	500	1,250
	Subpart F—Pre-Employment Drug Screen		
219.501	Failure to perform pre-employment drug screen; applicant employed in covered service.	500	1,000
219.505			
219.501	Failure to provide prior notice of drug screen.	500	1,000
219.503	Failure to provide notice of positive test result and opportunity for response.	250	750
	Failure to comply with other Subpart F requirement.	250	750

[1] Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) requires the Secretary of Transportation to "include in, or make applicable to, any railroad safety rule, regulation, order or standard issued under this title a civil penalty for violation thereof . . . in such amount, not less than $250 nor more than $2,500, as he deems reasonable." Each day of violation constitutes a separate offense.

Section 219.9(a) sets forth the standards of liability applicable to the various requirements of this part.

[2] For purposes of this schedule, an intentional violation is a failure to comply in which the railroad has acted willfully and with actual knowledge of the facts constituting the violation. Knowledge of the regulations is presumed by law.

PART 212—[AMENDED]

2. Part 212 is amended as follows:

A. The authority for Part 212 continues to read as follows:

Authority: Secs. 202, 205, 206, and 207, Pub. L. 91–458, 84 Stat. 917 *et seq.*, as amended by secs. 4 and 5, Pub. L. 96–423, 94 Stat. 1812 (45 U.S.C. 431, 434, 435, 436).

§ 212.221 [Amended]

B. By amending the first parenthetical in paragraph (a) of § 212.221 by inserting "219" and a comma after "49 CFR Parts 217, 218,".

C. By redesignating paragraphs (a)(2), (a)(3), and (a)(4) of § 212.223 as paragraphs (a)(3), (a)(4), and (a)(5), respectively.

D. By revising paragraph (a)(2) after § 212.223(a)(1) to read as follows:

§ 212.223 Operating practices compliance inspector.

* * * * *

(2) Control of Alcohol and Drug Use (49 CFR Part 219).

* * * * *

PART 217—[AMENDED]

3. Part 217 is amended as follows:

A. The authority for Part 217 continues to read as follows:

Authority: Secs. 202 and 209, 84 Stat. 971 and 975 (45 U.S.C. 431 and 438), and sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

B. By amending § 217.13 to add a new paragraph (d) to read as follows:

§ 217.13 Annual report.

* * * * *

(d) The number, type and result of each test and inspection related to enforcement of the railroad's rule on alcohol and drug use ("Rule G"), to specifically include:

(1) Total number of observations of individual employees (including observations for which breath, blood or urine tests were included and observations after accidents/incidents and rule violations) and total number of employees charged with violation of Rule G or a similar rule. Provide information separately for employees covered by the Hours of Service Act and other employees.

(2) Number of breath tests conducted under the authority of § 219.301 of this title and number of such tests that were positive;

(3) Number of urine tests conducted under the authority of § 219.301 of this title and number of such tests that were positive. For positive tests indicate number for alcohol and for each controlled substance drug group (marijuana, depressants, stimulants, narcotics, hallucinogens) or other drug.

(4) Number of blood tests demanded by employees in connection with such observations and results by substance (alcohol, controlled substance drug group, other drug).

B. *By amending Appendix A to add an entry as follows:*

APPENDIX A—SCHEDULE OF CIVIL PENALTIES

Section		Violation	Intentional violation [1]
*	* * * *		
217.13	Annual report:		
(d)		$1,000	$2,500
*	* * * *		

PART 218—[AMENDED]

4. Part 218 is amended by revising the title to read "Railroad Operating Practices."

PART 225—[AMENDED]

5. *Part 225 is amended as follows:*

A. The authority for Part 225 continues to read as follows:

Authority Secs. 12 and 20, 24 Stat. 383, 386, as amended (49 U.S.C. 12 and 20); secs. 1–7, 36 Stat. 350, as amended, (45 U.S.C. 38–43); secs. 202, 208 and 209, 84 Stat. 971 and 975, (45 U.S.C. 431, 437 and 438); secs. 6(e) and (f); 80 Stat. 939, (49 U.S.C. 1655(e) and (f)); 49 CFR 1.49(b)(11), (h) and (n); secs. 5(b) and (m), 80 Stat. 935, (49 U.S.C. 1654(b) and (m)); 14 CFR 400.43(c)).

B. Paragraph (d) of § 225.17 is revised to read as follows:

§ 225.17 Doubtful cases; alcohol or drug involvement.

* * * * *

(d)(1) In preparing a Rail Equipment Accident/Incident Report under this part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad shall report such alleged use or impairment as provided in the current FRA Guide for Preparing Accident/Incident Reports. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad shall include in the narrative statement of such report a brief explanation of the basis of such determination.

(2) For any train accident within the requirement for post-accident testing under § 219.201 of this title, the railroad shall append to the Rail Equipment Accident/Incident Report any report required by § 219.209(b) (pertaining to failure to obtain samples for post-accident toxicological testing).

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

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 18395 Filed 7–31–85; 11:00 am]

BILLING CODE 4910-06-M

Federal Register

Friday
August 2, 1985

Part VI

Department of Agriculture

Office of the Secretary

7 CFR Part 8

4-H Club Name and Emblem; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 8

4–H Club Name and Emblem

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, the proposed rule published in the **Federal Register** on October 24, 1980, 45 FR 70471. The final rule revises the current regulations on authorization of the use of the 4–H Club Name and Emblem by eliminating outdated provisions and by updating organizational names and titles.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Stormer, Deputy Administrator, 4–H-Youth Programs, Extension Service, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone: 202/447–5853.

EFFECTIVE DATE: September 3, 1985.

SUPPLEMENTARY INFORMATION: On October 24, 1980, the Department of Agriculture published a proposed rule in the **Federal Register** (45 FR 70471) which revises the regulations on authorization for use of the 4–H Club Name and Emblem as they appear in 7 CFR, Part 8. The existing regulations were originally promulgated in 1955. The revised regulations eliminate sections of the existing regulations which are no longer appropriate, and update regulations throughout in terms of organizational names and titles.

Written comments were received from three persons in response to the proposed changes. These comments were reviewed and considered. The major comment related to the elimination of the word "club" in designating 4–H in the revised regulations, to reflect the broader 4–H program as it is conducted today. It has been determined that this cannot be done without changing the original statute. In the absence of serious problems in use of the term "4–H Club," it was determined not to attempt to seek a change in the statute at this time.

It was concluded that all other comments received were reflected generally already in the revised regulations and that they will be covered more specifically in supplemental administrative guidelines concerning use of the 4–H Club name and emblem. In addition, a number of minor clarifications and editorial changes have been made throughout the regulations.

A summary of the changes in the regulations is as follows:

(1) Section 8.2, *Delegation of Authority,* has been conformed to the present delegation of authority to authorize the use of the 4–H Club name and emblem from the Secretary of Agriculture to the Administrator of the Extension Service. Accordingly, "Administrator for Extension, Science and Education Administration" is changed to "Administrator of the Extension Service" wherever the title appears.

(2) Repetitive references and detailed descriptions of the grant of authority to use the 4–H Club name and emblem to the National 4–H Council have been determined to be unnecessary to the regulation. Accordingly, § 8.7(b) has been deleted in its entirety. All other changes are editorial in nature and intended for clarification only. They do not alter the basic import of the regulations as proposed.

Executive Order 12291

These regulations have been reviewed under the USDA criteria established to implement Executive Order 12291, "Federal Regulations." A determination has been made that this action should not be classified as significant under those criteria. A Draft Impact Analysis has been prepared and is available on request.

Regulatory Flexibility Act

This Department has certified that this document 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.). Therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

Any information collection or record keeping requirements that we imposed on the public by this rule will not be implemented until such time as they have been approved, in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et. seq., by the Office of Management and Budget.

List of Subjects in 7 CFR Part 8

4–H Club, Signs and symbols.

Accordingly, 7 CFR, Part 8 is revised to read as follows:

PART 8—4-H CLUB NAME AND EMBLEM

Sec.

8.1 Policy.
8.2 Delegation of authority.
8.3 Definitions.
8.4 Basic premises.
8.5 Revocation of present authorizations.
8.6 Authorization for use.
8.7 Continued use.
8.8 Use by public informational services.
8.9 Use in 4–H fund raising.

Authority: 5 U.S.C. 301; 18 U.S.C. 707.

§ 8.1 Policy.

The Cooperative Extension Service, of which the 4–H Club program is a part, invites and appreciates the cooperation of all organizations, agencies, and individuals whose interest, products, or services will contribute to the educational effort of the Cooperative Extension Service as conducted through the 4–H Club program.

§ 8.2 Delegation of authority.

The Administrator of the Extension Service, United States Department of Agriculture, may authorize the use of the 4–H Club Name and Emblem in accordance with the regulations in this part.

§ 8.3 Definitions.

The term "4–H Club Name and Emblem" as used in this part means the emblem consisting of a green four-leaf clover with stem and the letter "H" in white or gold on each leaflet, or any insignia in colorable imitation thereof, or the words, "4–H Club," "4–H Clubs" or any combination of these or other words or characters in colorable imitation thereof.

§ 8.4 Basic premises.

(a) The 4–H Club Name and Emblem are held in trust by the Secretary of Agriculture of the United States Department of Agriculture for the educational and character-building purposes of the 4–H program and can be used only as authorized by the statute and according to the authorization of the Secretary or designated representative.

(b) The 4–H Club Name and Emblem may be used by authorized representatives of the United States Department of Agriculture, the Cooperative Extension Services, the land-grant institutions, and the National 4–H Council, according to these regulations, for serving the educational needs and interests of 4–H youth.

(c) Any use of the 4–H Club Name and Emblem is forbidden if it exploits the 4–H programs, its volunteer leaders or 4–H youth participants or the United States Department of Agriculture, the Cooperative Extension Services, or the land-grant institutions, or their employees.

(d) The 4–H Club Name and Emblem shall not be used to imply endorsement of commercial firms, products, or services.

§ 8.5 Revocation of present authorizations.

Effective September 16, 1985, authorization permits for the use of the 4–H Club Name and Emblem presently in effect will be revoked. However, such authorizations may be renewed upon written request.

§ 8.6 Authorization for use.

(a) The Administrator of the Extension Service may grant authorization for use of the 4–H Club Name and Emblem:

(1) For educational or informational uses which the Cooperative Extension Service deems to be in the best interests of the 4–H program and which can be properly controlled by the Cooperative Extension Service.

(2) For services to youth which the Cooperative Extension Service determines it is not in a position itself to perform.

(b) Authorizations, when issued, will be valid for specified purposes and periods of time only. Application forms for requesting authorization to use the 4–H Club Name and Emblem may be obtained from the Administrator of the Extension Service, United States Department of Agriculture, Washington, D.C. 20250.

(c) Granting an authorization to an individual, organization, or institution for a specific use does not preclude granting a similar authorization to another individual, organization, or institution for the same or a similar purpose.

(d) All uses of the 4–H Club Name or Emblem shall be consistent with the educational purposes, character-building objectives, and dignity of the 4–H program and the 4–H Club Name or Emblem shall be given a position of prominence. It is not permissible to superimpose any letter, design, or object on the 4–H Club Emblem, or to materially alter its intended shape.

(e) Specific authorization is not required to use the 4–H Club Name or Emblem in media such as newspapers, periodicals, and radio and television programs when such use is primarily for educational or informational purposes. Likewise, specific authorization is not required to use the 4–H Club Name or Emblem in those exhibits, displays, etc., which are designed primarily to pay tribute to or salute the 4–H program and are in keeping with the policies enunciated herein.

(f) Authorization must be obtained for use of the 4–H Club Name or Emblem by other than representatives of the Cooperative Extension Services, the land-grant institutions, and the National 4–H Council in connection with contests and awards, books, booklets, charts, posters, and all other forms of publications; all calendars regardless of origin or use; theatrical and nontheatrical motion pictures; slides, slide films, and other visual and audio-visual materials; supplies (whether to be sold or provided without charge); and titles of persons.

(g) Any authorization or permission for use of the 4–H Club Name and Emblem may be revoked at any time after written notice.

§ 8.7 Continued use.

(a) The Cooperative Extension Services, land-grant institutions, local 4–H Clubs and groups and other officially affiliated 4–H organziations recognized by the Secretary of Agriculture and the Cooperative Extension Service are authorized to use the 4–H Club Name or Emblem:

(1) For their own educational or informational purposes according to these regulations;

(2) On materials which are originated, requested, purchased, distributed, or sold by them for use in their respective geographical areas of responsibilities;

(3) Except as specifically authorized by the above-named organizations for use within the respective geographic boundaries specified (club or group, county, area, State) and as provided for in paragraph (4) of this section, manufacturers, wholesalers, jobbers, retailers, purchasers or others cannot manufacture, sell, or distribute materials bearing the 4–H Club Name or Emblem.

(4) Any proposal for distribution on an interstate, regional, or nationwide basis of materials, supplies, and similar items bearing the 4–H Club Name or Emblem which originates with an organization or individual not affiliated with the Cooperative Extension Service shall be brought to the attention of the Administrator of the Extension Service, United States Department of Agriculture, for approval.

§ 8.8 Use by public informational services.

(a) In any advertisement, display, exhibit, visual and audio-visual material, news release, publication in any form, radio and television program devoted in whole or in part to 4–H, the 4–H message or salute must be distinctly set apart from any commercial product message or reference.

(b) Advertisements, news releases, publications in any form, visuals and audio-visuals, or displays in any form must not include actual or implied testimonials or endorsements of business firms, commercial products or services, either by 4–H Clubs, other 4–H organizations and affiliated groups, 4–H youth participants, volunteer 4–H leaders, the Cooperative Extension Services, the land-grant institutions, USDA, or by any employees associated with any of the foregoing. Statements that a product is used or preferred to the exclusion of similar products are not permitted.

(c) The granting of an authorization to a non-Extension affiliated agency, organization or individual, for production of films, visual and audio-visual materials, books, publications in any form, etc., is contingent upon approval of the initial proposal and subject to review of the script of the visual or audio-visual or draft of the publication when the draft is in the final working form.

§ 8.9 Use in 4–H fund raising.

(a) Fund-raising programs using the 4–H Club Name or Emblem or involving 4–H participants and leaders, may be carried out for specific educational purposes. Such fund-raising programs must have the approval of the appropriate Cooperative Extension office, as follows:

(1) Approval of the County Extension Office, or the appropriate land-grant institution, if the fund-raising program is confined to a county.

(2) Approval of the State Extension Office, or the appropriate land-grant institution, if the fund-raising program is multi-county or Statewide.

(3) Approval of the Administrator of the Extension Service or a designee if the fund-raising program is multi-State or Nationwide.

(b) 4–H fund-raising programs may be carried out so long as the products and services sold do not bear the 4–H Club Name or Emblem and are not themselves labeled as 4–H products or 4–H services.

Done at Washington, D.C., this 17th day of May, 1985.

John R. Block,
Secretary of Agriculture.

[FR Doc. 85–18419 Filed 8–1–85; 8:45 am]
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