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Thursday
September 12, 1985

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Selected Subjects

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Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Greenhouse Cucumbers

Correction

In FR Doc. 85-21218 beginning on page 36041 in the issue of Thursday, September 5, 1985, make the following corrections:

1. On page 36041, in the third column, in paragraph 1, in the authority, in the second line, "amended as 1090 amended," should read "amended, 1090 as amended,".

2. On page 36042, in the first column, in the fifth line of the table of contents, "Conditions" should read "Condition".

3. Also on page 36042, the section heading now reading "§ 51.3588" should read "§ 51.3855".

BILLING CODE 1505-01-M

Food and Nutrition Service

7 CFR Parts 250 and 252

National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule will extend the National Commodity Processing (NCP) Program, established in the June 23, 1983 rule, through June 30, 1986. This action will promote a regular supply of processed end products to eligible recipient agencies for the 1985–86 school year. The Food and Nutrition Service (FNS) is also proposing a regulation requiring State distributing agencies to enter into processing agreements as a condition of receiving bonus commodities for fiscal year 1987. Extending NCP for a year will provide a grace period until this proposed requirement can be put forth for public comment. This interim rule also affords FNS the opportunity to: (1) Remove all references to NCP from Part 250 and to add a new Part 252 to accommodate the NCP Program; (2) incorporate in the regulatory text procedures currently contained in Part 250 regulations and the NCP Program agreement; and (3) address comments received on the June 23, 1983, (48 FR 28609) interim rule.

The June 23 rule established additional authority and procedures for offering manufactured food items to eligible recipient agencies at substantially reduced prices through the NCP Program. This interim rule will more clearly reflect the direct relationship between FNS and private food processors to ensure continued consumption of designated surplus commodities and clarify responsibilities under the NCP Program.

EFFECTIVE DATE: September 12, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Alberta Frost, Director, Nutrition and Technical Services Division, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3585.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), information collection requirements contained in §§ 252.4, 252.5, and 252.6 of this proposed rule have been approved by the Office of Management and Budget (OMB #0584-0325); approved for use through August 31, 1988).

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for program participants, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the FNS, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This action will ensure the availability of processed surplus commodities to eligible recipient agencies. The eligible recipient agencies include all outlets eligible for commodities under Parts 250 and 251.

Background

On June 23, 1983, the Department published interim regulations (48 FR 28609) which set forth a framework for the NCP Program. In part, the regulations were issued to satisfy the dictates of section 203 of the Temporary Emergency Food Assistance Act (TEFAA) (7 U.S.C. 612c note) which directed the Secretary to encourage the consumption of commodities made available without charge or credit under any nutrition program administered by the Secretary of Agriculture through processing agreements with private companies. Public comments were solicited concerning those interim regulations and all phases of program operation.

Under the 1983 interim rule, FNS entered into agreements with processors to convert donated commodities into end products desired by recipient agencies. Under those agreements, processors were permitted to market the end products nationwide to any recipient agency eligible to receive the specified commodity used in the end product. Bonus dairy commodities and honey were made available under the NCP Program.

On May 13, 1985, the Department published a notice (50 FR 19993) announcing that the NCP Program would end on June 30, 1985, because the NCP Program had not achieved its stated goals. Pursuant to Title I of Pub. L. 99-88, Congress has now extended section 203 of the Temporary Emergency Food

Assistance Act of 1983 through June 30, 1986. The Department has decided to satisfy this directive by reauthorizing the NCP Program for one additional year.

Because of the need to immediately put in place regulations to continue the NCP Program, these regulations are being issued as interim rules and are made immediately effective. Public comments concerning the program have been solicited, received and analyzed. A determination has been made that the public interest would be best served by issuing this rule as an interim rule, immediately effective, in order to quickly reinstitute the program and continue the flow of commodities to processing companies and recipient agencies.

Discussion of Interim Rules

The following material contains a description of the interim regulations and a discussion of the public comments. During the public comment period, 64 comments concerning program requirements were received. As discussed below, this interim rule changes the format of the NCP regulations, incorporates operational procedures currently addressed in the Part 250 regulations and in the NCP Program agreement and states other necessary program requirements.

Change in Format

This interim rule amends Part 250 by removing the NCP Program regulations from the Food Distribution Program Regulations and adding a new Part 252. The Department believes that the format more clearly reflects the direct relationship between FNS and private food processors to stimulate the consumption of surplus commodities currently in storage. Therefore, in § 250.3 the definition of "distributing agency" is amended by removing the reference to FNS as the distributing agency under the NCP Program and § 250.16 "National Commodity Processing System" is removed from Part 250.

Because the NCP regulations are being removed from Part 250, many of the requirements of Part 250 which are applicable to the NCP Program must be restated in Part 252. Those requirements are discussed below under the appropriate subject matter heading.

Proof of Marketability

The interim rule required processors to provide to FNS, prior to the delivery of any donated food, proof of marketability in the form of written intents to purchase from recipient agencies.

Two comments were received on this provision. One commentor stated that a written intent to purchase is meaningless, costly and that a bond is enough to protect the interest of the Department. The other commentor stated that the written intent to purchase is only one element of proof of marketability.

We agree that the requirement for a written intent to purchase is too narrow a criterion on which to base a decision to approve or deny an agreement. Therefore, under this interim rule, FNS will evaluate the following information in determining a company's ability to sell end products under the NCP Program: (1) Participation in the State processing program and historical performance under NCP; (2) anticipated new markets for NCP end products; (3) geographic areas served by the processor; (4) ability to accept and store donated food in minimum truckload quantities; and (5) written intent to purchase or bids currently awarded. Therefore, § 252.4(a) of this interim rule requires that processors must demonstrate their ability to sell end products under the NCP Program. This includes information necessary for FNS to determine the processor's ability to meet the terms and conditions of the NCP agreement and NCP regulations.

Substitution

Only three commentors addressed substitution of commercially purchased food for donated commodities. Two commentors suggested that the Department require that the substituted ingredient be of domestic origin and the other commentor characterized the provision for FNS approval of substitution as nebulous and arbitrary.

In response to these commentors, § 252.4(c)(1) of this interim regulation requires that, when substitution is made, the commercial food must be of domestic origin. Additionally, the Department will require that only identical food may be substituted, i.e., the donated food and the commercial food must be of the same generic identity. Since all donated foods are of domestic origin, it is only reasonable that substituted foods must also be produced domestically. FNS is retaining authority to approve substitutions to ensure the integrity of the NCP Program. Substitution is only appropriate in the case of commingling of donated and commercially purchased food or when delays in donated food shipment adversely affect production.

Nutritional and Quality Requirements and Child Nutrition (CN) Labeling

Thirty-seven commentors were concerned about the absence of nutritional and quality requirements and a CN labeling requirement in the interim rule. The Department strongly believes that competition in the market place will result in quality products without a regulatory requirement. Additionally, the CN labeling program is a voluntary one. Although the Department is not mandating the use of CN labels, the recipient agency or distributing agency is not precluded from including this in the product specifications. Section 252.4(c)(15) specifies that labels on end products must meet Federal requirements for labeling; this includes CN labels. End products containing vegetable protein products must be labeled in accordance with Parts 210, 225, or 226 Appendix A.

Yield Factors

Section 250.16(e)(2)(vi) of the June 23, 1983, interim rule established a 100 percent yield factor for the amount of donated food contained in a case of end product. The Department received 19 comments on this provision. Half of the commentors supported the 100 percent yield factor because it maintains consistency among processors and it provides an equitable way to obtain the full value for commodities processed. Half the commentors opposed the 100 percent yield factor because they believe that it is unrealistic and results in a more expensive product since processors pass along the cost of the food needed to make up the loss incurred through processing.

In this interim rule, processors are required to assume a production return of 100 percent for the donated food when completing the end product data schedule required as part of the NCP agreement.

The Department understands it is virtually impossible to totally eliminate production loss by nature of the food production industry (i.e., losses in the shredding of commodity food, losses due to spillage in the application process and losses due to packaging and handling finished end product). However, additional commodity required to account for these production losses must be obtained from non-donated food. For example, when 75 pounds of donated food are delivered to a processor, 75 pounds of the donated food ingredient are presumed to be contained in end products. Only the amount of donated food used to produce

the end products may be used for inventory drawdown.

The Department believes that the assumed 100 percent production return encourages efficient operations and ensures full accountability for the donated food. The regulations governing State processing agreements also contain a 100 percent yield requirement for all substitutable donated food. This final rule was published in the Federal Register on May 15, 1985 (50 FR 20197).

Waiver of Ingredient Information

The June 23, 1983, interim rule provided the FNS Administrator with the authority to waive the requirement to list the ingredients in the end product upon written request and justification from the processor.

Only one commentor addressed the ingredient waiver provision. This commentor supports the waiver provision because it protects proprietary formulation. This rule deletes the waiver provision. This information is essential to ensure that the end product contains a specific amount of ingredient indicated on the end product data schedule. Also, this information is essential for quality control purposes for end products containing a Child Nutrition (CN) label. However, under § 252.4(c)(1), the Department may permit processors to specify the total quantity of any flavorings or seasonings without identifying the ingredients which are components of the flavoring or seasoning. This provision is consistent with State processing regulations. Commentors are reminded that ingredient information is protected by FNS from disclosure to other entities under the Freedom of Information Act (5 U.S.C. 552).

Value of the Donated Food

Section 250.16(e)(2)(ii) defined the value of the donated food as the greater of: (1) The market price of the donated food at the time of sale to the recipient agency, or (2) the price support level for the donated food at the time of sale, adjusted to reflect transportation costs incurred by the Commodity Credit Corporation (CCC) in obtaining and delivering food to the processor. Nine comments were received on this provision. Several commentors recommended that the method of establishing the value of the donated food be consistent with State processing. Other commentors believed the method required by the interim rule is unworkable.

Section 252.2 of this interim rule defines contract value of the donated food as the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food. This value is established at the time of agreement approval and remains in effect for the term of the agreement. The Department realizes that occasionally the agreement value of a commodity may be higher or lower than the market value for the same commodity. This may result in a net loss or gain for the processor when the agreement value of the donated food is passed on to the recipient agency. Slight increases and decreases tend to balance each other in situations where price quotations (i.e., bids) are for an extended period of time. The Department does not feel this will have a detrimental effect on industry as food prices typically fluctuate in the commercial market.

Donated Food Value Return System

Section 250.16(e)(2)(iii) of the June 23, 1983, interim rule required processors to return to the purchasing recipient agency the agreement value of the donated commodity. At the time of agreement approval, FNS approved the method for returning the value of the donated commodity contained in the end product to the recipient agency. The processor either: (1) Reduced the market price of a processed end product by the value of the donated food contained in the product (discount); or (2) refunded to the recipient agency the value of the donated food contained in the end product (refund). FNS could approve any other system developed by the processor if the system ensured proper accountability.

A number of commentors expressed concerns regarding the value return provisions. Four commentors stated that under State processing systems, States are encouraged to use the refund system while NCP regulations allow processors to use the discount system. These commentors wanted State processing regulations and NCP regulations to be consistent in this area.

Four commentors objected to the double billing situation created under the discount through a distributor. (Under the dual billing system through a distributor, the processor sells the end products through a distributor, the processor bills the recipient agency for the end products and the distributor bills the recipient agency for storage, handling and delivery.) Besides creating an inconsistency between NCP and State processing requirements, it also creates additional paperwork for processors, distributors and recipient agencies. One commentor suggested that the processor should sell the end product to the distributor at a discount. The distributor should add the storage, handling and delivery charges to the discounted price of the end product and require the recipient agency to pay the total price of the end product. This would alleviate double billing to the recipient agency and allow the processor to receive timely payment for the end products.

Four commentors objected to the refund system. Two commentors stated that the refund system results in a 60 to 90 day interest-free loan to the processor. One commentor objected because, under the refund system through a distributor, the distributor earns more since the distributor's markup is based on a percentage of the cost of the end product. The distributor earns less when the cost of the end product. The distributor earns less when the value of the donated food is discounted before the distributor buys the end product. Another commentor objected to the refund system because of the paperwork involved and because most major computer systems do not lend themselves to daily input of refund applications.

FNS is continuing to allow the dual billing system because it ensures that recipient agencies receive the total discount value of the donated food as a credit on the billing invoice from the processor. FNS is also allowing the use of the refund system under the NCP Program. It is the recipient agencies' responsibility to apply for a refund in a timely manner. If they do so, processors will not benefit from the 60 to 90 day interest free loan. FNS has found the refund system to be an accountable system which ensures that recipient agencies receive the full value of the donated food contained in processed end products. FNS will permit a system which affords recipient agencies the benefit of a discount purchase price without dual billing; the requirements of this system are being outlined in this rule.

FNS permitted the use of all the aforementioned value pass-through systems during the first two years of operation. Additional value pass-through systems were approved.

Section 252.4(c)(4)(i)–(ii) of this interim regulation describes what value pass-through systems will be permitted in the NCP Program. They have been broken into five categories with a description of each to more clearly delineate the responsibilities of the processor under each. They are as follows: (1) Direct sale discount system; (2) Direct sale refund system; (3) Indirect sale through distributor with dual

billing; (4) Indirect sale through distributor without dual billing; and (5) Indirect sale through distributor with a refund.

Recipient Agencies

In response to commentors who requested that the Department expand the types of recipient agencies eligible to receive donated commodities under NCP, the Department has determined that expansion is not warranted at this time. The outlets in question, i.e., Federal prisons, Veterans Administration Hospitals, and Department of Defense dependent school lunch programs, are not eligible to receive food under Part 250, Food Distribution Regulations. Also, the temporary nature of this extension of the NCP Program does not warrant establishing additional recipient agency eligibility criteria for a one year period.

Section 252.2 defines "eligible recipient agency" as an agency that has a current agreement with a distributing agency to receive donated commodities.

Performance Bonding

Section 250.16(e)(2)(v) of the June 23, 1983, interim rule required processors to provide a performance bond or an irrevocable letter of credit in an amount acceptable to FNS. One commentor stated a bond for one month's inventory should be sufficient and one commentor stated that a bond equal to the current retail value of donated food in inventory should be sufficient.

The Department is requiring in § 252.4(c)(5) that the processor provide a performance supply and surety bond or an irrevocable letter of credit in an amount to cover the value of donated food on hand or on order at any one time.

Reporting and Recordkeeping Requirements

Sections 250.6 (r) and (s) specify records and reports necessary to assure donated food is received, acknowledged and distributed in an accountable manner. Six commentors wrote to support the retention of records and the need for accountability and audit trails. FNS has incorporated these requirements in § 252.4 (b) and (c) to ensure an accountable system for tracking donated food shipped to processors under the NCP Program.

Recipient Agency and State Agency Responsibilities

Section 250.6(r)(5) and 250.6(r)(2) state the responsibilities of State and recipient agencies. Commentors requested clarification of these responsibilities. Therefore, §§ 250.6(r)(5) and 250.6(r)(2) are adopted from Part 250 and incorporated into § 252.5(b) to ensure accountability for donated food shipped to processors and further delivered to recipient agencies in another form. We have also added language requiring that recipient agencies insure that any funds received as a result of refund payments be designated for use by the food service department of a recipient agency. The requirement is necessary to insure that funds generated by participation in the NCP Program are used to provide food services.

Provisions for the Disposal of Out-of-Condition Donated Commodities

Section 250.7 is also adopted in its entirety in §§ 252.6 (a) and (b) since the possibility for loss of donated food through improper storage is as inherent under the NCP Program as it is in the other food distribution programs.

Sanctions for Noncompliance With the Regulations and/or Agreement

Section 250.13(a) is adopted in full in § 252.6(c) for the protection of the Department.

Performance Reporting

The interim rule requires processors to submit monthly performance reports with respect to, but not limited to, the receipt, disposal, and inventory of donated food. One commentor supported reporting requirements and one supported identical reporting requirements for NCP and State processing. Section 252.4(c)(9) of this interim rule clarifies that the performance report is an activity report of the sale and delivery of end products during the month. The report must be postmarked by the last day of the month following the report month. Adjustments for any prior month may be reported on the monthly activity report. No later than 90 days after the end of the agreement period, processors must reconcile all reports. This reporting requirement is currently operational and does not add any substantial new burdens to the existing reporting requirements. The 90 day adjustment provision would be advantageous to both the Department and processors to determine final inventory balances of donated food. It will also be useful in assessing inventory balances to assure they do not exceed a six month supply based on the processor's previously submitted sales reports. Particularly under the refund system, this provision gives schools 60 days from the close of the school year to file for a refund and gives the processors 30 days to process the payments and report to FNS.

Duplicate Sales Reporting

Since the NCP Program has become fully operational, concern has been raised regarding the possibility of reporting sales under both NCP and State processing agreements. FNS received 15 comments from recipient agencies expressing concern that running dual programs (State and NCP) could lead to confusion on the part of recipient agencies which could not differentiate between a State or NCP sale. The same confusion could affect distributor reports of sales to processors which could lead to duplicate reporting. Where recipient agencies purchase end products through both NCP and a State contract, a single sale could be reported back to the processor as an NCP purchase and a State purchase. This would make it possible for a processor to draw down on both State and NCP inventories for the same sale.

In § 252.4(c)(4)(ii) of this interim rule, language has been added that processors must continue to utilize internal controls to eliminate duplicate reporting. These controls must be outlined in detail in the processing agreement prior to approval.

Corrective Action—Processor Verification of Sales

For the indirect sale through distributor system without dual billing, a processor must have the means to check the distributor's recipient agency sales reports. The rule requires in § 252.4(c)(4)(ii) that verification be based on a statistically valid sample of recipient agency sales to ensure a higher confidence level in the results. The sampling plan will be submitted for FNS approval. The results of the verification may be used to support the projection of a claim against the processor when in review of the sample, it is determined that the value of donated food has not been passed on to recipient agencies or when end products have been improperly distributed.

The rule requires that any results of the sampling indicating significant problem areas be provided to FNS along with corrective action proposals.

Annual Inventory Reconciliation

Section 252.4 includes a provision that each processor submit annual reconciliation reports and make payments to FNS for all outstanding refund applications and excessive inventories in accordance with § 252.3(a)(3). Section 252.4(c)(9)(ii) requires that the annual reconciliation report be made no later than 90 days after the end of the year to which the contract pertains.

This requirement is essential to ensure that no processor enjoys unjust enrichment as a result of ordering donated food far in excess of their needs based on sales activity reported to FNS. It affords FNS the ability to reduce excessive inventory balances on an annual basis to keep all processors with the six month allowable inventory level.

Food Containers and By-Products

Section 252.4 includes a provision that each processor shall return to FNS all funds received from the sale of donated food containers. It further requires the processor to return to FNS all funds received from the sale of any by-products derived from processing donated food or commercial food which as been substituted for donated food. This requirement is similar to that contained in § 250.15(b)(3)(viii) of the State processing regulations.

Miscellaneous Provisions

FNS is adding § 252.6 to address losses of donated food as a result of damage, improper distribution, misuse, embezzlement, theft, or obtainment by fraud to ensure the donated food is only used for the purpose of manufacturing and distributing processed end products to eligible recipient agencies. If donated food is lost as a result of any of the above circumstances, FNS will hold the processor responsible for payment for the value of the lost donated food in accordance with the provisions found in § 252.6 (a), (b) and (c) of this part. This action is necessary to ensure the value of the commodities is only realized by eligible recipient agencies.

List of Subjects in 7 CFR Parts 250 and 252

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

PART 250—FOOD DISTRIBUTION PROGRAM

Accordingly, Part 250 is amended to read as follows:

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 416 Agricultural Act of 1949 (7 U.S.C. 1431).

2. In § 250.3, the definition of "Distributing agencies" is revised to read as follows:

§ 250.3 Definitions.

* * * * *

"Distributing agencies" means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients. A recipient agency may also be a distributing agency.

* * * * *

§ 250.16 [Removed]

3. Part 250 is amended by removing § 250.16 in its entirety.

4. A new Part 252—"NATIONAL COMMODITY PROCESSING PROGRAM" is added to 7 CFR Chapter II to read as follows:

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

Sec.

Authority: Sec. 416 Agricultural Act of 1949 (7 U.S.C. 1431).

§ 252.1 Purpose and scope.

(a) *Purpose.* This part provides a program whereby the Food and Nutrition Service (FNS) and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies. The intent of the program is to encourage private industry, acting in cooperation with FNS, to develop new markets in which donated food may be utilized. It is expected that the processors will use their marketing abilities to encourage eligible recipient agencies to participate in the program. Additionally, recipient agencies will benefit by being able to purchase processed end products at a substantially reduced price.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FNS for the processing of commodities designated by the Secretary of Agriculture and the minimum requirements which NCP processors must meet. Also prescribed are distributing agency and recipient agency responsibilities.

(c) *Eligible Recipient Agencies.* Recipient agencies shall be eligible to participate in the NCP Program to the extent of their eligibility to receive the food involved in the NCP Program, pursuant to § 250.8 and Part 251.

§ 252.2 Definitions.

The terms used in this part that are defined in §§ 250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

"Agreement value of the donated commodity" means the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Distributing agencies" means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients; and FNS when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies under the National Commodity Processing Program. A recipient agency may also be a distributing agency.

"Donated food value return system" means a system used by a processor or distributor to reduce the price of the end product by the agreement value of the donated commodity.

"NCP Program" means a program under which FNS and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies.

"Recipient agency" means disaster organizations, charitable institutions, nonprofit summer camps for children, school food service authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, nonresidential child care institutions and emergency feeding organizations.

"Substitution" means the replacement of donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.).

§ 252.3 Administration.

(a) *Role of FNS.* The Secretary will designate those commodities which will be available under the NCP Program. Only commodities made available without charge or credit under any nutrition program administered by USDA will be available under NCP. FNS will act as the distributing agency and the contracting agency under the NCP Program. The Department will pay costs for delivering donated commodities to participating NCP Program processors.

(b) *Food orders.* When NCP Program processors request donated food, FNS will determine whether the quantities ordered are consistent with the

processor's ability to sell end products and/or the processor's past demonstrated performance under the program. If the quantities are appropriate, FNS will request from CCC the donated food for transfer of title to FNS and delivery to a mutually agreed upon location for use by the NCP Program processor. The title to these commodities transfers to FNS upon their acceptance by the processor. FNS retains title to such commodities until:

(1) They are distributed to eligible recipient agencies in processed form at which time the recipient agency takes title;

(2) They are disposed of because they are damaged or out-of-condition; or

(3) Title is transferred to the NCP Program processor upon termination of the agreement.

(c) *Substituted food.* When FNS approves the substitution of donated commodities with commercial food, title to the substituted food shall transfer to FNS and the processor shall use the substituted food in accordance with the terms and conditions of this Part.

(d) *Inventory levels.* FNS will monitor the inventory of each food processor to ensure that the quantity of donated food for which a processor is accountable is at the lowest cost-efficient level. In no event shall a processor hold in inventory more than a six-month supply, based on average monthly usage under the NCP Program, unless a higher level has been specifically approved by FNS on the basis of justification submitted by the processor. Under no circumstances should the amount of donated food requested by the processor be more than the processor can accept and store at any one time. FNS will make no further distribution to a processor whose inventory exceeds these limits until such time as the inventory is reduced.

(e) *Recipient agency registration.* FNS will register, upon request, eligible recipient agencies. FNS will make available to food processors a listing of registered eligible recipient agencies for marketing purposes. Any processor desiring additional listings will be charged a fee for the listing which is commensurate with the Department's policy on user fees.

§ 252.4 Application to participate and agreement.

(a) *Application by processors to participate.* Any food processor is eligible to apply for participation in the NCP Program. Applications may be filed with FNS at any time on an FNS-approved form. FNS will accept or reject the application of each individual food processor within 30 days from the date of receipt, except that FNS may, at its discretion, extend such period if it needs more information in order to make its determination. In determining whether to accept or reject an application, FNS shall take into consideration at least the following matters: the financial responsibility of the applicant; the ability of the applicant to meet the terms and conditions of the regulations and the NCP agreement; ability to accept and store commodities in minimum truckload quantities; historical performance under the State and NCP processing programs; anticipated new markets for NCP end products; geographic areas served by the processor; the ability of the applicant to distribute processed products to eligible recipient agencies; and a satisfactory record of integrity, business ethics and performance. In addition, the processors must demonstrate their ability to sell end products under NCP by submitting supporting documentation such as written intent to purchase, bids awarded, or historical sales performance. FNS will make a final determination based on all available documentation submitted.

(b) *Agreement between FNS and participating food processors.* Upon approval of an application for participation in the NCP Program, FNS shall enter into an agreement with the applicant food processor. All agreements under the NCP Program will terminate on June 30, 1986.

(c) *Processor requirements and responsibilities.* In accordance with the following provisions and the NCP agreement, any processor participating in the NCP Program may sell to any eligible recipient agency nationwide a processed product containing the donated food received from FNS.

(1) The processor shall submit to FNS end product data schedules which include a description of each end product to be processed, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product. FNS may permit processors to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of seasonings or flavorings. The end product data schedule must include the processors' free on board (FOB) plant price schedule for quantity purchases of processed products. The end product data schedule shall be made a part of the NCP agreement.

(2) When determining the value of the donated food, the processor shall use the agreement value of the donated food which shall be the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

(3) The processor shall demonstrate to the satisfaction of FNS that internal controls are in place to ensure that duplicate reporting of sales under the NCP Program and any other food distribution program does not occur.

(4) The processor shall use a method of selling end products to recipient agencies which ensures that the price of each case of end product is reduced by the agreement value of the donated commodity and ensures proper accountability. In line with FNS guidelines and subject to FNS approval, the processor shall select one or more of the following donated food value return systems to use during the term of the agreement. Regardless of the method used, the processor shall ensure that the invoice clearly indicates the discount included or refund due on the end product and clearly identifies that the discount included or refund due is for the value of the donated food. Regardless of the method chosen for selling end products, the processor shall reduce his inventory only by the amount of donated food represented by the discount or refund placed on the end product.

(i) *Direct Sale.* A direct sale is a sale by the processor directly to the eligible recipient agency. The following two methods of direct sales are allowed:

(A) *Discount System.* When the recipient agency pays the processor directly for an end product purchased, the processor shall invoice the recipient agency at the net case price which shall reflect the value of the discount established in the agreement.

(B) *Refund System.* The processor shall invoice the recipient agency for the commercial/gross price of the end product. The recipient agency shall submit a refund application to the processor within 30 days of receipt of the processed end product and the processor shall pay directly to the eligible recipient agency within 30 days of receipt of the refund application from the recipient agency, an amount equal to the established agreement value of donated food per case of end product multiplied by the number of cases delivered to and accepted by the recipient agency. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

(ii) *Indirect Sale.* An indirect sale is a sale by the processor through a distributor to an eligible recipient

agency. Indirect sales can be made with or without dual billing. Dual billing involves the processor billing the recipient agency for the end product and the distributor billing the recipient agency for the cost of services rendered in the handling and delivery of the end product. The following three methods of indirect sales are allowed:

(A) *Sale Through Distributor with Dual Billing.* When end products are sold to recipient agencies through a distributor under a system utilizing dual billing, the processor shall invoice the recipient agencies directly for the end products purchased at the net case price which reflects the value of the discount established in the agreement. The processor shall ensure that the distributor bills the recipient agencies only for the services rendered in the handling and delivery of the end product. The processor shall maintain delivery and/or billing invoices to substantiate the quantity of end product delivered to each recipient agency and the net case price charged by the processor which reflects the discount established by the agreement.

(B) *Sale Through Distributor without Dual Billing.* When end products are sold to recipient agencies through a distributor without dual billing, processors shall utilize a system that ensures that distributors provide discounts to recipient agencies. Such system shall be subject to approval by FNS. The processor must ensure proper accountability for the end products sold by distributors. The processor shall verify sales made by the distributor as specified in the NCP agreement. This shall include, but not be limited to: (*1*) Verifying sales of end products to eligible recipient agencies reported by distributors using a statistically valid sampling of such recipient agencies; (*2*) Reporting to FNS the level of invalid or inaccurate sales as part of a corrective action plan to correct significant problem trends as defined by FNS; and (*3*) Submitting monthly performance report adjustments and a plan to prevent or reduce future errors. If, as a result of this verification, FNS determines that the value of donated food has not been passed on to recipient agencies or when end products have been improperly distributed, FNS shall assert a claim against the processor in accordance with FNS instructions. Such claim may include a projection of the results of the verification sample to the total NCP sales reported by the processor.

(C) *Sale Through Distributor with a Refund.* Under the refund system, processors shall sell end products to distributors at the commercial/gross price of the end product. Distributors shall sell end products to recipient agencies at the commercial/gross price of the end products. Processors shall ensure that their invoices and the invoices of distributors identify the discount established by the agreement. Recipient agencies shall submit refund applications within 30 days of receipt of the processed end product. Within 30 days of the receipt of the refund application from the recipient agency certifying actual purchases of end product from substantiating invoices maintained by the recipient agency, the processor shall compute the amount and issue payment of the refund directly to the recipient agency. In no event shall refund applications for purchases during the period of the agreement be accepted by the processor later than 60 days after the close of the agreement period.

(5) The processor shall furnish to FNS prior to the ordering of any donated food for processing, a performance supply and surety bond obtained from surety companies listed in the current Department of Treasury Circular 570 or an irrevocable letter of credit to cover the amount of inventory on hand and on order.

(6) The processor shall draw down inventory only for the amount of donated food used to produce the end product. Processors shall ensure that amount equivalent to 100 percent of the donated food provided to the processor under the NCP Program is physically contained in end products. Additional commodities required to account for loss of donated food during production shall be obtained from non-donated food.

(7) The processor shall contact FNS for approval of any substitution of donated food. If approved, the processor shall substitute for donated food like quantities of domestically produced commercial food of the same generic identity (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.) and of equal or better quality. Substitution must not be made solely for the purpose of selling or disposing of the donated commodity in commercial channels for profit. Substitution is only appropriate in the use of commingling of donated food and commercial food or when delays in donated food shipment adversely affect production. The processor shall maintain records to substantiate that they continue to acquire on the commercial market amounts of substitutable food consistent with their level of non-NCP Program production and to document the receipt and disposition of the donated food. FNS shall withhold deliveries of donated commodities from processors that FNS determines have reduced their level of non-NCP Program production because of participation in the NCP Program.

(8) The processor shall be liable for all donated food provided under the agreement. The processor shall immediately report to FNS any loss or damage to donated food and shall dispose of damaged or out-of-condition food in accordance with Part 250.7.

(9) The processor shall submit to FNS monthly activity reports reflecting the sale and delivery of end products during the month.

(i) The processor shall ensure that the monthly activity report is postmarked no later than the last day of the month following the month being reported. The processor shall identify the month of delivery for each sale reported. The sale and delivery of end products for any prior month may be included on the monthly activity report. The processor shall include in the activity report: (A) The donated food inventory at the beginning of the reporting month; (B) The amount of donated food received from the Department during the reporting month; (C) Amount of donated food transferred to and/or from existing inventory; (D) A list of all recipient agencies purchasing end products and the number of units of end products delivered to each during the report month; the net price paid for each unit of end product; when the sale is made through a distributor, the name of the distributor; and (E) the donated food inventory at the end of the reporting month.

(ii) At the end of each agreement period, there will be a final 90 day reconciliation period in which processors may adjust NCP sales for any month.

(10) The processor shall maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food.

(i) The processor shall keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

(ii) The processor shall document that sales reported on the monthly activity reports, specified in paragraph (c)(9) of this section, were made only to registered eligible recipient agencies and that the normal wholesale price of the product was discounted or a refund payment made for the agreement value of the donated commodity.

(iii) When donated food is commingled with commercial food, the processor shall maintain records which will permit an accurate determination of the donated commodity inventory.

(iv) The processor shall make all pertinent records available for inspection and review upon request by FNS, its representatives and the General Accounting Office (GAO). All records must be retained for a period of three years from the close of the Federal fiscal year to which they pertain. Longer retention may be required for resolution of an audit or of any litigation.

(11) The processor shall obtain, upon FNS request, Federal acceptance service grading and review of processing activities and shall be bound by the terms and conditions of the grading and/or review.

(12) The processor shall indemnify and save FNS and the recipient agency free and harmless from any claims, damages, judgements, expenses, attorney's fees, and compensation arising out of physical injury, death, and/or property damage sustained or alleged to have been sustained in whole or in part by any and all persons whatsoever as a result of or arising out of any act or omission of the processor, his/her agents or employees, or caused or resulting from any deleterious substance, including bacteria, in any of the products produced from donated food.

(13) The processor shall be liable for payment for all uncommitted food inventory remaining at agreement termination.

(i) When agreements are terminated at the request of the processor or at FNS's request because there has been noncompliance on the part of the processor with the terms or conditions of the agreement, or if any right of FNS is threatened or jeopardized by the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory, plus any expenses incurred by FNS.

(ii) When agreements are terminated at FNS' request where there has been no fault or negligence on the part of the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory, unless FNS and the processor mutually agree on another value.

(14) The processor shall comply fully with the provisions of the NCP agreement and all Federal regulations and instructions relevant to the NCP Program.

(15) The processor shall label end products in accordance with § 250.15(j) and, when end products contain vegetable protein products, in accordance with 7 CFR Part 210, 225, or 226 Appendix A.

(16) The processor shall return to FNS any funds received from the sale of donated food containers and the market value or the price received from the sale of any by-products of donated food or commercial food which has been substituted for donated food.

(Information collection requirements approved by the Office of Management and Budget under Control No. 0584-0325)

§ 252.5 Recipient agency responsibilities.

(a) *Registration.* Recipient agencies that have approved agreements with distributing agencies to receive donated food may register with FNS on an FNS approved form to participate in the NCP Program. Upon request, FNS will provide recipient agencies with registration forms. Recipient agencies shall notify FNS when they are no longer eligible to receive donated food under an agreement. Failure to notify FNS shall result in claim action.

(b) *Recipient agency records.* Each recipient agency shall maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any funds which arise from the operation of the distribution program.

(c) *Refunds.* A recipient agency purchasing end products under the NCP Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor within 30 days of receipt of the end products. Recipient agencies must insure that any funds received as a result of refund payments be designated for use by the food service department.

(d) *Verification.* If requested by FNS, each recipient agency is encouraged to cooperate in the verification of end product sales reported by processors under the NCP Program. The recipient agency may be requested to verify actual purchases of end product as substantiated by the recipient agency's invoices and may also be requested to verify that the invoice correctly identifies the discount included or refund due for the value of the donated ingredient contained in the end product.

§ 252.6 Miscellaneous Provisions.

(a) *Improper distribution or loss of or damage to donated food.* If a processor improperly distributes or uses any donated food, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, FNS shall require the processor to pay to the Department the value of the donated food as determined by the Department.

(b) *Disposition of damaged or out-of-condition food.* Donated food which is found to be damaged or out-of-condition and is declared unfit for human consumption by Federal, State, or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. This instruction shall direct that unfit donated food be sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department. Upon a finding by the Department that donated food is unfit for human consumption at the time of delivery to a recipient agency and when the Department or appropriate health officials require that such donated food be destroyed, the processor shall pay for any expenses incurred in connection with such donated food as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated food.

(c) *Sanctions.* Any processor or recipient agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in the NCP Program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

(d) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity-related funds, assets, or property in child nutrition programs.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud commodities donated for use in the NCP Program, or any funds, assets, or property deriving from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen,

or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to, commodities which have been processed into different end products as provided for by this part, and the containers in which commodities have been received from the Department.

(Information collection requirements approved by the Office of Management and Budget under Control No. 0584-0325)

Dated: September 5, 1985.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 85-21769 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 361]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 361 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 13-19, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 361 (§ 908.661) is effective for the period September 13-19, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-447-5975.

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

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effectve under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the delared policy of the act.

The regulation is consistent with the marketing policy for 1984-85. The committee met publicly on September 3, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand for Valencia oranges has increased slightly.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

For the reasons set out above, 7 CFR Part 908 is amended as follows:

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-6741.

2. Section 908.661 is added to read as follows:

§ 908.661 Valencia Orange Regulation 361.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 13, 1985, through September 19, 1985, are established as follows:

(a) District 1: 314,000 cartons;

(b) District 2: 536,000 cartons;

(c) District 3: Unlimited cartons.

Dated: September 6, 1985.

Thomas R. Clark,

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

[FR Doc. 85-21788 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1435

[Amdt. 1]

Price Support Loan Program for 1983 Through 1985 Crops Sugar Beets and Sugarcrane

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The interim rule amending the regulations governing the Price Support Loan Program for the 1983 Through 1985 Crops Sugar Beets and Sugarcane, which was published in the **Federal Register** on July 3, 1985 (50 FR 27413), is hereby adopted as a final rule without change. The interim rule amended the regulations at 7 CFR 1435.115 to provide that sugar loan maturity dates may be extended for a period agreed upon by the Commodity Credit Corporation and the processor but in no event to a date later than September 30 following the date of loan disbursement.

EFFECTIVE DATE: September 12, 1985.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447-8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1435) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 25 and have been assigned OMB Number 0560-0093.

This final rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-base enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases; Number–10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule beause the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Interim Rule

An interim rule was published in the **Federal Register** on July 3, 1985, at 50 FR 27413 which amended the regulations governing the Price Support Loan Program for the 1983 Through 1985 Crops of Sugar Beets and Sugarcane. The interim rule amended 7 CFR 1435.115(d) to provide that sugar loan maturity dates may be extended for a period agreed upon by CCC and the processor but in no event to a date later than September 30 following loan disbursement. A comment period was provided through July 29, 1985. Since no comments were received with respect to the provisions contained in the interim rule, it has been determined that the interim rule should be adopted as a final rule.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Sugar.

Final rule

PART 1435—[AMENDED]

Acordingly, the interim rule published at 50 FR 27413, which amended 7 CFR Part 1435, is hereby adopted as a final rule without change.

Signed at Washington, D.C., on September 6, 1985.

John R. Block,

Secretary.

[FR Doc. 85-21787 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-18; Amdt. 39-5116]

Airworthiness Directives; Sikorsky Aircraft Model S-64E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive visual and dye penetrant inspections of the main rotor blade outboard spar for cracks and replacement, as necessary, on Sikorsky Aircraft Model S-64E helicopters. The AD is needed to prevent spar tip end loss which could result in loss of control of the helicopter.

DATE: Effective Date: September 12, 1985.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 1985.

Compliance: As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, Division of United Technologies Corporation, North Main Street, Stratford, Connecticut 06601.

A copy of the service bulletin is contained in the Rules Docket, in the Office of Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Cheryl McCabe, Airframe Branch, ANE-152, Boston Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7112.

SUPPLEMENTARY INFORMATION: The FAA has determined that cracks originating at screw holes outboard of the Blade Inspection Method (BIM) tip seal (not BIM detectable) and developing to spar tip end failure could cause loss of the entire counterweight train and subsequent possible loss of control of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires repetitive visual and dye penetrant inspections of the main rotor blade outboard spar for cracks and replacement, as necessary, on Sikorsky Model S-64E helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, 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 considered to be major under 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 action 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/ major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by Reference.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA 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 adding the following new AD:

Sikorsky Aircraft: Applies to Sikorsky Aircraft Model S-64E helicopters, certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent the possible loss of the main rotor blade outboard spar and subsequent loss of the counterweight train, accomplish the following:

(a) Within the next 30 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 30 hours' time in service from the last inspection, visually inspect main rotor blade outboard spars, Part Numbers (P/N) 6415-20201-043 and -045, for cracks in accordance with Section 2, Paragraph A of Sikorsky Alert Service Bulletin No. 64B15-8A, dated October 16, 1984, or later FAA-approved revision.

(b) Within the next 30 hours' time in service after the effective date of this AD, unless already accomplished within the last 120 hours' time in service, and thereafter at intervals of 150 hours' time in service from the last inspection, fluorescent penetrant inspect main rotor blade outboard spars, P/N's 6415-20201-043 and -045, for cracks in accordance with Section 2, Paragraph B of Sikorsky Alert Service Bulletin No. 64B15-8A, dated October 16, 1984, or later FAA approved revision.

(c) If a crack is found, replace with an airworthy blade that has been inspected in accordance with paragraphs (a) and (b) above prior to further flight.

(d) Aircraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7118.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Division of United Technologies Corporation, North Main Street, Stratford, Connecticut 06601. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective August 30, 1985.

Issued in Fort Worth, Texas, July 31, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-21725 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-15, Amdt. 39-5121]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires repetitive inspection and repair or replacement, as necessary, of the fuselage frame at the fuselage tailboom interface on Aerospatiale Model AS 350 and AS 355 series helicopters. This amendment is needed because the FAA has determined that a fastener torque check and retorquing, as necessary, is needed to supplement the visual inspections.

EFFECTIVE DATE: September 12, 1985.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 1985.

Compliance: as prescribed in the body of the AD.

ADDRESS: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or R. T. Weaver Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877-2548.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-5089, AD 85-14-06, which currently requires repetitive inspection and repair or replacement, as necessary, of the fuselage frame at the fuselage tailboom interface on Aerospatiale Model AS 350 and AS 355 series helicopters. After issuing Amendment 39-5089, the FAA has determined, based on additional service experience and evaluation, that a bolt torque inspection is necessary, and that in some cases, the bolt torque inspection and retorque, as necessary, are sufficient without a requirement for removing the tailboom. Therefore, the FAA is amending Amendment 39-5089 by providing for a fastener torque inspection and a subsequent tailboom removal inspection only if low torque is found on Aerospatiale Model AS 350 series helicopters and an initial tailboom removal inspection followed by repetitive fastener torque inspections with subsequent tailboom removal inspections required only when low torque is found on Aerospatiale Model AS 355 series helicopters. The amendment also requires the reporting of fastener torque values and cracks found during the initial tailboom removal inspection of Model AS 355 series helicopters. Also, the compliance times have been adjusted to agree with the service bulletins.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation involves a cost per inspection of $280 with 141 rotorcraft affected for a total cost of $39,480 per year. Therefore, I certify that this action (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). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

PART 39—[AMENDED]

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 Federal Aviation Regulations (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); 14 CFR 11.89.

2. By amending Amendment 39-5089, AD 85-14-06, by revising paragraphs (a), (b), (c), (d), (e), and (f); by redesignating paragraphs (g) and (h) as (i) and (j) respectively; and by adding new paragraphs (g) and (h) as follows:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all Aerospatiale Model AS 350 and AS 355 series helicopters certificated in all categories.

Compliance is required as indicated, unless already accomplished.

* * * * *

(a) For helicopters which have 1,100 hours or more time in service on the effective date of this AD, inspect in accordance with paragraph (d) within the next 100 hours' time in service.

(b) For helicopters which have 900 hours or more but less than 1,100 hours' time in service on the effective date of this AD, inspect in accordance with paragraph (d) before reaching 1,200 hours' time in service.

(c) For helicopters which have less than 900 hours' time in service on the effective date of this AD, inspect in accordance with paragraph (d) within the next 300 hours' time in service.

(d) Inspect the bolts for torque and, if necessary, the frame for cracks at the fuselage-to-tailboom interface in accordance with:

(1) Service Bulletin No. 05.16 for Model AS 350 series helicopters.

(2) Service Bulletin No. 05.14 for Model AS 355 series helicopters.

(e) In addition for AS 355 series helicopters, conduct the following initial visual inspection within the next 100 hours' time in service for helicopters which have 1,100 hours or more time in service on the effective date of this AD or before reaching 1,200 hours time in service for those helicopters having less than 1,100 hours total time in service on the effective date of this AD:

(1) Remove the tailboom from the fuselage in accordance with the Model AS 355 maintenance manual, or FAA-approved equivalent, as appropriate. Prior to tailboom removal, inspect the bolts for torque readings in accordance with paragraph (d).

(i) Visually inspect the aft fuselage frame at the fuselage tailboom interface for cracks. Conduct the visual inspection on all accessible frame areas with special emphasis in frame flange radii and at bolt holes.

(ii) Conduct dye penetrant inspections of areas of suspected cracks that cannot be verified by a visual inspection.

(2) If all the bolt torque readings from the inspection of SB No. 05.14 are 26.5-inch-pounds or greater, the following RH upper quadrant (looking forward) frame inspection may be conducted in lieu of the full frame inspection of paragraph (1):

(i) Remove the bolts common to the tailboom, fuselage frame, and RH fuselage frame radius block.

(ii) Remove the RH radius block after grinding off the three rivet heads which retain the radius block. The radius block is shown as Item 21 of detail C of page 10 of Aerospatiale Repair Manual 53.10.22, Volume 1.

(iii) Visually inspect the forward side of the RH aft fuselage frame for cracks. Conduct the visual inspection on all accessible frame areas with special emphasis in frame flange radii and at bolt holes.

(iv) Conduct dye penetrant inspections of areas of suspected cracks that cannot be verified by a visual inspection.

(v) Apply zinc chromate primer to the aft surface of the radius block; replace it using the original bolts, but do not re-rivet to the frame.

(3) Report cracks and bolt torque values measured before tailboom or radius block removal to the Manager, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101 within 10 days of the inspection. Use a copy of View F of Service Bulletin No. 05.14 or No. 05.16 to show the locations of cracks or loose fasteners (those below 26.5 inch-pounds of measured torque). If all fasteners are found to have a torque of 26.5 inch-pounds or greater, a statement of such is sufficient without a marked-up View F. Provide aircraft serial numbers, total time, and time since tailboom removal, if any. (Reporting is approved by the Office of Management and Budget under OMB No. 2120-1156.)

Note.—The initial visual inspection of paragraph (e) and reporting of results are required for all Model AS 355 helicopters even if the bolt torque values measured during the inspections of paragraph (d) are 26.5 inch-pounds or greater.

(f) Replace any cracked frames or repair in accordance with Service Bulletin No. 05-14 or No. 05-16.

(g) Reinstall the tailboom in accordance with the appropriate Model AS 350 or AS 355 maintenance manual, or FAA-approved equivalent, if removed during the inspections and rework of paragraphs (d), (e), and (f).

(h) Repeat the inspections required in paragraph (d) at intervals not to exceed 1,200 hours' time in service from the last inspection.

* * * * *

The manufacturer's specifications and procedures identified and described in this directive are incorporated by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. These documents may also be examined in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 156, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective September 5, 1985.

This amendment amends Amendment 39-5089, AD 85-14-06.

Issued in Fort Worth, Texas, on August 8, 1985.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-21742 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD7-85-24]

Drawbridge Operation Regulations; Cooper River, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Seaboard System Railroad the Coast Guard is changing the regulations governing the Cordesville Bridge, mile 42.8, by requiring that advance notice of opening be given. This change is being made because of a steady decrease in requests for opening the draw. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 15, 1985.

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

SUPPLEMENTARY INFORMATION: On June 28, 1985 the Coast Guard published (50 FR 26809) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by Commander, Seventh Coast Guard District on July 12, 1985. In each notice interested persons were given until August 12, 1985 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

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

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because of the infrequent opening of the bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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 117.925 is revised to read as follows:

§ 117.925 Cooper River.

The draw of the Seaboard System Railroad bridge, mile 42.8 near Cordesville, shall open on signal if at least six hours advance notice is given.

Dated: August 28, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85-21834 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-85-11]

Drawbridge Operation Regulations; Schooner Bayou Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge over Schooner Bayou Canal, mile 4.0 from White Lake, on LA82 at Little Prairie Ridge, Vermilion Parish, Louisiana. The change will require that at least four hours advance notice be given for an opening of the draw between 10 p.m. and 6 a.m. The draw will continue to open on signal outside these hours. The bridge presently is required to open on signal at all times. This change is being made because of infrequent requests to open the draw during the advance notice period. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 10 p.m. to 6 a.m. and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Perry F. Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On July 1, 1985, the Coast Guard published a proposed rule (50 FR 27029) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 9 July 1985. In each notice interested persons were given until 15 August 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

The only comment received was a letter of no objection from the National Marine Fisheries Service.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge during the advance notice period of 10 p.m. to 6 a.m., as evidenced by the combined 1983 and 1984 bridge opening statistics which show that the bridge averaged two openings every three days. These vessels can reasonably give four hours advance notice for a bridge opening between 10 p.m. and 6 a.m. by placing a collect call to the bridge owner, LDOTD in Lafeyette (318) 233-7404, at any time. Mariners requiring the bridge openings during the advance notice period are mainly repeat users and scheduling their arrival at the bridge at the appointed time during the advance notice period will involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.494 is added to read as follows:

§ 117.494 Schooner Bayou Canal.

The draw of the S82 bridge, mile 4.0 from White Lake at Little Prairie Ridge, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: September 3, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-21831 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. MC 84-2; Order No. 631]

Amendments to Domestic Mail Classification Schedule; Deletion of E-COM Provisions

Issued: September 6, 1985.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the July 10, 1985, adoption of the Postal Rate Commission's recommended Docket No. MC84-2 decision by the Governors of the Postal Service, the Commission is publishing the corresponding changes for the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.67). These changes eliminate the Electronic-Computer Originated Mail (E-COM) service offering from the DMCS.

EFFECTIVE DATE: These changes became effective on September 3, 1985.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Washington, D.C. 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., Washington, D.C. 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On July 6, 1984, the Postal Service filed a request with the Commission for a recommended decision that the E-COM service offering be eliminated from the DMCS. The Commission published a notice of the filing in the **Federal Register** (49 FR 28953 (July 17, 1984)). Following the provision of an opportunity for a hearing on the record under sections 556 and 557 of Title 5, the Commission, on December 21, 1984,

issued a decision recommending the elimination of the E-COM service offering from the DMCS. The Governors of the Postal Service approved the recommended decision on July 10, 1985, and the Board of Governors set September 3, 1985, as the effective date of the changes. The changes in the DMCS which are published in this order reflect the Governors' decision, and became effective September 3, 1985. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which lead to the publication of the DMCS in the **Federal Register**, these changes are published as final rules, since procedural safeguards and an ample opportunity to have different viewpoints considered has already been afforded to all interested persons. *See* 50 FR 21629 (May 28, 1985).

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 3603, 3622, 3623, 84 Stat. 759–761; (5 U.S.C. 553), 80 Stat. 383, unless otherwise noted.

2. The following changes in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR 3001.61 through 3001.67) of the Commission's rules of practice and procedure are adopted:

a. Sections 100.024, 100.044, 100.045, 100.051, 100.052, 100.0521, 100.0522 and 100.101 and Rate Schedule 104 are removed.

b. Section 100.020 is amended to read as follows:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing 12 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.021, 100.0211, 100.022, 100.0221, or 100.023.

c. Section 100.08 is amended to read as follows:

100.08 Ancillary Services.

100.080 First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of appropriate fees:

	Classification schedule
a. Address correction	SS-1.
b. Business reply mail (except ZIP + 4 rate category mail).	SS-2.
c. Certificates of mailing	SS-4.
d. Certified mail	SS-5.
e. C.O.D.	SS-6.
f. Insured mail	SS-9.
g. Registered mail (except ZIP + 4 rate category mail).	SS-14.
h. Special delivery	SS-17.
i. Merchandise return	SS-20.

d. In section 100.090, remove "e. Electronic Computer Originated Mail 104" and redesignate "f. Fees 1000" to become "e. Fees 1000."

e. In Rate Schedule 1000, remove the following:

First-Class Mailing Fee E-COM Annual Fee	50.00

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 85-21860 Filed 9-11-85; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action IA 1582; A-7-FRL-2895-9]

Approval and Promulgation of Implementation Plans; State of Iowa; New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On July 18, 1984, the State of Iowa submitted revisions to their air pollution control regulations. The purpose of these revisions is to cure deficiencies in the State's preconstruction review procedures that would be applicable in nonattainment areas. Today's notice takes final action to approve these revisions. However, EPA is temporarily deferring action on certain unapprovable provisions of these regulations which deal with emission offsets. EPA's temporary deferral action is warranted because the State has provided a written commitment and schedule to propose, adopt and submit appropriate revisions to correct these deficiencies.

DATE: This action is effective September 12, 1985.

ADDRESSES: The State submittal is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460

Iowa Department of Water, Air and Waste Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319

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

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236-2893 or FTS 757-2893.

SUPPLEMENTARY INFORMATION: On March 6, 1980, EPA disapproved a portion of the Iowa Part D State Implementation Plan (SIP) because the State had no adequate means of preventing major sources of carbon monoxide (CO) from constructing in violation of section 173 of the Clean Air Act. A CO construction ban went into effect on July 1, 1979, and will remain in effect until the SIP is fully approved.

The regulations in question were in Chapter 3 of the regulations of the Iowa Department of Environmental Quality (IDEQ). On July 1, 1983, the IDEQ was merged with other State agencies to form the Iowa Department of Water, Air and Waste Management (IDWAWM). The IDWAWM air quality rules are now codified at Department 900, Title II, Chapters 20 through 39. The IDEQ Chapter 3 regulations are now in IDWAWM Department 900, Chapter 22. The recodification of these rules did not change any substantive SIP requirements, but merely incorporated the new numbering system.

In an effort to cure their SIP deficiency, and to rescind the construction ban, the State submitted revised new source review regulations on July 18, 1984. The State's submittal letter requested EPA to act on all revisions to Chapter 22 that were adopted in 1980 and 1982. Therefore, this final rulemaking essentially addresses all of Chapter 22.

On August 25, 1983 (48 FR 38742), EPA proposed revisions to 40 CFR Parts 51 and 52 affecting *federal enforceability* and the *crediting of source shutdowns and curtailments* as offsets in nonattainment areas among other proposed changes. EPA proposed these changes in response to the terms of a settlement agreement between EPA and a number of industries and trade associations challenging the relevant

EPA regulations. *Chemical Manufacturers Association* (CMA) v. *EPA*, D.C. Cir. No. 79–1112 (Settlement agreement entered into February 22, 1982).

During its rule revision process, the State anticipated that EPA would promulgate the CMA revisions and adopted regulations which are consistent with EPA's proposed CMA revisions, but are not consistent with the current EPA requirements. As a result, three subrules of the Chapter 22 regulations are unapproval as they relate to federal enforceability and the crediting of source shutdown and curtailment as emission offsets.

Subrule 22.5(4)g allows offset credit for reduced operating hours, if the reduced operating hours are included in the permit and the reduction occurred after January 1, 1978; and the work force is notified of the curtailment. This rule is inconsistent with § 51.18(j)(3)(ii)(*c*) because it does not provide that credit may be given for past curtailments only if the new source is a replacement for the curtailed source.

Subrule 22.5(4)i allows offset credit for closing of an existing source or plant. The source owner or operator is required to notify the work force of the proposed shutdown. This rule is inconsistent with § 51.18(j)(3)(ii)(*c*) because it does not provide that credit may be given for past shutdowns only if the new source is a replacement for the shutdown source.

Subrule 22.5(4)j allows external offsets, i.e., from sources not owned or controlled by a source seeking such offsets. Credit may be allowed provided the external source's permit is amended to require the emission reduction or a consent order is entered into by IDWAWM and the existing sources. This subrule is not approval because it does not require that State issued consent orders be federally enforceable in order to obtain offset credit, which is a requirement of § 51.18(j)(3)(ii)(*e*).

On November 20, 1984, EPA addressed the Chapter 22 regulations in a notice of proposed rulemaking (49 FR 45761). A complete review of these regulations is included in the November 20 proposal. There have been no subsequent changes to these regulations; therefore, EPA's review will not be restated in this notice. The proposal discussed the emission offset rule deficiencies and stated that these issues had to be resolved before EPA could take final action. The remainder of the Chapter 22 regulations were proposed for approval in so far as they pertained to requirements of the Clean Air Act.

The November 20 proposal also mentioned that the State must make an enforceable commitment not to use the exemption provisions of Rule 900–22.1 to exempt any major source or major modification from review before EPA could take final action to approve the Chapter 22 rules. Upon further review of these rules, EPA has determined that such a commitment is not needed. Subrule 22.1(2) specifically states that the exemption provisions do not apply to sources which are subject to the nonattainment area requirements of Rule 22.5. Because Rule 22.5 requires permits for all major sources and major modifications in nonattainment areas, no major sources or major modifications in those areas will be exempt from review under subrule 22.1(2). Therefore, no additional State commitment is required.

The State submitted the only public comments in response to the proposal. They requested partial, if not full, approval of their revised rules.

To remedy the emission offset issue, and to allow EPA to take final action, the State provided a written commitment and schedule, dated May 14, 1985, to propose, adopt, and submit appropriate revisions to their emission offsets rule by November 1985. Therefore, EPA will temporarily defer action on the affected portions of the State's emission offsets rule. Until EPA takes final action to approve these offset provisions, the State cannot allow any offset credit for source shutdown or curtailment, or for external offsets.

EPA's notice of proposed rulemaking mentioned several provisions of the Chapter 22 regulation which are not relevant to, and therefore not addressed by, this final action. These regulations contain permit requirements for anaerobic lagoons which are intended to control odor emissions. EPA has no authority to require odor control regulations and has no odor standards. For that reason, EPA does not address the IDWAWM regulations insofar as they pertain to the control of odor emissions from anaerobic lagoons. Rule 900–22.6(455B), *Nonattainment area designations*, is not addressed because it is not a requirement of section 110 of the Act. Rule 900–22.7(455B), *Alternative emissions control program*, is not addressed because this rule was not submitted as a SIP revision.

EPA Action

In today's notice, EPA takes final action to approve the IDWAWM, Department 900, Chapter 22 air pollution control rules, with the exception of Subrules 22.5(4) g, i, and j, which pertain to emission offsets. EPA is temporarily deferring action on the aforementioned subrules. The CO construction ban will remain in effect until the State adopts appropriate revisions to its offset rules and the SIP is fully approved by EPA.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of 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, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons.

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

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart Q—Iowa

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.820 is amended by adding paragraphs (c)(43) and (c)(44) as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(43) On July 1, 1983, the State's air pollution control regulations were recodified at Department 900, Title II, Chapters 20 through 29.

(44) Revised Chapter 22 regulations, dealing with new source review in nonattainment areas, were submitted on July 18, 1984, by the Iowa Department of Water, Air and Waste Management. Subrules 22.5(4) g, i, and j remain unapproved. EPA will temporarily defer action on these subrules pending a May 14, 1985, commitment from the State to submit appropriate revisions.

(i) *Incorporation by reference.* Revised Chapter 22 regulations, dealing with new source review in nonattainment areas, adopted by the State on July 17, 1984.

(ii) *Additional material.* May 14, 1985, letter of commitment from the State to

revise unapprovable portions of their Chapter 22 air pollution regulations.

[FR Doc. 85-21818 Filed 9-11-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-2895-6]

Approval and Promulgation of Implementation Plans; Connecticut; Certification of No Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is codifying the certifications that no Air Oxidation Processes in any Synthetic Organic Chemical Manufacturing Industry or any Natural Gas/Gasoline Processing Plants are located in the State of Connecticut. The intended effect of this action is to provide this information in 40 CFR Part 52, as justification for the fact that the Connecticut State Implementation Plan (SIP) does not contain reasonably available control technology (RACT) requirements for these sources.

EFFECTIVE DATE: This action will be effective 60 days from the date of publication unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (617) 223-4868.

SUPPLEMENTARY INFORMATION: EPA requires states with areas which could not attain the National Ambient Air Quality Standard for ozone by 1982 to adopt RACT on sources of volatile organic compounds (VOCs). EPA has published a series of Control Technique Guidelines (CTGs) which define RACT for various VOC source categories. In response to the CTGs for Natural Gas/Gasoline Processing Plants and Air Oxidation Processes in any Synthetic Organic Chemical Manufacturing Industry (SOCMI), the Connecticut Department of Environmental Protection has certified by letters to EPA dated April 24, 1985 and May 15, 1985 that no sources in these categories are located within the state. EPA is accepting DEP's certifications and codifying the information at 40 CFR 52.375 as justification for the fact that the Connecticut SIP does not contain RACT regulations for Natural Gas/Gasoline Processing Plants or for Air Oxidation Processes in any SOCMI.

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

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 12, 1985.

Final Action

EPA is codifying information certifying that no Natural Gas/Gasoline Processing Plants or Air Oxidation Processes in any SOCMI are located in the State of Connecticut at 40 CFR 52.375.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of 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, Intergovernmental relations, and Incorporation by reference.

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart H—Connecticut

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.375, is revised to read as follows:

§ 52.375 Certification of no sources.

The State of Connecticut has certified to the satisfaction of EPA that no sources are located in the state which are covered by the following Control Technique Guidelines:

(a) Large Petroleum Dry Cleaners.

(b) Natural Gas/Gasoline Processing Plants.

(c) Air Oxidation Processes/SOCMI.

[FR Doc. 85-21814 Filed 9-11-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 65

[A-6-FRL-2886-5]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) proposed on May 16, 1985, (at 50 FR 20455) to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Princeton Packaging, Incorporated (Princeton), Dallas, Dallas County, Texas, on December 7, 1984. This action provides final approval for this DCO. The DCO requires Princeton to bring air emissions of volatile organic compounds from their flexographic printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP required compliance by December 31, 1982. Dallas County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. Since it is now approved by EPA, the DCO constitutes an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO.

EFFECTIVE DATE: This action will be effective October 15, 1985.

ADDRESSES: The State order, supporting material, and evaluation report are available for inspection during normal business hours at the Region 6 office, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270 (as Docket number R6-85-DCO-3), and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, D.C. 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Stan R. Burger, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-9868.

SUPPLEMENTARY INFORMATION: Princeton's Dallas facility was formerly owned by the St. Regis Corporation. Princeton Packaging, Incorporated, bought the Dallas facility from St. Regis effective October 1, 1984. To avoid ambiguity, "Princeton" will be used throughout this document to represent the Dallas facility.

On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982.

Princeton's Dallas plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic processes, and as such is subject to Rule 115.201. Based on Princeton's contention that water based and/or high solids content ink would not be available by the SIP compliance date, and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Princeton extending their SIP compliance date until December 31, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as an extension to the SIP, and thus the SIP required compliance date remained December 31, 1982. On January 30, 1984, EPA notified Princeton under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the December 7, 1984, DCO that is now approved under this notice. The TACB transmitted the DCO to EPA on January 16, 1985. EPA has reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments. The full text of this Order was published on May 16, 1985, at 50 FR 20455.

Since the DCO is approved by EPA, compliance with its terms preclude federal enforcement action under section 113 of the Clean Air Act against Princeton for violations covered by the order during the period that the order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act are similarly precluded. The approved Order constitutes an addition to the Texas SIP. However, compliance with the order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons were invited to submit written comments on the proposed approval action. No comments were received. The public should be advised that this action will be effective on the date listed in the **EFFECTIVE DATE** section of this rulemaking. 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 within 60 days of the date of publication of this notice of final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This DCO affects only one entity and involves an "Order", rather than a "rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Part 65 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

2. Section 65.481 is amended by adding one source to the table as follows:

§ 65.481 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of Federal Register proposal	Final compliance date
Princeton Pkg. Inc.	Dallas, TX	TACB No. 84-14	Rule 115.201	5/16/85	12/31/85

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-21816 Filed 9-11-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-6-FRL-2886-7]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) proposed on May 16, 1985, (at 50 FR 20458) to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Printpack, Incorporated (Printpack), Grand Prairie, Tarrant County, Texas, on November 9, 1984. This action provides final approval for this DCO. The DCO requires Printpack to bring air emissions of volatile organic compounds from their flexographic printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP

[1] "EPA Review of Texas State Delayed Compliance Order for Princeton Packaging, Incorporated, Dallas County, Texas, December 7, 1984; March 1985".

required compliance by December 31, 1982. Tarrant County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the Order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. Since it is now approved by EPA, the DCO constitutes an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO.

EFFECTIVE DATE: This action will be effective October 15, 1985.

ADDRESSES: The State order, supporting material, and evaluation report are available for inspection during normal business hours at the Region 6 office, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270 (as Docket number R6-85-DCO-1), and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, D.C. 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Richard Raybourne, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-5145

SUPPLEMENTARY INFORMATION: On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties", as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982. Printpack's Grand Prairie plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic processes, and as such is subject to Rule 115.201. Based on Printpack's content that water based and/or high solids content ink would not be available by the SIP compliance date and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Printpack extending their SIP compliance date until December 1, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as a revision to the SIP, and thus the SIP-required compliance date remain December 31, 1982. On January 30, 1984, EPA notified Printpack under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the November 9, 1984 DCO that is now approved under this notice. The TACB transmitted the DCO to EPA on December 18, 1984. EPA reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments. The full text of this Order was published on May 16, 1985, at 50 FR 20458.

Since the DCO is approved by EPA, compliance with its terms preclude federal enforcement action under section 113 of the Clean Air Act against Printpack for violations covered by the order during the period that the order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act are similarly precluded. The approved Order constitutes an addition to the Texas SIP.

However, compliance with the Order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C). As noted in the proposed rulemaking, the Notice in the DCO regarding the assessment of section 120 noncompliance penalties may be misleading. As the Clean Air Act clearly states, a major stationary source in the position of Printpack, unless exempted under section 120(a)(2) (B) or (C), is subject to noncompliance penalties after December 31, 1982. Since the DCO is approved, a footnote to this effect is included in the approval listing in Part 65 of 40 CFR.

All interested persons were invited to submit written comments on the proposed approval action. No comments were received. The public should be advised that this action will be effective on the date listed in the **EFFECTIVE DATE** section of this rulemaking. 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 within 60 days of the date of publication of this notice of final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Part 65 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

2. Section 65.481 is amended by adding the entry to read as follows:

§ 65.481 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FEDERAL REGISTER proposal	Final compliance date
Printpack Inc.[1]	Grand Prairie, TX	TACB No. 84-10	Rule 115.201	5/16/85	12/31/85

[1] Section 120 noncompliance penalty language in TACB No. 84-10 may be misleading. Source is subject to noncompliance penalties after December 31, 1982, unless exempted under section 120(a)(2) (B) or (C).

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-21815 Filed 9-11-85; 8:45 am]

BILLING CODE 6560-50-M

[1] "EPA Review of Texas State Delayed Compliance Order for Printpack, Incorporated, Tarrant County, Texas, November 9, 1984; January, 1985".

40 CFR Part 65

[A-6-FRL-2886-6]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency proposed on May 16, 1985, to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Dixico, Incorporated (Dixico), Dallas County, Texas, on December 7, 1984. The DCO requires Dixico to bring air emissions of volatile organic compounds from their flexographic and rotogravure printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP required compliance by December 31, 1982. Dallas County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. The approved DCO is an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO. This Notice is the final rulemaking on the DCO.

EFFECTIVE DATE: This action will be effective October 15, 1985.

ADDRESSES: The State order, supporting material and evaluation report are available for inspection during normal business hours at the following locations (as Docket number R6-85-DCO-2): Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, DC 20460, the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and the Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Willie Kelley, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-9189.

SUPPLEMENTARY INFORMATION: On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982.

Dixico's Dallas plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic and rotogravure processes, and as such is subject to Rule 115.201. Based on Dixico's contention that water based and/or high solids content ink would not be available by the SIP compliance date and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Dixico extending their SIP compliance date until December 1, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as a revision to the SIP, and thus the SIP required compliance date remained December 31, 1982. On January 30, 1984, EPA notified Dixico under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the December 7, 1984, DCO that is now approved under this notice. The TACB transmitted the DCO to EPA on January 16, 1985. EPA has reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments. The full text of this Order was published on May 16, 1985 (50 FR 20453).

[1] "EPA Review of Texas State Delayed Compliance Order for Dixico, Incorporated, Dallas County, Texas, December 7, 1984; March 1985". This evaluation is available at the addresses given previously in this Notice.

Compliance with its terms preclude federal enforcement action under section 113 of the Clean Air Act against Dixico for violations covered by the Order during the period that the Order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act is similarly precluded. The approved Order constitutes an addition to the Texas SIP. However, compliance with the Order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C).

There were no public comments on the proposed approval action. The public should be advised that this action will be effective on the date listed in the **EFFECTIVE DATE** section of this rulemaking. 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 within 60 days of the date of publication. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to the Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Part 65 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

2. Section 65.481 is amended by adding one source to the table as follows:

§ 65.481 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of Federal Register proposal	Final compliance
Dixico Inc	Dallas TX	TACB No. 84-12	Rule 115.201	5/16/85	12/31/85

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-21817 Filed 9-11-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42031A; FRL-2871-5]

Toxic Substances; Biphenyl; Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule promulgates EPA's decision to require manufacturers and processors to test biphenyl (CAS No. 92–52–4) for environmental effects and chemical fate under section 4(a) of the Toxic Substances Control Act (TSCA) according to protocols to be submitted to and approved by EPA. This regulation is in compliance with the Interagency Testing Committee's (ITC) designation of biphenyl for priority testing consideration.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern ["daylight" or "standard" as appropriate] time on September 26, 1985. This rule shall become effective on October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office, Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460. Toll Free: (800–424–9065). In Washington, DC: (554–1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1983 (48 FR 23080), EPA issued a proposed rule under section 4(a) of TSCA to require testing of biphenyl for environmental effects and chemical fate. The Agency is now promulgating a final rule.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA; Pub. L. 94–469, 90 Stat. 2006 *et seq.*, 15 U.S.C. 2603 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package—chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980 (45 FR 48524), and to the second package—dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981 (46 FR 30300) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

Biphenyl (CAS No. 92–52–4) is a solid organic compound at ambient temperature and pressure (Ref. 1). Approximately 13 million pounds of biphenyl were domestically produced in 1984 (Ref. 2). Biphenyl is used primarily to produce dye carriers, heat-transfer fluids, and alkylated biphenyls (Ref. 3). As discussed in the proposed rule and its accompanying technical support document, the use/disposal pattern for biphenyl suggests that biphenyl has the potential to be released into the environment at significant concentrations from dye-carrier applications through wastewater discharge or from leakage of heat-transfer fluids.

B. ITC Recommendations

The Interagency Testing Committee (ITC) designated biphenyl for priority testing consideration in its Tenth Report, published in the **Federal Register** on May 25, 1982 (47 FR 22585). The ITC recommended that biphenyl be tested for chronic toxicity to fish and invertebrates, toxicity to aquatic macrophytes, and chemical fate. The ITC based its designation of biphenyl of substantial production, on the reported use/disposal pattern of biphenyl and on the potential persistence of biphenyl and biphenyl byproducts in the aquatic environment.

The ITC was concerned about the environmental release of biphenyl from its use as a fungicide. Use of biphenyl as a fungicide is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and as such cannot be regulated under TSCA [see TSCA section 3(2)(B)(ii)].

The ITC was also concerned that mono- and dichlorobiphenyl might be produced by the chlorination of biphenyl at dye-carrier waste treatment facilities. EPA has concluded that release of mono- and dichlorobiphenyls resulting from chlorination of biphenyl at dye-carrier waste treatment facilities is likely to be insignificant because of low measured concentrations of biphenyl in dye-carrier waste treatment plant effluents and the extremely low estimated concentrations of mono- and dichlorobiphenyls that might be produced as a result of chlorination of such effluents.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** of May 23, 1983 (48 FR 23080) which would require that testing of biphenyl be performed for the environmental effects and chemical fate characteristics listed below:

1. Acute aquatic macrophyte toxicity
2. Chronic fish toxicity
3. Chronic daphnid toxicity
4. Acute oyster toxicity
5. Oyster bioconcentration and chronic oyster toxicity
6. Aerobic and anaerobic biodegradation

In the proposal, the EPA based its testing requirements on the authority of section 4(a)(1)(A) of TSCA. It found that: Environmental release of biphenyl from the chemical's use and disposal may present an unreasonable risk of effects to aquatic organisims because existing data suggest that biphenyl may have the potential to produce acute effects in aquatic plants, as well as chronic effects in aquatic vertebrates and invertebrates, and because of detected concentrations of biphenyl in the aquatic environment. In addition, EPA found that such releases of biphenyl may present an unreasonable risk of effects to sediment organisms because of the potential of

biphenyl to partition from water to sediments, to persist and possibly accumulate in aerobic and anaerobic sediments, to bioconcentrate or promote acute effects in benthic organisms, and because of detected levels of biphenyl in sediments. EPA found that there are insufficient data to reasonably determine or predict the environmental effects and chemical fate of biphenyl and that testing is necessary to develop such data.

III. Public Comment

A public meeting on the proposed rule was held August 8, 1983.

Comments received by the Agency in response to the proposed rule for biphenyl were submitted by the industry Biphenyl Ad Hoc Group (BAHG), E.I. DuPont de Nemours and Company (Dupont), the American Textile Manufacturers Institute, Incorporated (ATMI) and the Natural Resources Defense Council, Incorporated (NRDC). Technical comments from the BAHG, which represents Chemol, Coastal States Marketing, Gulf, Koch Chemical, Monsanto Industrial Chemicals, Dow Chemical, and Sybron Chemical Company, and comments from the AMTI are addressed in Units III. A and B below. Legal comments received from the remaining commentors are addressed in Units III. C through F.

A. Environmental Effects Testing

The BAHG has commented that the release of biphenyl during its use and disposal is insignificant.

The Agency does agree that quantities of biphenyl being released to the environment result in relatively low reported concentrations (<1 to 15)g/l in water and 1 to 8)g/g in sediment) (Refs. 4 through 12). However, based on these measured concentrations, and in conjunction with existing toxicity data, the Agency believes there is sufficient concern for further testing.

The BAHG has commented that biphenyl concentrations in water and sediment are not significant and biphenyl is not toxic or persistent in the aquatic and sediment environment. The BAHG further states that ". . . existing toxicity data conclusively demonstrates that biphenyl does not present an unreasonable risk to organisms in the aquatic or sediment environment".

The Agency believes that BAHG has not provided data to substantiate its position that biphenyl ". . . does not present an unreasonable risk to organisms in the aquatic or sediment environment . . ." or that detected concentrations of biphenyl are insignificant.

Further, the Agency notes that the industry response that LC_{50} values generally are 1 to 10 ppm, ignores the 24 hour LC_{50} of 0.73 mg/l (ppm) and the no observed effect level (NOEL) of <0.25 mg/l (ppm) for *Daphnia magna* reported by Adams *et al.* (Ref. 13).

Acute toxicity data have been reported for fish (fathead minnows, rainbow trout, sheepshead minnows, blue gill, golden shiner, and catfish) with LC_{50}'s ranging from 1.5 to <10 mg/l (Refs. 15 through 21). Reported acute toxicities for various invertebrates range from 1.9 to 4.7 mg/l. (Refs. 19, 21 and 22).

No data have been reported for chronic toxicity of biphenyl to fish or aquatic invertebrates. However, there are indications of chronic toxicity to aquatic invertebrates from the acute data reported by Heidolph *et al.*, (Ref. 14) in which the concentration of biphenyl required to produce an LC_{50} value in *D. Magna* is 5 times higher at 24 hours than at 48 hours. In addition, studies by the Analytical Biochemistry Laboratories, Inc. on the acute toxicity of Therminol® to fathead minnows (Ref. 23) produced 24-hour and 96-hour LC_{50}'s which indicate that biphenyl may produce chronic effects in freshwater fish. No data on acute or chronic toxicity to aquatic life exposed to biphenyl contaminated sediment have been reported.

Given the range of biphenyl concentrations producing acute effects in aquatic organisms, the indication of chronic effects observed from available acute toxicity test data, and the absence of chronic toxicity data on aquatic organisms exposed by ingestion of biphenyl contaminated sediments, the BAHG contention that biphenyl does not present an unreasonable risk to organisms in the aquatic or sediment environment cannot be substantiated.

The BAHG response does not consider another aspect of biphenyl toxicity which would be addressed by chronic testing, namely the toxicity to other life stages (eggs and larvae) which typically are more sensitive to toxicants than the life stages used in acute toxicity tests. The Agency believes that the use of acute toxicity test data alone is not adequate to evaluate the overall risk to aquatic organisms unless there is a large margin of safety relative to environmental concentrations and no evidence of chronic toxicity.

The BAHG comment that the log P for biphenyl is too small and not typical of the types of chemicals that are known to have high accumulative toxicity is not relevant to the concern for chronic toxicity of biphenyl to other life stages. The log P of biphenyl (4.02 measured; 3.95 to 17 estimated) (Refs. 24 and 25) is large enough to expect that the chemical will sorb to sediments (concentrations up to 8 ppm have been reported in sediments) and also will be taken up by aquatic organisms. Given that the acute toxicity data for biphenyl show a range of LC_{50}'s for aquatic organisms from 0.73 mg/l to <10.0 mg/l (Refs. 13 through 23) and that water (<1 to 5)g/l) and sediment concentrations (1 to 8)g/g) have been found (Refs. 4 through 12), the important question is whether the sediment-bound biphenyl is bioavailable. No test data are available to evaluate this concern. BAHG comments do not provide a basis for discounting the bioavailability of biphenyl associated with sediment.

The BAHG feels that existing data are adequate and no further testing is needed. The BAHG specifically responded to the proposed aquatic macrophyte testing and the acute, chronic and bioaccumulation testing with oysters. The BAHG feels that there is no justification to require testing with the aquatic macrophyte *Lemna gibba*. The following reasons were given: (1) There are no data which would indicate *Lemna* is more sensitive than algae, (2) surface water concentrations are too low to justify *Lemna* testing, and (3) *Lemna* is also not the prevalent species in the river systems where biphenyl manufacturing occurs or textile discharges are located.

The Agency agrees that there are no data which would indicate that *Lemna* is more sensitive to biphenyl than algae. Consequently, EPA is withdrawing the proposed rule requiring testing of *Lemna* for biphenyl. However, EPA believes that information for macrophytes is useful and has decided to develop data to determine a comparative toxicological profile between the aquatic macrophyte *Lemna gibba* and the aquatic algae *Selenastrum capricornutum*. This comparative study shall be undertaken by EPA.

In response to the requirement for acute, chronic and bioaccumulation tests with oysters the BAHG stated that, "there may be some justification for acute screening tests with benthic freshwater organisms such as midges or amphipod." The BAHG further states with reference to chronic and bioaccumulation studies, ". . . the studies not only go beyond what ITC recommended, they are not scientifically justified." The ITC did recommend chronic tests. Industry apparently feels that some acute toxicity tests with benthic organisms might be justified. The reason for testing with the oyster is that this organism is a filter feeder and can be used to test the toxicity of

biphenyl bound to sediments (suspended organic particles, clay, etc.). Based on the log P of biphenyl, some uptake of the chemical can be expected if the chemical is bioavailable. For purposes of hazard assessment, the Agency needs to know the uptake and depuration of biphenyl and the possible toxic effects, acute and chronic, of the chemical taken up from sediment as well as from the water column. The requirements for testing biphenyl in oysters is consistent with the Agency's mandate to require testing that will provide data to assess the chemical's risks.

The BAHG asserts that the tests which the Agency has proposed are "extensive" and "costly". BAHG did not, however, explain or substantiate what it means by "extensive" and "costly". The tests proposed by the agency constitute a minimal data set. The limited number of tests proposed are essential to performing an adequate environmental hazard and risk assessment for biphenyl. Based on the results of EPA's economic analysis, the economic impact of conducting the required tests is expected to be minimal (see Unit V).

B. Chemical Fate

Comments were not received with respect to the proposed chemical fate testing.

C. Protocol Submission and the Phased Test Rule Process

The Natural Resources Defense Council (NRDC) submitted comments concerning the need for requiring validated protocols and recommended modification of the Agency's two-phase test rule process. NRDC stated that the Agency should require test sponsors to use validated reference protocols or give adequate justification for any deviations from these protocols. NRDC cited the Agency's two-phase test rule process (as described at 47 FR 13012; March 26, 1982) as an apparent "reversal" of EPA's previous policy which has required that specific EPA, FIFRA or OECD testing protocols be followed by persons required to test under section 4(a) of TSCA. The proposed policy of demanding only that test sponsors select protocols listed in Agency guidelines, or develop protocols on their own, was cited as an approach "apparently developed in response to industry criticism that the requirements are too rigid and would inhibit innovation in testing methodologies." The commenter further characterized this decision as compromising the recognized need for reliable and adequate data.

The Agency disagrees with NRDC's view that the two-phase test rule process based on EPA's review and approval of chemical-specific study plans would compromise the ability of the test rule to generate reliable and adequate data. In general, EPA believes that issuance of generic test methodology guidelines, rather than generic test requirements, provides more flexibility for test facilitates, test sponsors, and EPA itself in arriving at cost-effective, scientifically sound test methodologies, and facilitates the incorporation of scientific judgment where necessary on a chemical-specific basis. This approach also encourages scientific innovation and the development of more sophisticated and scientifically advance testing methodologies. With either single-phase or two-phase rules a public comment period and an opportunity for a public meeting will allow interested parties to review and comment on the chemical-specific test standards. After this comment period, EPA will issue a final rule adopting chemical-specific test standards as required under section 4(b)(1)(B) of TSCA. A more detailed discussion of the Agency's views on these and other related issues may be found in the agency's Test Rule Development and Exemption Procedures final rule published in the Federal Register of October 10, 1984 (49 FR 39774).

NRDC also stated that the Agency should modify the timing of the two-phase test rule development process so that subsequent test rules, complete with specific protocols for testing, are published within one year of EPA's receipt of the ITC's recommendations. NRDC contended that application of the two-phase rulemaking process in the case of the biphenyl rule has resulted in the Agency's failure to meet the statutory deadlines for initiating rulemaking.

EPA does not agree that the Agency has not met its statutory responsibility for biphenyl. The Agency's statutory obligation under TSCA section 4(e)(1)(B) was fulfilled with the issuance of the proposed test rule for biphenyl. In so doing, EPA initiated rulemaking under section 4(a) to require testing appropriate to the actual exposures to biphenyl.

EPA shares NRDC's desire that test rules should be completed as rapidly as possible and the Agency is continuing to explore ways to better achieve that objective.

D. Identification of Biphenyl Processing Activities

Dupont commented that EPA should identify, to the extent practicable, those activities which the Agency considers to be biphenyl "processing" activities. Dupont believed that by identifying those activities which the Agency considers to be processing, persons who "process" biphenyl as opposed to those persons who "use" biphenyl would be put on notice that they are subject to the test rule.

The Agency considers that "processing" includes any preparation of biphenyl for distribution in commerce as part of a mixture, an article, or any product containing or composed of biphenyl. Processing also includes the use of biphenyl as a reactant or intermediate to produce another chemical substance for distribution in commerce. If a company only uses and discards biphenyl, the company is not a processor of biphenyl.

A processor is, among other things, one who prepares a chemical substance or mixture for distribution in commerce, after its manufacture, in the same or different form of physical state from that in which it was received by the processor (see TSCA section 3(10)). One who mixes, reacts, purifies, separates, repackages, or otherwise "prepares" a chemical substance or mixture for distribution in commerce is a processor. Thus, a person who reacts biphenyl to make another chemical substance for distribution in commerce is a processor subject to this section 4 test rule.

E. Persons Subject to The Testing Requirements

Because the Agency found in its proposal that the use and disposal of biphenyl may present an unreasonable risk to the environment, EPA proposed that persons who manufacture or process, or intend to manufacture or process, biphenyl would be subject to the testing requirements of a final rule. Citing legislative history to support its positions, Dupont commented that the Agency can require only those biphenyl manufacturers and processors to sponsor testing whose manufacturing and processing activities result in the use or disposal activities which the Agency identified in making its "may present an unreasonable risk" finding.

The Agency has reviewed the legislative history cited by Dupont and the plain language of section 4(b)(3)(B) and disagrees with Dupont's position as stated above. The legislative history which Dupont cites as supporting its position cannot be entitled too much

weight. The language in the House Report (Committee on Interstate and Foreign Commerce), which spoke of the need for a connection between the use identified under a section 4(a) finding and the person responsible for testing, accompanied language of a House bill which was never enacted (Ref. 26). Similarly, the language in the Senate bill to which Dupont refers was never enacted. Both the House and Senate language which tied testing responsibilities to specific uses of a chemical substance and those who manufactured and processed the chemical substance for such uses was eliminated in the Conference Committee. The version of section 4(b)(3)(B) that was finally enacted by Congress requires that all persons who manufacture or process a chemical substance be subject to the testing requirements if the insufficiency of data findings under section 4(a)(1)(A)(ii) or 4(a)(1)(B)(ii) are based on distribution in commerce, use, or disposal.

The plain language of TSCA section 4(b)(3)(B)(iii), unlike the House or Senate bills cited by Dupont, does not restrict testing responsibilities to only those who manufacture or process for certain uses. In the absence of a clear contrary indication in the Conference Report, the Agency must follow the statute's plain language and require that all persons who manufacture or process or intend to manufacture or process biphenyl be subject to the requirements of this final rule. (Unit IV.D.)

F. Basis for the "May Present" Finding

The Agency based its proposed finding under TSCA section 4(a)(1)(A) upon the position that the use and disposal of biphenyl-containing dye carriers and heat transfer fluids result in the environmental release of biphenyl that may present an unreasonable risk to aquatic organisms. Dupont commented that the Agency did not adequately support its position that the use of biphenyl may present an unreasonable environmental risk. Dupont contended that the use of biphenyl as a heat transfer fluid does not result in release of biphenyl to the environment. Thus, Dupont suggested that EPA must provide better support for its finding that the use of biphenyl may present an unreasonable environmental risk.

EPA has considered Dupont's comments and still believes that the environmental release of biphenyl can result in an unreasonable risk to the environment. While the Agency acknowledges that heat transfer fluid spills can be reprocessed, there is no absolute certainty that these spills will be reprocessed. Therefore, if these occur there may be an environmental hazard.

With regard to biphenyl's use as a dye carrier, it has been reported that at least 95 percent of the biphenyl is released to wastewater treatment facilities and less than 5 percent is released as vapor. (Ref. 27). This small percentage released as vapor will have a short half-life and will most likely be oxidized by hydroxyl radicals through reactive oxidizable intermediates to nontoxic products such as carbon dioxide (Ref. 28).

However, approximately 17 million pounds of biphenyl that is used as a dye carrier is released for wastewater treatments. Although much of this disposed biphenyl is expected to be subsequently released to the atmosphere during aeration operations and oxidized, approximately 1–3 million pounds from these wastewater treatment plants is expected to partition into the plant sludge, and a certain portion (0.3–1.4 million pounds) may be contained in the wastewater effluent. (Refs. 29 and 30).

The Agency agrees with Dupont that use of biphenyl as a heat transfer fluid and dye carrier may not depending on the place and method of release immediately result in sufficient environmental release to pose a potential environmental risk. However, once biphenyl is disposed of into wastewater treatment plants after being used, a sufficient environmental release does occur to result in a potential risk to aquatic organisms. Biphenyl has been detected in water and sediment in a variety of locations in the United States. (Refs. 4 through 12). EPA believes that this environmental contamination has probably resulted from the use and disposal of biphenyl. Thus, the Agency is basing its section 4(a)(1)(A) finding for the final rule upon the environmental release of biphenyl resulting from its use and disposal.

IV. Final Test Rule for Biphenyl

A. Findings

The EPA is basing its final testing requirements for biphenyl on the authority of section 4(a)(1)(A) of TSCA. EPA finds that environmental release of biphenyl from the chemical's use and disposal may present an unreasonable risk of adverse effects to aquatic organisms because of the existing data which suggest that biphenyl may have the potential to produce chronic effects in aquatic vertebrates and invertebrates and because of detected concentrations of biphenyl in the aquatic environment. In addition, EPA believes that such releases of biphenyl may present an unreasonable risk of adverse effects to sediment organisms. This belief is based on detected levels of biphenyl in sediments and on the potential of biphenyl to partition from water into sediments, to persist and possibly accumulate in aerobic and anaerobic sediments, and to bioconcentrate and produce effects in benthic organisms. EPA believes that there are insufficient data to reasonably determine or predict the environmental effects and chemical fate of biphenyl and that testing is necessary to develop such data.

B. Required Testing

EPA is requiring that testing of biphenyl be performed for the environmental effects and chemical fate tests listed below:

1. Chronic fish toxicity
2. Chronic daphid toxicity
3. Acute oyster toxicity
4. Oyster bioconcentration and chronic oyster toxicity
5. Aerobic and anaerobic biodegradation

C. Test Substance

EPA is proposing that biphenyl of 99 percent purity be used as the test substance because biphenyl of this purity is readily available commercially and may provide more definitive information on biphenyl toxicity than biphenyl of lower purity.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the use and disposal of biphenyl may present an unreasonable risk to the environment, persons who manufacture or process, or who intend to manufacture or process, biphenyl at any time from the effective date of this test rule to the end of the reimbursement period are subject to the rule. The end of the reimbursement period for the biphenyl test rule will be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must

individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement as discussed in Unit IV. E.

E. Test Rule Development

Development of this test rule for biphenyl will be a two-phase process. In Phase I, this test rule is being promulgated for biphenyl specifying certain environmental effects and chemical fate characteristics for which test data are to be developed. In Phase II, following promulgation of the Phase I test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects and characteristics specified in the Phase I rule.

Within 30 days from the effective date of this final Phase I test rule for biphenyl, manufacturers must submit to EPA a letter stating their intention to sponsor testing or an application for exemption. Test sponsors must submit their study plans to EPA within 90 days from the effective date of this Phase I test rule. After an opportunity for public comment, EPA will promulgate a rule adopting the study plans, as proposed or modified, as the test standards and schedules for biphenyl for the tests required by the Phase I rule. Testing will also be subject to EPA's TSCA Good Laboratory Practices (GLP) standards. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards and schedules developed. Modifications to the adopted study plans can be made only with EPA approval.

Processors will not be required to submit letters of intent, exemption applications, and study plans, and to conduct testing, unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to indirectly pass the costs of testing on to processors through any increase in the price of biphenyl.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) standards which appear in 40 CFR Part 792. These final GLP standards apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the second phase of this rulemaking in which study plans are approved. The procedures for the second phase rulemaking are described in 40 CFR Part 790.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act of any regulation issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other permises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits and/or inspections will be conducted periodically in accordance with procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for biphenyl. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to the TSCA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under test rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they have never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of biphenyl: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

The total costs of conducting the required environmental effects tests are estimated to range from $47,500 to $116,100. Annualized costs range from $12,303 to $30,070. Based on these costs and the market characteristics of biphenyl, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. Although the market expectations for biphenyl in its major uses are not optimistic and the price sensitivity of demand appears

relatively elastic, this conclusion is supported by the following observations:

1. The annual unit cost of the testing required in this rule is very low. Based on an estimated 1984 production level of 13 million pounds and anual test costs ranging from $12,303 to $30,070, the unit costs of testing range from a low of 0.09 cents per pound to a maximum of 0.23 cents per pound. This represents approximately 0.13 to 0.33 percent of current price.

2. Biphenyl is produced as a secondary product to benzene by all but one producer. It is unlikely that the relatively small unit test costs would have a significant adverse effect on the overall profitability of these operations.

Refer to the Economic Analysis (Ref. 2) for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the National Technical Information Service (NTIS) Springfield, Virginia, (PB 82-140773).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Public Record

EPA has established a public record for this rulemaking (docket number OPTS-42031). This record includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule, consisting of:

(a) Notice of final rule on biphenyl.

(b) Notice of proposed rule on biphenyl. May 23, 1983 (48 FR 23080).

(c) Notice containing the ITC designation of biphenyl to the Priority List. May 25, 1982 (47 FR 22585).

(d) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards. Nov. 29, 1983 (48 FR 53922).

(e) Notice of final rule on test rule development and exemption procedures. Oct. 10, 1984 (49 FR 39774).

(f) Notice of final rule concerning data reimbursement July 11, 1983 (48 FR 31785).

(2) Support documents, consisting of:

(a) Biphenyl technical support document for proposed rule.

(b) Economic impact analysis of final test rule for biphenyl.

(3) Communications, consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries including transcript of public meeting held on proposed rule Aug. 8, 1983.

(d) Reports—published and unpublished factual materials, including contractors' reports.

B. References

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Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St. SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the critieria set forth in section 1(b) of the order. First, the total cost of all the proposed testing for biphenyl is $47,500 to $116,100 over the market life of biphenyl. Second, the cost of the testing is not likely to result in a major increase in users' cost or prices. Finally, based on our present analysis, EPA does not believe that there will be a significant adverse effects as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in organization of the testing effort; (2) they will experience only very minor costs if any in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has OMB control number 2070-0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous Substances, Chemicals, Recordkeeping and reporting requirements.

Dated: September 3, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Part 799 is amended by adding § 799.925 in Subpart B to read as follows:

§ 799.925 Biphenyl.

(a) *Identification of test substance.* (1) Biphenyl (CAS No. 92-52-4) shall be tested in accordance with this rule.

(2) Biphenyl of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process Biphenyl from the effective date of this rule [October 28, 1985] to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests and submit data as specified in this section, Subpart A of this Part, and Part 790—Test Rule Development and Exemption Procedures of this Chapter.

(c) *Environmental effects testing*—(1) *Fish early life stage toxicity testing*—(i) *Required testing.* Testing using flow-through systems shall be conducted with rainbow trout to develop data on the chronic toxicity of biphenyl to aquatic vertebrates.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Environmental Effects Test Guidelines for the Fish Early Life Stage Toxicity test (EG-11), published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting Pesticide Assessment Guidelines, Subdivision for Hazard Evaluation: Wildlife and Aquatic Organisms published by NTIS (PB 83-153908).

(2) *Daphnid chronic toxicity testing*—(i) *Required testing.* Testing using flow-through systems shall be conducted with daphnids to develop data on the chronic toxicity of biphenyl to aquatic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Environmental Effects Test Guidelines for the Daphnid Chronic Toxicity test (EG-2), published by NTIS (PB 82-232992), be consulted. Additional guidelines may be obtained by consulting Pesticide Assessment Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908), and references cited in the support document for the proposed test rule.

(3) *Oyster acute toxicity testing*—(i) *Required testing.* Testing using systems that control for biphenyl evaporation shall be conducted with oysters to develop data on the acute toxicity of sediment-associated biphenyl to benthic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Environmental Effects Test Guidelines for the Oyster Acute Toxicity Test (EG-5), published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the Pesticide Assessment Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908). Because the testing requires the use of sediment-associated biphenyl, the paper of Lynch and Johnson (1982), which is available in the public record for this rulemaking, should also be consulted.

(4) *Oyster bioconcentration testing*—(i) *Required testing.* Testing using systems that control for biphenyl evaporation shall be conducted with oysters to develop data on the potential chronic toxicity and bioconcentration of sediment-associated biphenyl to benthic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Environmental Effects Test Guidelines for the Oyster Bioconcentration Test (EG-6), published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the Pesticide Assessment Guidelines for Hazard Evaluations: Wildlife and Aquatic Organisms (PB 83-153908) and references cited in the support document for the proposed test rule. Because the testing requires the use of sediment-associated biphenyl, the paper of Lynch

and Johnson (1982), which is available in the public record for this rulemaking, should be consulted.

(d) *Chemical fate testing*—(1) *Aerobic biodegradation*—(i) *Required testing.* Testing using systems that control for and quantify biphenyl evaporation that use a ratio of undisturbed sediment to water of 3:1—2:1 and that provide a mass balance of biphenyl distributed in water and sediment, volatilized or degraded to CO_2 or other products before and after biodegradation shall be conducted to develop data on the persistence of biphenyl in aerobic sediments.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OECD Test Guideline for inherent biodegradability in soil (304 A) published by OECD be consulted.

(2) *Anaerobic biodegradation*—(i) *Required testing.* Testing using systems that control for and quantify biphenyl evaporation that use a ratio of undisturbed sediment to water of 3:1—2:1 and that provide a mass balance of biphenyl distributed in water and sediment, volatilized or degraded to CO_2 or other products before and after biodegradation shall be conducted with biphenyl to develop data on the persistence of biphenyl in anaerobic sediments.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Chemical Fate Test Guidelines for Anaerobic Biodegradation (CG–2050), published by NTIS (PB 82–233008), be consulted.

(e) *Availability of test guidelines.* The OTS Environmental Effects Test Guidelines cited in this final rule are available from the: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (703–487–4650).

[Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.]

[FR Doc. 85–21811 Filed 9–11–85; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC No. 85–450]

Delegation of Authority to the Chief, Field Operations Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 0.311(d)(1) of the Commission's rules to increase the monetary limit of Notices of Apparent Liability (NALs) issued to broadcast licensees under authority delegated to the Chief, Field Operations Bureau. This will prevent the Field Operations Bureau from having to refer NALs above $2,000 to the Mass Media Bureau. Such NALs frequently result from multiple, technical rule violations.

EFFECTIVE DATE: August 22, 1985.

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

FOR FURTHER INFORMATION CONTACT: Lawrence R. Clance, Field Operations Bureau, Washington, D.C. 20554, (202) 632–7591.

SUPPLEMENTARY INFORMATION: Lists of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Order

In the matter of amendment of Part 0 of the Commission's rules with respect to delegation of authority to the Chief, Field Operations Bureau.

Adopted: August 6, 1985.
Released: August 22, 1985.

By the Commission.

1. We are amending § 0.311(d)(1) of the Commission's rules to increase the monetary limit of Notices of Apparent Liability issued to broadcast licensees under authority delegated to the Chief, Field Operations Bureau. Since February 1984, a joint statement of policy between the Mass Media and the Field Operations Bureaus has been in effect authorizing the field issuance of monetary forfeitures. That statement of policy reflects specified amounts for certain rule violations. Pursuant to § 0.311(d)(1) and the existing statement of policy, forfeiture actions issued by the Field Operations Bureau under the terms and provisions of the policy statement cannot exceed $2,000 in amount. However, since broadcast station inspections by the Field Operations Bureau frequently uncover multiple, technical rule violations, the Notice of Apparent Liability often exceeds $2,000. In such instances, cases must be transferred to the Mass Media Bureau for handling. The amendment of § 0.311(d)(1) to increase the monetary limitation to $10,000, the limit authorized the Mass Media Bureau, will allow a revision of the present policy statement to enable the Field Operations Bureau to issue appropriate Notices of Apparent Liability to broadcast licensees and will eliminate the necessity of referring such cases to the Mass Media Bureau.

2. Notice and comment are not required prior to enactment of this rule change because it relates to internal Commission organization, procedure, and practice. 5 U.S.C. 553(b). Similarly, because this is a procedural rule, the effective date provisions of the Administrative Procedures Act are not applicable. 5 U.S.C. 553(d).

3. Accordingly, it is ordered, on the Commission's own motion, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c), that the rules are amended, effective August 22, 1985 by substituting for § 0.311(d)(1) the revised language which appears as the Appendix to this Order.

4. It is further ordered, pursuant to section 5(c)(1) of the Act, 47 U.S.C. 155(c)(1), and § 0.201(d)(1) of our rules, 47 CFR 0.201(d)(1), that the Secretary shall cause this order to be published in the **Federal Register.**

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 0—[AMENDED]

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read:

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

2. In § 0.311, paragraph (d)(1) is revised to read as follows (the introductory text is reprinted without change for the convenience of the reader):

§ 0.311 Authority delegated.

The performance of functions and activities described in § 0.111 is delegated to the Chief, Field Operations Bureau, provided that:

* * * * *

(d)(1) The Chief of the Field Operations Bureau is authorized to issue notices of apparent liability, final forfeiture orders, and orders cancelling or reducing forfeitures, pursuant to § 1.80 of this chapter, if the amount set out in the notice of apparent liability is $10,000 or less in the case of a broadcast licensee, and $2,000 or less in any other instance. The scope of the Field Operations Bureau's authority to take such actions includes cases of violation of section 301 or 318 of the Communications Act, or Part 13 or 17 of this chapter, and any other rule parts or sections specified in statements of policy provided by the other bureaus

and offices available for inspection in the Field Operations Bureau. The Chief of the Field Operations Bureau is authorized to further delegate this authority to Engineers in Charge of field installations.

* * * * *

[FR Doc. 85-21750 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 1

[FCC 85-478]

Practice and Procedure in the Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends rules of practice and procedure in the Private Radio Services. The purpose of these amendments is to clarify and standardize treatment of applications in these services and to delete unnecessary rule provisions.

EFFECTIVE DATE: October 7, 1985.

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

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Order

In the matter of amendment of Part 1 of the rules concerning practice and procedure in the Private Radio Services.

Adopted: August 27, 1985.
Released: September 5, 1985.

By the Commission:

1. This Order amends Part 1 of the Commission's rules, Practice and Procedure (47 CFR Part 1), by making changes to several rule provisions which govern the processing of applications in the Private Radio Services.

2. First, we are clarifying § 1.925 regarding the procedures for obtaining special temporary authority (STA) in the Private Radio Services. Second, we are adding Forms 402-R (Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Service) and 1046 (Assignment of Authorization) to the list of forms to be used in the Private Radio Services contained in § 1.922. Lastly, we are deleting §§ 1.927, 1.928, 1.929 and 1.930 governing ship station exemptions. These four rule sections only apply to ship radio stations and they are also found in Part 83 (Stations on Shipboard in the Maritime Services). This duplication is unnecessary. Therefore, we are removing these rules from Part 1 and retaining them in Part 83 where they are more conveniently available to the affected users.

3. Because these are amendments of rules of Commission practice and procedure, the public notice and comment provisions of 5 U.S.C. 553 do not apply (5 U.S.C. 553 (a)(3)(A). This Order is issued pursuant to § 1.412(b)(5) of the Commission's rules.

4. The amendments to the Commission's rules set forth in the attached Appendix are issued under authority of section 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. Accordingly, it is ordered that Part 1 of the rules is amended as set forth in the attached Appendix, effective October 7, 1985.

6. Regarding questions on matters covered in this document, contact Robert DeYoung or Robert Mickley at 202 (632-7175).

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 1—PRACTICE AND PROCEDURE

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

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

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

§ 1.922 [Amended]

2. Section 1.922 is amended by removing the note which immediately follows the section title and by adding the following two forms to the two column table in numerical/alphabetical order:

402-R Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Service.
1046 Assignment of Authorization.

3. In § 1.925, paragraph (a) is revised and paragraph (b) is removed and reserved to read as follows:

§ 1.925 Application for special temporary authorization, temporary permit or temporary operating authority.

(a) A licensee of or an applicant for a station in the Private Radio Services may file either a formal or informal application for a special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner which is beyond the scope of that authorized by the existing license. (See §1.962(b)(5) and (f)). The nature of the extraordinary circumstance which, in the opinion of the applicant justifies insurance of a special temporary authorization, must be fully described in the request. Information presently on file with the Commission may be included by reference. Applications for special temporary authority must be filed at least 10 days prior to the date of the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of good cause. In situations involving the safety of life or property or where equipment has been damaged, a request for special temporary authority may be made by telephone or telegraph provided a properly signed application is filed within 10 days of such a request.

(1) *Formal application.* Submit the appropriate FCC Form for the radio service in which the proposed operation is intended (see § 1.922) with a covering letter that contains the justification for the special temporary authorization request.

(2) *Informal application.* Informal requests for special temporary authority must contain the following information:

(i) Name, address, and citizenship status of applicant;

(ii) Statement of facts on which the request is based, including estimated duration of proposed use;

(iii) Class of station and nature of service;

(iv) Location of station and the points with which the station will communicate including, when appropriate, geographical coordinates;

(v) Equipment to be used, specifying manufacturer and model number, frequencies desired, types of emissions, power, and other pertinent technical information; and

(vi) Description of proposed antenna structure, including height.

(vii) For stations in the private operational-fixed microwave service, azimuth and beamwidth of the major lobe of the transmitting antenna and ERP.

(b) [Reserved]

* * * * *

§§ 1.927, 1.928, 1.929, 1.930 [Removed]

4. Sections 1.927, 1.928, 1.929 and 1.930 are removed.

[FR Doc. 85-21749 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket PS-83, Amdts. 192-50 and 195-35]

Transportation of Gas or Hazardous Liquids by Pipeline; Nondestructive Testing

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule allows some exception to the requirements to nondestructively test 100 percent of the girth welds in certain onshore locations. In certain cases where 100 percent testing is impacticable, testing less than 100 percent is allowed if at least 90 percent is tested. An operator who avails itself of the "90 percent testing" rule must determine that, under the circumstances, nondestructive testing is impracticable for each weld not tested.

EFFECTIVE DATE: The effective date of this final rule is October 15, 1985, except that October 21, 1985, is the effective date for intrastate hazardous liquid pipelines, see **SUPPLEMENTARY INFORMATION** for further details.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426-2392, regarding the content of this final rule or the Dockets Branch, (202) 426-3148, regarding other information in the docket.

SUPPLEMENTARY INFORMATION: Under the current requirements of § 195.234(e) for hazardous liquid pipelines, 100 percent of the girth welds in the following onshore locations must be nondestructively tested, while offshore, only 90 percent of each day's welds need be tested when testing 100 percent is impracticable:

(1) At any onshore location where a loss of hazardous liquid could reasonably be expected to pollute any stream, river, lake, reservoir, or other body of water, and any offshore area unless impracticable, in which case only 90 percent of each day's welds need be tested.

(2) Within railroad or public road rights-of-way.

(3) At overhead road crossings and within tunnels.

(4) At pipeline tie-ins.

(5) Within the limits of any incorporated subdivision of a State government.

(6) Within populated areas, including but not limited to, residential subdivisions, shopping centers, schools, designated commercial areas, industrial facilities public institutions, and places of public assembly.

For gas pipelines welds that are required to be nondestructively tested, the current § 192.243(d)(4) prescribes 100 percent testing within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, and at pipeline tie-ins. In Class 3 and Class 4 locations (populated areas), at crossings of major or navigable rivers, and offshore, § 192.243(d)(3) requires testing 100 percent if practicable, but not less than 90 percent of each day's welds.

A notice of proposed rulemaking (NPRM) (50 FR 11921, March 26, 1985) was published proposing to extend the "90 percent testing" rule currently embodied in §§ 195.234(e)(1) and 192.243(d)(3) to all hazardous liquid and gas pipeline locations where 100 percent testing is now required, except tie-ins. The "90 percent testing" rule does not allow an operator to routinely test less than 100 percent of the girth welds. Rather, an operator who wishes to avail itself of the "90 percent testing" rule must determine that under the circumstances, nondestructive testing is impracticable for each girth weld not tested. The MTB examined the safety impact of relaxing the 100 percent testing requirements and found that the proposed rule would not reduce safety, but had the potential to reduce costs. Comments were solicited from interested parties.

Fourteen commenters responded to the notice: 10 operators of hazardous liquid or gas pipelines, the Iowa State Commerce Commission, the American Petroleum Institute (API), the American Gas Association (AGA), and the Interstate Natural Gas Association of America (INGAA).

The proposed rule was supported without suggested change by 8 pipeline operators, the AGA, and the API.

INGAA supported the proposal but recommended minor changes for clarity which MTB has not adopted, preferring the language proposed. However, as INGAA suggested, the term "must be tested" has been deleted from the end of the proposed § 192.243(d)(3) for consistency with the wording of paragraphs (d) (1), (2), and (4) and because the "must" command to test is already expressed in the lead-in text of paragraph (d).

INGAA and a gas operator also suggested that the proposed § 192.243(d), which requires nondestructive testing of all tie-ins, be changed to apply only to tie-in welds which are not strength tested. INGAA said this change would make the proposed § 192.243(d)(4) consistent with § 192.719(a)(2), which requires nondestructive testing only of non-strength tested girth welds made in the repair of transmission lines. MTB did not propose any substantive change to the existing rule. It was merely restated in the NPRM in view of other proposed changes to paragraph (d)(4). Therefore, the commenters' recommended rule change is beyond the scope of the NPRM. Furthermore, MTB does not believe that § 192.243(d)(4) and § 192.719(a)(2) are inconsistent. Although there are wording differences between the two rules, the effect of § 192.719(a)(2) is to require nondestructive testing of all tie-ins, because these girth welds are too impractical to strength test when a section of transmission line is replaced.

One commenter recommended that the radiographic test requirement for offshore pipelines in § 192.243(d)(3) be made the same as that for Class 1 pipelines (test at least 10 percent), since § 192.5 classifies offshore as Class 1 areas. Because offshore pipeline welds are outside the scope of the NPRM, this commenter's suggestion could not be adopted in this proceeding even if meritorious. Nevertheless, MTB notes that until Amendment 192-27 (41 FR 34598), the rule for offshore welds was identical to that for welds in Class 1. That amendment-adopted a more stringent test requirement for offshore girth welds to reduce the opportunity for pipeline damage which can result from lifting an underwater pipeline to repair a weld. It also made the offshore rule consistent with the requirement for testing welds located in navigable river crossings. MTB does not have any new information which indicates that the existing offshore rule is too burdensome or could be safely relaxed, and so does not plan any action on the subject at this time.

One commenter recommended that in cases where an operator avails itself of the "90 percent testing" rule, the operator be required to keep a record of each weld not tested and the reasons for not testing. This commenter argued that under the proposed rule an operator might skimp on weld tests under the guise that testing is impracticable, and that the recommended record would prevent this type of abuse. This recommendation was not adopted in the final rule because the type of abuse envisioned by the commenter would be equally possible under the current rule in situations where "90 percent testing" applies, and MTB is not aware of any abuses of this type. Further, the burden to determine that nondestructive testing is impracticable for each weld not tested

rests on the operator and the language of the rule reflects this. Therefore, any enforcement problems that might arise should be minimized. Finally, one of MTB's goals is to eliminate unnecessary recordkeeping requirements (see 49 FR 44928, November 13, 1984, Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting), and adding a recordkeeping requirement in the absence of information showing need would be contrary to that goal.

An editorial change is made in this final rule to make the title of § 195.234 consistent with the content. The title of § 195.234 has been changed from "Welds: Nondestructive testing and retention of testing records" to simply "Welds: Nondestructive testing," deleting the reference to record retention. This title change should have been made when the record retention requirement was deleted from § 195.234 (48 FR 9014, March 3, 1983) but was overlooked at that time.

Safety Standards Committees

The NPRM was presented to the Technical Hazardous Liquid Pipeline Safety Standards Committee on November 1, 1984, and to the Technical Pipeline Safety Standards Committee for gas pipelines on February 28, 1985. Both Committees found the proposed rules to be technically feasible, reasonable, and practicable. Copies of the Committees' reports are available in the docket.

Intrastate Hazardous Liquid Pipelines

The NRPM noted that the proposed rule would be adopted for intrastate hazardous liquid pipelines should Part 195 be extended to those pipelines. There were no adverse comments to this proposal. A final rule was published (50 FR 15895, April 23, 1985) extending the Part 195 regulations to intrastate hazardous liquid pipelines effective October 21, 1985. As a consequence, this final rule is adopted for intrastate hazardous liquid pipelines, but as indicated above under the "Effective Date" heading, will not apply to those pipelines until October 21, 1985.

Classification

Since this final rule will have a positive effect on the economy of less that $100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated, the final rule is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). MTB believes that the final rule will reduce the costs of nondestructive testing. However, these savings are not large enough to justify the preparation of a Regulatory Evaluation.

Based on the facts available concerning the impact of this final rule, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Parts 192 and 195

Pipeline safety, Nondestructive testing, Girth welds, Welding.

In view of the above, MTB amends Parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as set forth below and any authority citations following the sections in Part 192 are removed.

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. In § 192.243, paragraphs (d) (3) and (4) are revised to read as follows:

§ 192.243 Nondestructive testing.

* * * * *

(d) * * *

(3) In Class 3 and Class 4 locations, at crossings of major or navigable rivers, offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, in which case at least 90 percent. Nondestructive testing must be impracticable for each girth weld not tested.

(4) At pipeline tie-ins, 100 percent.

PART 195—[AMENDED]

3. The authority citation for Part 195 is revised to read as set forth below and any authority citations following the sections in Part 195 are removed:

Authority: 49 U.S.C. 2002; 49 CFR 1.53 and Appendix A to Part 1.

4. In § 195.234 the title is revised, paragraph (e) is revised, and a new paragraph (g) added to read as follows:

§ 195.234 Welds: Nondestructive testing.

* * * * *

(e) 100 percent of each day's girth welds installed in the following locations must be nondestructively tested 100 percent unless impracticable, in which case at least 90 percent must be tested. Nondestructive testing must be impracticable for each girth weld not tested:

(1) At any onshore location where a loss of hazardous liquid could reasonably be expected to pollute any stream, river, lake, reservoir, or other body of water, and any offshore area;

(2) Within railroad or public road rights-of-way;

(3) At overhead road crossings and within tunnels;

(4) Within the limits of any incorporated subdivision of a State government; and

(5) Within populated areas, including, but not limited to, residential subdivisions, shopping centers, schools, designated commercial areas, industrial facilities, public institutions, and places of public assembly.

* * * * *

(g) At pipeline tie-ins 100 percent of the girth welds must be nondestructively tested.

Issued in Washington, DC on September 6, 1985.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85-21763 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination To Remove Three Palau Birds From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service removes the Palau fantail flycatcher (*Rhipidura lepida*), the Palau ground-dove (*Gallicolumba canifrons*), and the Palua owl (*Pyrroglaux* (=*Otus*) *podargina*) from the protection of the Endangered Species Act of 1973, as amended. This action is being taken because these species are distributed throughout their former range at near original abundances and are faced with no foreseeable threat. They suffered reductions in populations in southern Palau during World War II, but they have increased in these areas since then.

DATES: The effective date of this rule is October 15, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT:
Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Palau Fantail Flycatcher or Melimdelebteb

The fantail flycatcher (*Rhipidura lepida*), of the family Muscicapidae, is an Old World flycatcher that was first described in 1868 by Hartlaub and Finsch. It is presently distributed uniformly throughout its former range and is found on all the major and many of the smaller islands from Babeldaob to Peleliu. The fantail is common in all forest types except mangrove, and shows a preference for mixed second-growth stands with a thick and well developed understory. Early accounts suggest the fantail was common in the mid-1800's (Finsch 1875), rare in 1931 (Coultas *in* Baker 1951), and uncommon in 1945 on islands damaged by World War II (Baker 1951). Surveys completed by the Trust Territory Conservation Office in 1977–79 show that the fantail is common and widespread, and in fact is now most abundant on Peleliu, an island that was heavily damaged during the war. Observations by visiting ornithologists in the 1970's confirm the general abudance of the fantail throughout the islands (Pratt *et al.* 1980).

Palau Ground-Dove, or Omekrengukl

The Palau ground-dove (*Gallicolumba canifrons*), described by Hartlaub and Finsch in 1872, inhabits dense to open forest of rocky limestone substrates. Its historical and present range includes the many limestone islands from Koror to Angaur. A few birds also have been recorded from the large volcanic island of Babeldaob. Past accounts indicate the dove has always been uncommon, particularly on war-damaged islands after World War II (Baker 1951). Accurate assessments of the ground-dove's status are hindered by its inaccessible habitat, low density, secretive nature and soft and infrequently voiced call. In surveys conducted by the Trust Territory Conservation Office from 1977–79, the dove was found to be uncommon but widespread within its range in the limestone islands. Island populations that were depressed in 1945 have recovered. A minimum of 15 birds was estimated to remain on Peleliu in 1945 (Baker 1951), but the recent survey shows a population of over 150 on that one island. The total population is estimated at a minimum of 500 birds, which is thought to be near the level before the arrival of man on these islands.

Though the dove is uncommon to rare, its low density is apparently natural and probably due to the living requirements of the species. There appear to be no imminent threats to the population. The many limestone islands that constitute the primary range are a *de facto* refuge. The ground-dove's small size, inaccessible habitat, secretive nature and low, scattered numbers all make the dove unsought as a game species.

Palau Owl or Chesuch

The Palau Owl (*Pyrroglaux* (=*Otus*) *podargina*), described by Hartlaub and Finsch in 1872, resides in all forest types, including mangroves, and is abundant on all the major islands from Babeldaob to Peleliu. The owl is a vocal species, and can be readily located by its loud and persistent calls that are voiced during the night. It has always been reported as common, though immediately after World War II the owl was rare on islands of southern Palau affected by the war (Marshall 1949, Baker 1951). It was thought that the owl continued to decrease after World War II, possibly as a result of its feeding on the introduced coconut rhinoceros beetle (*Oryctes rhinoceros*), but since the 1960's the owl has steadily increased in numbers (Owen *in* Pratt *et al.* 1980). (A beetle control program was started in the 1950's and has been effective in reducing the total number of beetles now available to the owl. The beetle apparently is sometimes swallowed whole and may kill the owl by piercing its stomach.) Today, the owl is found in high densities. On Peleliu only 4 pairs could be located in 1945; the population in 1978 was estimated at over 300 on this island, and over 10,000 throughout the archipelago. The population appears to be secure and stable.

None of these species is sought as a game species, and none are especially sought after by humans. In the past, all three species have been protected by Trust Territory laws. These laws are slated to be adopted by the new government of Palau upon termination of the Trust. The new constitution of Palau bans personal possession of firearms, making it illegal to hunt with firearms. The forest habitat for these species is relatively secure. The high islands should remain in a natural state; these generally have poor access, are precipitous, and have a rocky substrate that is unsuitable for agriculture or other types of development. On the main island of Babeldaob, a more extensive road system is planned, but a major portion of the island should remain in a forested condition. Populations of all three species do not appear to be threatened by disease, predation, or other natural or manmade factors.

The Palau fantail flycatcher, Palau ground-dove, and Palau owl were classified as endangered June 2, 1970 (35 FR 8495). No critical habitat has been designated. Based on recent status information, a rule was proposed to delist these three species on September 19, 1984 (49 FR 36665).

Summary of Comments and Recommendations

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute in the development of a final rule. Appropriate Republic of Palau agencies, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Pacific Daily News* on November 6, 1984, which invited general public comment. Two comments were received and are discussed below.

The former Chief Conservationist for the Trust Territory Conservation Office, Robert P. Owen, submitted comments supporting delisting the three Palau species. He stated that the original listing was based on surveys of southern Palau completed by military ornithologists a short time after U.S. forces had invaded Angaur and Peleliu. These invasions caused serious destruction of the vegetation and wildlife. No surveys were made of central or northern Palau at that time because those islands were still being held by the Japanese forces. Owen first went to Peleliu and Angaur in 1949, 5 years after the invasion and 4 years after the military survey. Native bird life was still scarce compared with the rest of Palau and the destroyed vegetation was just beginning to recover. He frequently visited these islands in following years, and believes that the vegetation and bird life have returned to normal.

Dr. H. Douglas Pratt, Research associate at Louisiana State University, also supported delisting the three Palau species. He has made intensive studies of the birds of these and other western Pacific islands. He believes that these birds are very likely at the carrying capacity of their habitats and that these habitats are under no presently foreseeable threat. He knows of no management measures that could

conceivably increase the populations of these three species over present levels.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Palau fantail flycatcher, the Palau ground-dove, and the Palau owl should be removed from the protection of the Endangered Species Act of 1973, as amended. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The data used to support a removal must be the best scientific and commercial data available to substantiate that the species is neither endangered nor threatened. Factors leading to delisting include extinction, recovery of the species, or the original data for classification were in error. The factors in section 4(a)(1) and their application to the Palau fantail flycatcher (*Rhipidura lepida*), the Palau ground-dove (*Gallicolumba canifrons*), and the Palau owl (*Pyrroglaux*) (=*Otus*) *podargina*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The three Palau birds are all forest species. About 75 percent of Palau is forested, and much of this forest should remain intact in future years, particularly on the many small, inaccessible islands between Koror and Peleliu. Despite relatively rapid development at present, much of the growth is concentrated around the capital of Koror and on the upper savannas of Babeldaob, where there has always been little forest habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None of the three Palau birds are utilized for these purposes. Occasionally, the Palau owl is taken for a pet, and the Palau ground-dove is taken incidental to hunting for the Micronesian pigeon (*Ducula oceanica*). These losses are few and are not considered a threat to the population.

C. *Disease or predation.* Populations of all three species appear to be stable, and neither disease nor predation is thought to pose a threat at present.

D. *The inadequacy of existing regulatory mechanisms.* All three species are protected by local regulations. Recently a ban on personal possession of firearms was enacted in Palau, which may further reduce any illegal taking of these and other bird species.

E. *Other natural or manmade factors affecting its continued existence.* There are no other known factors that are affecting the continued existence of the three Palau species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. All three species appear to have recovered on islands damaged during World War II. The original status information was meager and more recent and complete information is now available. These three Palau species are presently distributed throughout their former habitat and have stable populations that survive at or near their respective carrying capacities. Thus, they no longer meet the definitions of threatened or endangered species. Based on this evaluation, the Service delists the Palau fantail flycatcher, Palau ground-dove, and Palau owl.

Effects of Rule

The rule merely acknowledges that the Palau fantail flycatcher, Palau ground-dove, and Palau owl are not threatened with becoming endangered or in danger of extinction and that further protection under the Act is not required. Those prohibitions and conservation measures under the Act, sections 7 and 9 in particular, are no longer applicable to these species. As there were no specific preservation or conservation measures for these species in effect, there will be no impact on any agency or individuals.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

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Marshall, J.T., Jr. 1949. The endemic avifauna of Saipan, Tinian, Guam, and Palau. Condor 51:200–221.

Pratt, H.D., J. Engbring, P.L. Bruner, and D.G. Berret. 1980. Notes on the taxonomy, natural history, and status of the resident birds of Palau. Condor 82:117–131.

Author

The primary author of this final rule is John Engbring, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine Mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the following, found in alphabetical order under BIRDS, from the List of Endangered and Threatened Wildlife: Dove, Palau ground; Flycatcher, Palau fantail; and Owl, Palau.

Dated: August 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–21764 Filed 9–11–85; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Designation of Critical Habitat for the White River Spinedace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a fish, the White River spinedace (*Lepidomeda albivallis*), to be an endangered species and designates its critical habitat under the authority

contained in the Endangered Species Act of 1973, as amended. This action is being taken because five populations of this species have been eliminated and the remaining two populations have declined due to habitat destruction through channelization and diversion of their spring habitats, and due to the introduction of exotic fishes, which compete with and prey on the White River spinedace. The White River spinedace occurs in remnant waters of the pluvial White River system in southern White Pine County and extreme northeastern Nye County, Nevada. A determination that the White River spinedace is an endangered species and designation of its critical habitat will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is October 15, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The White River spinedace (*Lepidomeda albivallis*) was described by Miller and Hubbs (1960) based on material collected in 1934. It is one of six species belonging to the Plagopterini, a unique tribe of cyprinid fishes noted for their adaptations to small, swift-water desert streams. Members of the Plagopterini are restricted to the lower Colorado River system and are characterized by the possession of two spinal rays in the dorsal fin and a reduction in scalation in certain taxa (Miller and Hubbs 1960, Uyeno and Miller 1973). The White River spinedace is a relatively large species of *Lepidomeda*, and ofter attains a length of 4 to 5 inches (10–13 cm). It can be distinguished from other species of *Lepidomeda* by its possession of a pharygeal tooth formula of 5–4 in the main row, typically fewer than 90 lateral-line scales, a moderately oblique mouth, a dorsal fin of moderate height, and distinctive body coloration. The species exhibits a bright green to olive color dorsally, brassy over bright silver laterally, and silvery-white ventrally. The head is coppery-red to red on the sides with gilt reflections on the cheeks and opercles (Miller and Hubbs 1960).

The White River spinedace is the only representative of the tribe within the upper White River system of southern White Pine County and extreme northeastern Nye County, Nevada. During pluvial times, 10,000 to 40,000 years ago, the White River was tributary to the Colorado River by way of the Virgin River (Hubbs *et al.* 1974). As the pluvial waters desiccated because of the more xeric climates, the White River spinedace was restricted to permanent waters such as springs or perennial sections of the White River. Currently, the White River is dry for much of its course. In the mid 1900's, the White River spinedace was known from Preston Big, Nicholas, Arnoldson, Cold, Lund, and Flag Springs as well as from the White River near its confluence with Ellison Creek (Miller and Hubbs 1960, Williams and Wilde 1981).

Presently, viable populations of the White River spinedace are found only in Lund Spring and Flag Springs. Lund Spring is privately owned and Flag Springs is State owned and within a wildlife management area. The former locality contains established populations of exotic species. Both spring systems have been altered by human activities. The primary threats to the continued existence of the White River spinedace are the channelization and diversion of water within the spring habitats as well as the introduction of exotic fishes such as guppies (*Poecilia reticulata*), mosquitofish (*Gambusia affinis*), and goldfish (*Carassius auratus*) into spinedace habitat. The exotic fishes compete with and, in some instances, prey on the spinedace.

On December 30, 1982, the Service published a vertebrate Notice of Review (47 FR 58454) and included the White River spinedace as a category 1 species. Category 1 indicates that the Service has substantial information to support the biological appropriateness of listing the species as threatened or endangered.

On April 12, 1983, the Service received a petition from the Desert Fishes Council requesting that the White River spinedace along with 16 other fish species be added to the List of Endangered and Threatened Wildlife. The Service published in the **Federal Register** (48 FR 27273) on June 14, 1983, a finding that the petition presented substantial information and that the petitioned action may be warranted. Publication of the proposed rule on May 29, 1984 (49 FR 22359), constituted the required 12-month petition finding in accordance with section 4(b)(3)(ii) of the Act.

Summary of Comments and Recommendations

In the May 29, 1984, proposed rule (49 FR 22359) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notice were published in the *Ely Daily Times* on June 26, 1984, *The Las Vegas Sun* on June 26, 1984, and the *Las Vegas Review Journal* on June 13, 1984, which invited general public comment. Six comments were received and are discussed below. No public hearing was requested or held.

Supportive comments were received from the International Union for Conservation of Nature and Natural Resources (IUCN), American Society of Ichthyologists, Nevada Department of Conservation and Natural Resources (NDCNR), and Thomas M. Baugh, University of Nevada. In addition, a comment was received from the Nevada Department of Wildlife (NDOW) supporting the listing of the Lund Spring population and the designation of critical habitat at Lund Spring and Preston Big Spring. However, NDOW withheld support for the listing of the Flag Springs population and designation of critical habitat at Flag Springs. The Nevada Department of Wildlife felt that its management of the wildlife area afforded the White River spinedace adequate protection at this site and that because of its management policies the population was not endangered. The Flag Springs population is small and vulnerable to any habitat disturbance. In the past, the springs have been modified and adverse effects to the species' habitat have resulted. It is the position of the Service that State management of the spinedace habitat is not sufficient to allow complete recovery of the species and its habitat. Designation of this site as critical habitat will provide full protection for the species including future recovery actions. In addition, due to the importance of this small site as one of only two existing locations for the fish, the exclusion of this site from critical habitat designation is not considered prudent.

One opposing comment was received from the Regional Planning Commission, White River County. The main concern was the effect the rulemaking might have on the private landowners in this agricultural area. In response to the

above concern, the only activities that may be affected by the listing of the White River spinedace and the designation of critical habitat are Federal activities that might adversely affect the species or its critical habitat and the "taking" of the fish itself, a prohibition already enforced under the State of Nevada's regulations regarding protected species. Private or county activities, unless undertaken with assistance from Federal sources, will not be affected by this rule, and there are no known or anticipated activities involving Federal funds or permits for these lands.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the White River spinedace (*Lepidomeda albivallis*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the White River spinedace (*Lepidomeda albivallis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* When the White River spinedace was described by Miller and Hubbs in 1960, the species was present in large numbers throughout its range. By 1979, the spinedace was considered rare in all localities surveyed (Hardy 1980). Physical and biological habitat alteration have precipitated this decline. During the latter half of this century, agricultural and residential use increased within the White River spinedace range because of the abundant water supply found there. The available suitable habitat for the spinedace has been reduced by channelization of spring flows and the development of diversion structures around outflow creeks, activities that made water available for residential and agricultural uses. Continued channelization and diversion of the water supply threatens the remaining habitat of the White River spinedace.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No such threats are known.

C. *Disease or predation.* Introduction of exotic fish, such as guppies (*Poecilia reticulata*), mosquitofish (*Gambusia affinis*), and goldfish (*Carassius auratus*), into the aquatic habitats of the White River spinedace has occurred. The establishment of guppies and mosquitofish in habitats occupied by the White River spinedace has been particularly harmful. It is thought that some of these exotic fish prey upon the spinedace and have led to population declines. In general, the introduction of exotic fishes is usually detrimental to native fishes because of competition, predation, or the introduction of exotic parasites and diseases (Deacon *et al.* 1964, Hubbs and Deacon 1964).

D. *The inadequacy of existing regulatory mechanisms.* The State of Nevada has placed the White River spinedace on its Protected Species List. However, this action does not provide protection to the species' habitat. Through Federal listing, protection for the species and its habitat will be implemented as provided by the Endangered Species Act.

E. *Other natural or manmade factors affecting its continued existence.* The use of copper sulfate for control of algae may have been partly responsible for the elimination of the species from Preston Big Spring and may threaten the remaining populations (Courtenay *et al.* ms).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the White River spinedace as endangered. The elimination of five populations, and the reduction of the remaining two by channelization and diversion activities in their spring habitats, as well as competition and predation from exotic species, indicate that the species is imminently threatened with extinction. Therefore, endangered status is warranted. The reasons for designation of critical habitat are discussed below.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the White River spinedace (*Lepidomeda albivallis*) to include three areas in Nevada. Preston Big Spring (approximately 4.0 acres) and Lund Spring (approximately 1.3 acres) are critical habitat areas in White Pine County and Flag Springs (3.0 acres) is located in northeastern Nye County. Preston Big Spring is included in the critical habitat designation as an area outside the present geographical range occupied by the species but essential for the species' conservation and within the historic range of the species. The White River spinedace is thought to have been extirpated from this spring shortly before 1980 (Courtney *et al.* ms). Efforts to reestablish the spinedace at this recent historical site are planned and are considered necessary to increase the species' numbers, the population numbers, and the genetic viability of this species. Constituent elements at all sites include consistently high quality cool (55°–70°F) springs and outflows with a sufficient quantity of water, and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds. A precise description of the critical habitat can be found in the "Regulations Promulgation" section.

The areas proposed as critical habitat for the White River spinedace satisfy all known criteria for its ecological, behavioral, and physiological requirements. The most critical element to the survival of the spinedace is a consistent quality and quantity of springflow. The critical habitat being designated includes the springs and associated outflows as well as the immediately surrounding riparian areas. These narrow riparian land areas are essential for vegetative cover that contributes to the uniform water conditions preferred by the spinedace and provides habitat for insects and other invertebrates that constitute a substantial portion of the spinedace diet.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities that may adversely affect the critical habitat of the White River spinedace include pollution of the

springwater (such as through the use of chemicals to control algae), introduction of exotic species, excessive pumping of water from nearby aquifers, and further physical modification of the spring areas (such as through channelization and diversion of springflows or clearing of the surrounding vegetation).

Agriculture is the primary activity on private lands near the two White Pine County springs proposed as critical habitat. The water from these two springs enters pipes after an open area near the spring head and is used for irrigating crop lands. The springs system on State lands within the proposed critical habitat is part of the Kirch Wildlife Management Area and is relatively unmodified. Two impoundments occur away from the spring heads for wildlife use. Currently, there are no known activities involving Federal funds or permits that may affect or be affected by the designation of critical habitat for this species. If a landowner seeks Federal assistance in activities such as modification of the springs or their immediate outflows the Federal agency involved must enter into consultation with the Service to ensure that such activities do not adversely affect the White River spinedace or its habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. No additional information has been received as a result of the proposed rule on economic or other impacts that might result from designation of the critical habitat. The critical habitat area is approximately 8.3 acres and includes three spring systems and their outflows. One of these spring areas is owned by the State of Nevada and has been maintained in a relatively pristine condition as part of a wildlife management area. The two other springs are in private ownership. There is no known or anticipated involvement of Federal funds or permits for the private and State lands included in the critical habitat designation. Therefore, no significant economic or other impacts are expected as a result of the designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No such Federal involvement is known for White River spinedace.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1966, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat designation as defined in the proposed rule did not bring forth economic or other impacts to warrant consideration of revising the critical habitat. One spring included as critical habitat is located within a wildlife management area owned by the State and the two other springs designated as critical habitat are in private ownership. There is no known or planned involvement of Federal funds or permits for the State and private lands included in the critical habitat designation. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, at the address found in the "Addresses" section.

Literature Cited

Courtenay, W.R., S.E. Deacon, D.W. Sada, R.C. Allan and G.L. Vinyard. Manuscript. Comparative status of fishes along the course of the pluvial White River, Nevada.

Deacon, J.E., C. Hubbs and B.J. Zahuranec. 1964. Some effects of introduced fishes on the native fish fauna of southern Nevada. Copeia 1964:384–388.

Hardy, T. 1980. The Inter-basin area report—1979. Proc. Desert Fishes Council 11:5–21.

Hubbs, C.L. and J.E. Deacon. 1964. Additional introductions of tropical fishes into southern Nevada. Southwestern Nat. 9:249–251.

Hubbs, C.L., R.R. Miller and L.C. Hubbs. 1974. Hydrographic history and relict fishes of the north-central Great Basin. Memoirs California Acad. Sci. 7:1–259.

Miller, R.R. and C.L. Hubbs. 1960. The spiny-rayed cyprinid fishes (Plagopterini) of the Colorado River system. Misc. Publ. Mus. Zool., Univ. Michigan 115:1–39.

Uyeno, T. and R.R. Miller. 1973. Chromosomes and the evolution of the Plagopterin fishes (Cyprinidae) of the

Colorado River system. Copeia 1973:776–782.
Williams, J.E. and G.R. Wilde. 1981. Taxonomic status and morphology of isolated populations of the White River springfish, *Crenichthys baileyi* (Cyprinodontidae). Southwestern Nat. 25:485–503.

Author

The primary author of this final rule is Carol A. Wilson, Endangered Species Staff, at the address in the "**ADDRESSES**" section.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Spinedace, White River	*Lepidomeda albivallis*	U.S.A. (NV)	Entire	E		17.95(e)	NA

3. Amend § 17.95(e), by adding critical habitat of the White River spinedace (*Lepidomeda albivallis*), as follows: The position of this entry under § 17.95(e) will follow the same alphabetical sequence as the species occurs in § 17.11.

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

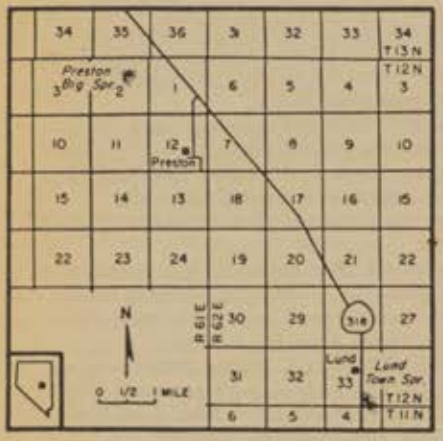
* * * * *

WHITE RIVER SPINEDACE (*Lepidomeda albivallis*)

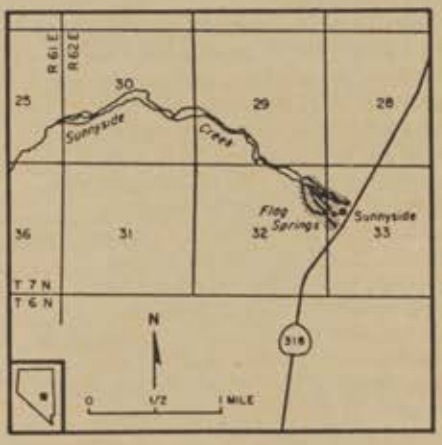
Nevada, White Pine County. Each of the following springs and outflows plus surrounding land areas for a distance of 50 feet from these springs and outflows:

Preston Big Spring and associated outflows within T12N, R61E, NE ¼ Sec. 2.

Lund Spring and associated outflows within T11N, R62E, NE ¼ of NE ¼ of Sec. 4; T12N, R62E, S ½ of SE ¼ Sec. 33.



Nevada, Nye County. Flag Springs and associated outflows plus surrounding land areas for a distance of 50 feet from the springs and outflows within the following areas: T7N, R62E, E ½ of NE ¼ Sec. 32, SW ¼ of NW ¼ Sec. 33.



Known constituent elements for all areas of critical habitat include consistently high quality and quantity of cool springs and their outflows, and surrounding land area that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds.

* * * * *

Dated: August 13, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–21824 Filed 9–11–85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

Refuge-Specific Hunting Regulations

Correction

In FR Doc. 85–21036, beginning on page 35815, in the issue of Wednesday, September 4, 1985, make the following corrections:

1. On page 35816, first column, sixteenth line, "FR 37736" should read "FR 36736".

2. On page 35821, first column:

a. In § 32.22(d)(4)(ii), fifth line, "mussleloader" should read "muzzleloader".

b. In § 32.22(d)(4)(iii), third line, insert "five" between "last" and "days".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 30316-39]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Paragraph (b) is removed from § 658.22, and the terms "field order" and "order" are replaced by "Notice in the

Federal Register" and "notice," respectively, wherever they occur at § 658.25. The intent is to remove nonconforming language from the implementing regulations.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: William B. Jackson, Fisheries Management Officer, 202–634–7432.

SUPPLEMENTARY INFORMATION: NOAA published a final rule on April 21, 1983 (48 FR 17098) to modify, temporarily, the boundary of the Tortugas Shrimp Sanctuary to reduce the area closed to trawl fishing. The termination date for the temporary geographic modification of the Sanctuary was 2400 hours August 14, 1984. Accordingly, § 658.22 is revised to remove paragraph (b) where the temporary geographic modification is discussed.

NOAA has also determined that the use of the terms "field order" and "order" are not the appropriate terms to accurately describe how inseason adjustments are made known to the public, therefore, "notice in the **Federal Register**" and "notice," respectively, are inserted in § 658.25 wherever "field order" and "order" appear.

List of Subjects in 50 CFR Part 658

Fisheries.

Dated: September 6, 1985.

Carmen J. Blondin,

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

For the reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—[AMENDED]

1. The authority for Part 658 continues to read as follows:

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

§ 658.22 [Amended]

2. Section 658.22 is amended by removing the paragraph (a) designator and paragraph (b) in its entirety.

§ 658.25 [Amended]

3. Section 658.25 is amended by removing the term "field order" and "order" and inserting the terms "notice in the **Federal Register**" and "notice," respectively, wherever they occur.

[FR Doc. 85–21825 Filed 9–9–85; 2:43 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1806

Real Property Insurance

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the Real Property Insurance loss deductible clause for Multiple Family Housing Loan and Grant recipients. This action is being taken to provide flexibility in selection of the level of loss deductible and keep insurance premiums at reasonable amounts. The intended effect is to help hold tenant rents from unreasonable escalation.

DATES: Comments must be received on or before November 12, 1985.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250.

All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: James D. Tucker, Branch Chief, Multiple Family Housing Servicing and Property Management (MHSPM) Division, USDA, Room 5321–S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, D.C. 20250, Telephone: (202) 382–1618.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse affects 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.

Environmental Impact Statement.

This document has been revised according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; and 10.427, Rural Rental Assistance Payments. For the reasons set forth in the final rule related notice(s) to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983. The program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

General Information

Background and Statutory Authority

This subpart prescribes the authorization, methods, and procedures for obtaining and servicing property insurance on buildings on owned or leased land securing the interest of Farmers Home Administration (FmHA) in connection with Farmer Program (FP), Rural Housing (RH), Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Recreation Loans (RL), Other Real Estate (ORE), Soil and Water (SW), Timber Development (TD), and Land Conservation and Development (LCD) loans. FP means direct and insured individual farm real estate, operating and emergency loans secured by real estate.

This proposed change is to revise the amount of loss deductible allowable on Real Property Insurance Policies covering buildings securing Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) organization type loans securing FmHA financed projects.

List of Subjects in 7 CFR Part 1806

Insurance, Loan programs—Agriculture, Real property insurance, Rural areas.

Therefore, Subpart A of Part 1806, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1806—INSURANCE

1. The authority citation for Part 1806 would be revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70; 29 FR 14764; 33 FR 98950.

2. In § 1806.2, paragraph (d)(1)(iii) is revised to read as follows:

§ 1806.2 Companies and policies

* * * * *

(d) * * *

(1) * * *

(iii) *Loss Deductible Clause.*

(A) For all loans other than RRH, RCH and LH organizations this clause generally provides that loss to each *building* to the extent of the limitation is not recoverable. The company is liable only for loss to each building in excess of such limitation stated in the clause. This clause may be accepted where the limitation does not exceed $150, or one percent of the insurance coverage whichever is greater. In no case, however, may the limitation on any one building exceed $500.00.

(B) For RRH, RCH, and LH organization loans this clause generally provides that loss to each *project* to the extent of the limitation is not recoverable. The company is liable only for loss to each project in excess of such limitation stated in the clause. This clause may be accepted where the

limitation does not exceed the option shown below that is chosen by the borrower and agreed to by the Loan Approving Official and properly annotated in the borrower file. The borrower and FmHA Official should consider the economic impact to the project when selecting the appropriate option.

(1) Option 1—Up to one-fourth of one percent (0.0025) of the insurable value. Maximum deductable $5,000.

(2) Option 2—Up to a flat rate of $500 deductible on any project with an insurable value not exceeding $200,000.

(3) Option 3—Option 1 may be chosen and increased by an amount equivalent to an amount of funds placed in an insurance escrow to offset the increased deductible, dollar for dollar.

(4) Option 4—Option 2 may be chosen and increased by an amount equivalent to an amount of funds placed in an insurance escrow to offset the increased deductibles, dollar for dollar.

(5) The funds used to increase the deductible in Option 3 or Option 4 may be from project funds if it does not create an unsecure financial situation for the project. Also, non-project funds may be used for Optional 3 or 4 and then repaid by withdrawal from the project at the rate of 75 percent of the annual insurance premium savings earned by the amount of escrow deposit, up to the amount deposited.

(6) The funds escrowed to increase the authorized deductible will be placed in the project reserve account as an increased amount in and above the amount required by the Loan Agreement/Resolution and so annotated in the borrower's accounting system.

* * * * *

Dated: August 19, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85-21789 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Parts 51, 71, 78, 80, and 92

[Docket 83-106]

Brucellosis Regulations; Interstate Movement of Cattle, Bison, and Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the interstate movement of cattle, bison, and swine as related to brucellosis. This document would amend the brucellosis regulations to clarify definitions and interstate movement requirements, provide for additional restrictions on the interstate movement of cattle in order to reduce the risk of interestate spread of brucellosis, and provide for alternate methods of moving cattle and bison interstate which would not increase the risk of the interstate spread of brucellosis.

DATE: Comments must be received on or before November 12, 1985.

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

FOR FURTHER INFORMATION CONTACT: Dr. Granville H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious, infectious, and contagious disease which affects animals and man and is cause by bacteria of the genus brucella. The Secretary of Agriculture is authorized to cooperate with the States in conducting a brucellosis eradication program and to prevent the interestate spread of brucellosis. Title 9, Code of Federal Regulations, Part 78, (referred to below as the regulations) regulates the interstate movement of cattle, bison, and swine with respect to brucellosis. States, areas, herds, and individual animals are clssified according to brucellosis status, and the brucellosis requirements for interstate movement are based upon the disease status of the individual animal and the status of the herd, area, or State from which the animal originates.

A major revision of the regulations was published as a final rule December 13, 1982, and became effective January 12, 1983. Provisions in this final rule which differed significantly from the proposed rule were open for comment and three letters were received during the comment period which addressed those sections of the final rule officially open for comment. These comments and any proposed changes based upon such comments will be discussed in this proposal.

Further a number of problems have been identified in interpretation, compliance, and enforcement of these regulations. A number of proposed changes are set forth in this document which we believe would resolve these problems.

Since 1947, minimum standards for conducting the brucellosis eradication program have been recommended to the Department by the United States Animal Health Association (USAHA). The USAHA is a nongovernmental organization dedicated to the betterment of livestock health and the livestock industry. It is composed of livestock industry organizations and individuals, State animal helath officials, and Federal animal health officials. Department representatives serve on the Brucellosis Committee of USAHA both as members and as advisors. The recommendations of USAHA are reviewed by the Department. Those acceptable to the Department are proposed as amendments to the Brucellosis Eradication Uniform Methods and Rules (UM&R), APHIS Publication 91-1. The UM&R forms the basis for cooperation between the States and the Department to control and eradicate brucellosis, and constitutes the minimum standards for achieving and maintaining brucellosis status. The UM&R is subject to annual review and amendment to reflect progressive program needs as determined by representatives of all impacted segments of the livestock industry, the scientific community, the State animal health officials, and United States Department of Agriculture animal health officals. This proposed rule incorporates USAHA recommendations which would affect the interstate movement requirements of the regulations.

The Proposal

This document proposes numerous changes in the regulations; therefore, the entire part is republished as a proposal. Only those sections which would be substantively amended by this document will be discussed in this supplemental information. This document proposes to make numerous minor changes only for clarification of the current regulations, and such proposed changes are not addressed in this supplemental information.

Subpart A—General Provisions

This document would reorganize the terms defined in present § 78.1 in alphabetical order to assist those who wish to locate any particular term defined. Further, to assist the reader, this document would provide a list of terms defined to provide an easy method of determining which terms are defined in § 78.1. Paragraph designations would be deleted from

§ 78.1 and reference to the definitions in other sections of the proposed regulations would refer only to § 78.1. Further the definitions set forth in present § 78.1 would be amended as explained below.

Present § 78.1(m) defines the word "moved" as "[s]hipped, transported, or otherwise moved, or delivered or received for movement." This document would amend the definition of the word "moved" to read: "[s]hipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved." This amendment would not change the requirements of the regulations, however, it would extend the legal responsibility for violations of the regulations to those aiding, inducing, or causing the movement of animals in violation of the regulations.

The definition of "certificate" set forth in present § 78.1(n) would be amended by this document to permit ownership brands to be used as identification on certificates for cattle moving interstate which do not require an official test for brucellosis to be moved in accordance with the regulations, provided, the ownership brands are registered with an official brand recording agency and the cattle being moved are accompanied by an official brand inspection certificate. This amendment would permit cattle which are required to be accompanied interstate by a certificate to be moved interstate from Class Free States or areas and from certified brucellosis-free herds with a certificate utilizing the ownership brand as identification. The proposed change in the definition of certificate would greatly facilitate identification procedures for cattle originating in Class Free States or areas or certified brucellosis-free herds without losing identity to the State and farm of origin. Cattle originating from such States or areas and from such herds represent a very low risk of transmitting brucellosis, and it is not believed that this proposed change in identification requirements will have any significant adverse effect on the brucellosis eradication program.

This document would add definitions to the terms "official brand inspection certificate" and "official band recording agency" which are used in the proposed definition of the word "certificate," explained above. These two definitions would be added to more clearly identify the type of agency with which ownership brands must be registered and the type of document which must accompany the cattle.

Present § 78.1(o) defines the word "permit." This definition also defines the terms "permit for entry" and "S brand permit." These three terms have different meanings; therefore, this proposal would separately define each of the three terms. None of the definitions of these three terms have been substantively changed.

Section § 78.1(p) sets forth the definition of "official test." This definition is divided into official tests for the classification of cattle and bison and official tests for the classification of swine. There are no substantive changes proposed in this document for the definition of official tests for the classification of swine. The definition of official test for the classification of cattle and bison would be amended by this document by including two additional tests and by substantively modifying the interpretations of two of the current official tests.

The proposed amendment would add a modified (reduced sensitivity) card test as an official test for cattle and bison which are official vaccinates. The modified card test would be used as a followup test on official vaccinates positive to the presently used card test in livestock markets in those States in which the State animal health official and the Veterinarian in Charge designate the test as an official test. The presently used card test is referred to as the standard card test in this proposal to distinguish it from the modified card test. Official vaccinates which are not infected with field strain brucella occasionally continue to produce a type of antibody which is detectable on the standard card test and which results in a "positive" interpretation. This has sometimes caused excessive and unnecessary interruption of cattle and bison movement, particularly in areas where the cattle and bison population is heavily vaccinated. (Utilization of reduced dose vaccination as proposed in the definition of official calfhood vaccinate and official adult vaccinate as set forth in proposed § 78.1 will minimize this problem, but will not eliminate it entirely.) Adoption of the modified card test as proposed is intended to provide a more specific test to more accurately identify those cattle and bison infected with field strain brucella. Official vaccinates positive to the standard card test but negative to the modified card test would be classified as brucellosis suspects. The definition of the standard card test presently set forth in § 78.1(p)(1)(i) would also be modified by this proposal to permit classification of official vaccinates positive to the standard card test and negative to the modified card test as brucellosis suspects.

The proposed amendment to the definition of "official test" would also add the Technicon automated complement-fixation (CF) test as an official test for test-eligible cattle and bison. The presently used complement-fixation test is referred to as the manual complement-fixation (CF) test in this proposal to distinguish it from the Technicon automated CF test. Extensive comparison studies provided by Texas animal health officials demonstrate that the Technicon automated CF test is slightly more sensitive (in terms of indentifying field strain infected cattle and bison) than the manual CF test.

The rivanol test presently set forth in § 78.1(p)(1)(iv) would also be amended by this proposal. Specifically, this proposal would provide that official vaccinates subject to the rivanol test and found to have a complete agglutination at a dilution of 1:50 or less would be classified as brucellosis suspects rather than brucellosis reactors if a complement-fixation test is conducted and results in a complement-fixation classification of brucellosis suspect or brucellosis negative.

Since vaccination may interfere with the interpretation of the rivanol test, the brucellosis reactor classification for the rivanol test is considered by some animal health officials to be too stringent. Selection of the complete agglutination at the 1:50 level is based on field observations that official vaccinates with titers of incomplete agglutination at 1:100 or higher on the rivanol test have a greater probability of being infected with field strain brucellosis than do official vaccinates with rivanol titers of complete agglutination at 1:50 or less.

The "milk ring test" presently set forth in § 78.1(p)(1)(viii) is renamed in this proposal the "brucellosis ring test" These terms are used synonymously in much of the scientific literature to describe the same test procedure. The brucellosis ring test surveillance program has for many years required routine collection on both milk and cream samples from all dairies which ship milk or cream commercially in the United States. The use of the term "milk ring test" in the regulations which became effective January 12, 1983, caused some persons to conclude erroneously that routine collection of cream samples for testing was no longer required. Therefore, to eliminate this misunderstanding, this document would propose that the name "brucellosis ring test" be used instead of "milk ring test" in the regulations. It is also proposed to remove the "milk ring test" from the definition of official test and set forth the definition of brucellosis ring test separately in proposed § 78.1. The

brucellosis ring test has never been used as a test to determine the disease status of individual animals or the eligibility of individual animals for interstate movement pursuant to the regulations. Since the "brucellosis ring test" would continue to be used in determining the classification of States or areas, it is necessary to retain a definition of the term.

The definition of "certified brucellosis-free herd" as set forth in present § 78.1(q) would be amended to increase the minimum number of consecutive negative brucellosis ring tests for dairy herds as specified in the first qualifying procedure from three to four to be conducted at not less than 90 day intervals and followed by the currently required negative herd blood test within 90 days of the last brucellosis ring test. The increased number of brucellosis ring tests would provide greater assurance that the individual dairy is free of brucellosis. Should a dairy herd become infected, brucellosis would be detected earlier. This would result in reduced economic loss to the producer and reduce the threat of brucellosis transmission. No brucellosis test is required for cattle moving interstate from a certified brucellosis-free herd. This proposed change to require four rather than three brucellosis ring tests to qualify as a certified brucellosis-free herd provide additional assurance of the brucellosis-free status of the herd and a reduced risk of the interstate spread of brucellosis.

It is also proposed to amend the definition of "certified brucellosis-free herd" to provide for certification of bison herds, as well as cattle herds. Although not a requirement, owners of bison herds may wish to obtain the certified brucellosis-free herd status by following the testing procedures set forth in the proposed definition of "certified brucellosis-free herd." The certified brucellosis-free herd status would provide the bison owner with the same assurance of brucellosis free status as cattle herds which are certified brucellosis-free herds. As discussed below, this document proposes to amend the regulations concerning the interstate movement of bison to reduce restrictions on bison originating from any herds which may qualify as certified brucellosis-free herds.

The definition of "certified brucellosis-free herd" is also amended in this proposal to permit an owner of a certified brucellosis-free herd to reestablish the recertification test date by conducting a herd blood test prior to the end of the 12 month certification period. Some owners of certified brucellosis-free herds have found it necessary or advantagous to change the recertification test date. It is believed that by testing their herd earlier than required to establish a new recertification date, the brucellosis-free status of their herd can be confirmed without adversely affecting the certification program.

This document would amend the definition of "validated brucellosis-free State for swine" set forth in present § 78.1(s) to eliminate the references in the definition to validated brucellosis-free areas since there are no areas other than States which are validated brucellosis-free. The definition of "validated brucellosis-free State" would also be amended to add the minimum qualifying alternative standards which are referred to in present § 78.1(s). These proposed alternative standards would require that prior to validation a State have no known foci of brucellosis in the State, have found no more than 3 percent of the herds in the State to have brucellosis during the qualifying period, and have completed one of three specified methods of surveillance. The definition of "validated brucellosis-free State" would further be amended to permit validation of a State regardless of the brucellosis status of the feral swine in that State if the feral swine do not come in contact with domestic swine. This amendment was recommended by the USAHA to support efforts for validation of States which have a wild swine population. In certain States wild swine may be affected with brucellosis but do not come in contact with domestic swine and thus do not represent a risk to domestic swine in a State qualifying for validated brucellosis-free status.

This document would amend the definitions of "Class Free State or Area," "Class A State or Area," "Class B State or Area," and "Class C State or Area," respectively, defined in present § 78.1(t), § 78.1(u), § 78.1(v), and § 78.1(w). Two substantive amendments would be made to each of these definitions.

First, one of the current standards to attain and maintain Class Free, A, B, and C status is that the brucellosis ring test (BRT) shall be conducted at least four times a year on all dairy herds. The Department believes that this requirement is too stringent. The very large number of dairy herds in some States makes the accounting and collection procedures subject to occasional error. As a result, it is proposed to amend this standard by requiring that each dairy herd producing commercial milk be included in at least three of four brucellosis ring tests conducted on dairy herds at approximately equal intervals each year. Under this proposed amendment, the vast majority of dairies would continue to be tested four times per year. It does not appear that this reduced surveillance requirement would adversely affect the brucellosis program.

Second, currently under the regulations, card test positive cattle tested for surveillance under the market cattle identification (MCI) program are classified as MCI brucellosis reactors with or without supporting serologic test results for the purposes of classifying States or areas. Since official vaccination may interfere with the results of the standard card test, it is believed that including all card test positive cattle as MCI brucellosis reactors in determining the MCI reactor prevalence rate is excessively stringent and may improperly and adversely affect the classification of the State or area.

In order to obtain uniformity, however, in identifying and counting MCI reactors throughout the United States, the USAHA has recommended that nonvaccinated cattle positive to the standard card test and vaccinated cattle positive to the modified card test or positive to the rivanol test at 1:25 or greater be included in determining the MCI reactor prevalence rate. This proposed amendment has been included under MCI reactor prevalence rate in the definitions of Class Free, A, B, and C States or Areas in § 78.1.

The definitions of "brucellosis reactor," "brucellosis suspect," and "brucellosis negative" set forth in present §§ 78.1(x), 78.1(y), and 78.1(z), respectively, are proposed to be amended in this proposal. Each of these terms is presently defined by identifying the official tests to which an animal may be subjected and the results which will classify the animal regarding its particular brucellosis disease status. Further, a designated epidemiologist may reclassify an animal based upon other epidemiologic considerations. This proposal deletes the references to the specific official tests and the specific test results which classify an animal in terms of its brucellosis disease status and defines "brucellosis reactor," "brucellosis suspect," and "brucellosis negative" as an animal which has been subjected to one or more official tests which results in a specific brucellosis status classification based upon the results of the official test. Except with respect to substantive changes in the definition of official test discussed above, this change in the format of the

definition of these three terms would not substantively amend the meaning of these terms. This amendment would avoid the duplication which is presently found in the definitions of "official test," "brucellosis negative," "brucellosis suspect," and "brucellosis reactor." This proposal would not amend the definitions of these terms with respect to reclassification of the brucellosis status of an animal by the designated epidemiologist.

The definition of the term "breeding swine" in present § 78.1(ff) would be deleted since this term is not used in the proposed regulations. The terms "sow" and "boar" are retained and defined in this proposal without substantive change. These terms are used in place of the term "breeding swine" with qualification as necessary in the proposed regulations. This change is proposed for clarification. The deletion of this term would necessitate an amendment of the definition of the word "animal" set forth in present § 78.1(cc). Presently, "animals" are defined as "[c]attle, bison, and breeding swine". This document would amend the definition of "animals" to read "[c]attle, bison, and swine."

Present § 78.1(ii) sets forth the definition of "recognized slaughtering establishment." This proposal would add a footnote which states that a list of recognized slaughtering establishments in a State may be obtained from Veterinary Services representatives, the State animal health official, or State representatives. The information in this proposed footnote is in present § 78.24(a). To avoid duplication, this proposal would delete present § 78.24(a).

Present § 78.1(jj) sets forth the definition of "specifically approved stockyard." This proposal would not substantively amend the definition of the term in that this proposal, as the present regulations, refers the reader to another section of the regulations in order to determine the substantive requirements which must be met in order to obtain approval. The substantive requirements are set forth in proposed § 78.44 and are discussed below. The proposed definition of "specifically approved stockyard" would be amended by adding a footnote which states "[n]otices containing lists of specifically approved stockyards are published in the Federal Register. The list of specifically approved stockyards also may be obtained from Veterinary Services representatives, the State animal health official, or State representatives." The information in this proposed footnote is in present § 78.23. To avoid duplication, this proposal would delete present § 78.23.

Present § 78.1(ll) sets forth the definition of "test-eligible cattle and bison" and sets forth three types of test-eligible cattle and bison: test-eligible cattle and bison for the purposes of (1) a herd blood test, (2) the market cattle identification program and (3) movement pursuant to the regulations. This proposal would delete from the definition of "test-eligible cattle and bison" those cattle and bison tested for the purposes of a herd blood test and the market cattle identification program. Cattle and bison which must be tested for the purposes of a herd blood test and cattle and bison which must be tested for the purposes of the market cattle identification program are specifically set forth in the proposed definitions of "herd blood test" and "market cattle identification program (MCI) test cattle." The proposed definition of "test-eligible cattle and bison" would retain those cattle and bison which are presently set forth in the definition for the purposes of movement pursuant to the regulations.

Present § 78.1(mm) defines "quarantined area" as "[a]ny area listed in § 78.22." Present § 78.22 states that "[n]otice is hereby given that because of the existence of the contagion of brucellosis and the nature and extent of such contagion in certain areas which do not have control and eradication procedures adequate to prevent the interstate dissemination of the disease, the following areas are quarantined: None". This proposal would place the information contained in present § 78.22 in the proposed definition of "quarantined area" and would delete the information from proposed § 78.42. However, § 78.42 would retain the list of quarantined areas.

Present § 78.1(rr) defines "official metal eartag" as "[a] Veterinary Services approved metal identification eartag conforming to the nine character alpha-numeric National Uniform Eartagging System. It provides unique identification for each individual animal." This proposal would amend the term to "official eartag" and would delete the requirement that the tag be made of metal. USAHA recommended that plastic eartags be used in addition to offical metal eartags. The plastic eartag is more easily and accurately read. Further, the plastic eartag is more easily removed at slaughter and would thus improve collection of official eartags in the market cattle identification surveillance program.

Present § 78.1(uu) sets forth the definition of "whole herd vaccination" and states that the minimum age for vaccination is two months of age. This proposal would amend the definition of "whole herd vaccination" by raising the minimum vaccination age from two to four months. This proposed amendment is necessitated by a change in the approved vaccine which would be used to officially vaccinate cattle and bison as discussed below.

Present § 78.1(vv) defines "official vaccinate" by including the definitions of "official calfhood vaccinate" and "official adult vaccinate." This proposal would define an "official vaccinate" as "[a]n official calfhood vaccinate or an official adult vaccinate" and would separately define the terms "official calfhood vaccinate" and "official adult vaccinate."

This proposal would amend the dosage (number of viable organisms) of approved brucella vaccine administered to cattle and bison for purposes of official adult vaccination and official calfhood vaccination. This proposed amendment would also establish December 1, 1984, as the last date the standard dose approved brucella vaccine for calfhood vaccination presently set forth in the definition of "official vaccinate" would be permitted to be used in the United States to meet the definition of "official vaccinate." The dosage for official adult vaccination would be changed from "at least 300 million and not more than 3 billion cells" to "at least 300 million and not more than 1 billion cells". The Scientific Advisory Committee of the USAHA Brucellosis Committee recommended the lower maximum dose based on available research and field data. Available evidence indicates that adult cattle given the lower dose develop approximately the same level of resistance (protection) as do those adult cattle given the higher dose. The lower dose, however, tends to reduce the number of persistent serologic blood serum titers significantly. Reduction in the persistence of titer is beneficial to the industry and the eradication program in that persistent titers sometime interfere with diagnosis, and may result in improper brucellosis disease classification of tested cattle and bison. This reduction of persistent vaccine related titer is especially important when dealing with herds known to be affected with brucellosis which have undergone whole herd vaccination. The likelihood of eradication of brucellosis in the herd is enhanced if retesting begins as early as 60 to 120 days following whole herd vaccination. Studies conducted in the field, comparing administration of 1 billion in lieu of 3 billion live cells have

indicated as much as a two-thirds reduction in the number of persistently card test positive animals following vaccination.

The dosage for official calfhood vaccination would be changed from the present regulations of "at least 300 million and not more than 3 billion live cells" per 2 ml dose to "at least 3 billion and not more than 10 billion live cells" per 2 ml dose in this proposal. This approved vaccine would be administered to female cattle or female bison while from 4 through 12 months of age in this proposal.

This change was also recommended and endorsed by the Scientific Advisory Committee of the USAHA Brucellosis Committee for several reasons. The increased persistence of blood serum titers observed in calves vaccinated with as few as 1 billion live cells instead of 10 billion live cells was relatively insignificant (a matter of only 1–2 additional weeks in most cases). Since such calves would generally not be old enough to be subjected to official tests for many months' postvaccination, the small additional period of titer persistence would be of little or no consequence. Some available research data also suggest that calves in the 4–6 month age group develop a better level of resistence (protection) to brucellosis following use of the higher dosage.

Commercial biologic firms which were identified as willing and able to produce the new reduced dose approved brucella vaccine indicated that it would be necessary to manufacture a product in the higher dose range proposed so as to provide sufficient "shelf-life" for the vaccine to be economically feasible and practical.

The Department is of the opinion that the availability and use of a commercially produced, quality-controlled product will be superior to current practices carried on in some States where vaccine is diluted at the time of vaccination. This practice causes a degree of uncertainty as to the actual dosage of live cells being administered, and variations in the dosage, if significant, could result in a reduction in vaccine protection or an extended persistence of vaccine related titer.

Present § 78.1(ww) defines the term "identification of vaccinates." This proposal would delete this definition and place the substance of the definition in the proposed definitions of the terms "official adult vaccinate" and "official calfhood vaccinate" with two substantive changes.

This proposal would provide for utilization of a "V" hot brand placed high on the hip near the tailhead as an alternate means of identifying official adult vaccinates. The use of a "V" hot brand high on the hip near the tailhead was recommended by USAHA to permit a more convenient location for brand application which would require less restraint. Using this proposed location for the "V" hot brand would not necessitate catching the animals individually, and restraining the head which is presently necessary when applying the "V" hot brand to the right jaw, or the "AV" tattoo to the right ear. "V" hot brands placed high on the hip, however, may be less well defined and readable, and may be less apparent to a person conducting official tests (1) in States where this means of identification or location of identification is not normally used, or (2) when such animals are being neck-bled in a head-catch facility causing the brand on the hip not be observed or reported on official test documents or health certificates.

This proposal would also amend the indentification provisions for official calfhood vaccinates to permit States which require more combinations of numbers or letters than are available on the current official vaccination eartag to use a "T" or "S" series in addition to the "V" series now used. This is to provide unique eartag identification in States where the number calves vaccinated is extremely large.

Present § 78.1(xx) defines the term "approved action plan or approved individual herd plan." Since these terms are given the same meaning, this proposal would use the single term, "approved individual herd plan." Further this proposal would amend the definition for clarity.

Present § 78.1(yy) defines "official seal." This proposal would amend the definition of "official seal" to permit the use of a serially numbered self-locking button as an official seal. This self-locking button can seal two ends of a metal, plastic, or rope-like cord and cannot be opened without destruction of the button. Certain areas of the country have used this button successfully as a seal, and it is proposed here as an alternative to the devices which presently meet the definition of official seal.

Present § 78.1(eee) defines the term "untested test-eligible cattle." This term is not used in the present regulations or this proposal. Therefore, this proposal would delete the definition of the term.

This proposal would define the term "dairy cattle" as "[a] bovine animal of a recognized dairy breed." The definition would be added to clarify the term "dairy cattle" which would be used in proposed § 78.10(a), as explained below.

This proposal would define the term "directly" to mean "[w]ithout unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner." The word "directly" would be defined in order to clarify the meaning of the word as it is used in the proposed regulations. Present § 78.2 provides that "[n]otice is hereby given that the contagion of brucellosis may exist in domestic animals in each State." This proposal would delete present § 78.2 since it contains no substantive requirements which must be placed in the regulations.

Present § 78.3 (a) and (b) set forth certain requirements for the handling of certificates and permits for the movement of animals. These requirements are set forth in proposed § 78.2(a) and would be amended as follows:

The requirements for handling certificates and permits set forth in present § 78.3 (a) and (b) only apply when animals are moved by a transportation agency. This proposal would expand the applicability of this regulation to all instances in which certificates, permits, and "S" brand permits are required to accompany animals interstate pursuant to the regulations. Present § 78.3 (a) and (b) (and proposed § 78.2(a)) require that documents accompany animals interstate in order to provide animal health officials with the capability of tracing animal movement and the spread of brucellosis. There appears to be no reason to limit the requirements set forth in present § 78.3 (a) and (b) (and proposed § 78.2(a)) to those instances in which transportation agencies are involved in the movement.

Present § 78.3(a) requires that the certificate or permit be attached to the billing of a transportation agency and be filed with such billing. It is believed that such documents which pertain to the identification and brucellosis status of the animals should be maintained with the animals and be made available to the person receiving the animals at destination. Therefore, it is proposed that certificates, permits, and "S" brand permits be required to be delivered to the consignee or person receiving the animals. This would provide the person receiving the animals with a record of the individual animal moved.

Present § 78.3(c) sets forth requirements regarding the sending of copies of certificates and permits required to accompany cattle pursuant to the regulations to appropriate State animal health officials. These requirements are set forth in proposed § 78.2(b). This proposal would expand

the applicability of present § 78.3(c) to the handling of copies of certificates and permits required to accompany bison and swine in addition to cattle. The purpose of the requirements in present § 78.3(c) is to ensure that appropriate State animal health officials are informed of the intended movement of cattle. Information regarding the intended movement of bison and swine is just as important to a successful brucellosis eradication program as information regarding the intended movement of cattle. Therefore, this proposal would expand the applicability of the handling of copies of certificates and permits to bison and swine as well as cattle.

Present § 78.4 concerning requirements for handling cattle and bison in transit is set forth in proposed § 78.3. This proposal would reserve § 78.4.

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

This proposal would provide for two types of specifically approved stockyards. One type would be approved to handle all cattle and bison; the other would be prohibited from allowing the entry into the stockyard of known brucellosis reactor and brucellosis exposed cattle or bison. Therefore, this proposal would amend present §§ 78.7 and 78.8 to limit interstate movement of brucellosis reactor cattle and brucellosis exposed cattle to specifically approved stockyards which would be permitted to handle such cattle.

Present § 78.8 (b) and (c) would be amended to require that brucellosis exposed cattle for which a claim for indemnity is being made under the provisions of Title 9, Code of Federal Regulations, Part 51, shall only be moved interstate for slaughter. An important purpose for the payment of federal brucellosis indemnity is to provide an incentive for the timely removal and slaughter of brucellosis reactor and brucellosis exposed cattle. It was not intended that brucellosis exposed cattle for which indemnity is claimed be permitted to move interstate pursuant to present § 78.8(b) to quarantined feedlots or pursuant to present § 78.8(c) as brucellosis exposed calves. Other brucellosis exposed exposed cattle may continue to more interstate pursuant to § 78.8 (a), (b), or (c).

Present § 78.8(c) provides for the interstate movement of certain brucellosis exposed cattle to any location. This proposal would amend § 78.8(c) to require that such brucellosis exposed cattle meet additional requirements set forth in proposed § 78.10 discussed below.

Present § 78.8(c)(1) provides that official vaccinates under 12 months of age from a herd known to be affected with brucellosis which is following an approved individual herd plan be permitted to move interstate without restriction. This proposal would require that such cattle be identified by means of a ¾-inch hole in the left ear. Since these cattle can potentially be affected with brucellosis, the USAHA recommended that they be identified with a ¾-inch hole in the left ear. This would permit program officials and the public to recognize these calves and take measures to reduce any risk of brucellosis transmission during and following interstate movement.

Present § 78.9 would be amended for the purposes of clarification, correction of errors, and incorporation of proposed program modifications based on USAHA recommendations. Present § 78.9 specifies the types of cattle to which the regulations are applicable (non-vaccinates over 18 months of age, official calfhood vaccinates of the beef breeds over 24 months of age, official calfhood vaccinates of the dairy breeds over 20 months of age or cattle which are parturient or postparturient). This proposal would replace this terminology with the term "test-eligible" which is defined in proposed § 78.1. This is not a substantive change. This proposal would also replace the term "States" with "States or areas" throughout § 78.9. A State may be divided into more than one area for the purpose of brucellosis classification. This proposal would also amend § 78.9 to require that cattle from herds not known to be affected with brucellosis meet additional requirements set forth in proposed § 78.10 discussed below.

Present § 78.9(a) (Class Free States) requires that all cattle from herds not known to be affected with brucellosis which originate in Class Free States or areas "must be accompanied by a certificate, unless moved to immediate slaughter at a recognized slaughtering establishment, or to a specifically approved stockyard for sale to a recognized slaughtering establishment, or if moved in the course of normal ranching operations without change of ownership to another premises belonging to the same owner." The present regulations concerning interstate movement from Class A States or areas, Class B States or areas, and Class C States or areas do not require a certificate for all cattle from herds not known to be affected with brucellosis. Class Free States and areas are States and areas with the lowest incidence of brucellosis. The additional certificate requirement for the movement of certain cattle from Class Free States or areas is in error. Therefore, this proposal would amend § 78.9(a) to require that only test-eligible cattle from herds not known to be affected with brucellosis must be accompanied by a certificate with certain specified exceptions. This would exempt cattle which are not test-eligible from the certificate requirement as do the present regulations for movement of cattle from herds not known to be affected in Class A, B, and C States or areas.

Present § 78.9(a) would be amended in this proposal to permit test-eligible cattle from a Class Free State or area to move interstate directly from a farm of origin to a specifically approved stockyard without a certificate. The present regulations permit such movement from Class A, B, and C States or areas if any additional requirements for movement can be met at the specifically approved stockyard. This certificate requirement for interstate movement from a Class Free State or area is an error in the present regulations.

Present §§ 78.9(a), 78.9(b)(3)(iv), and 78.9(c)(3)(v), would be amended to clarify the requirements for cattle moved interstate in the course of normal ranching operations. Presently, these sections require that the premises from which and to which cattle are moved in the course of normal ranching operations be owned by the same individual. This requirement would be eliminated by this proposal and replaced by the requirement that the two premises be owned, leased, or rented by the same individual. Such movements are frequently made to premises which are not owned by the same individual, but are leased or rented by that owner and are, therefore, under the control or supervision of the cattle owner. Since actual ownership of the two premises does not affect the brucellosis status of these cattle, this language would be amended by this proposal to include leased or rented premises as well as those owned by the same individual. This proposal would also amend this provision concerning normal ranching operations in present § 71.18.

Present § 78.9(b)(1)(i) provides that cattle moved from a farm of origin in a Class A State or area for immediate slaughter directly to a recognized slaughtering establishment or through no more than one specifically approved stockyard and then to a recognized slaughtering establishment may move

without being tested if identity to the farm of origin is maintained or the animals are penned apart from other animals. Present § 78.9(c)(1)(i) and (d)(1)(ii) provide for the same type of movement for cattle originating in Class B and Class C States or areas without restriction. It was not intended that such cattle from Class A States or areas have more stringent requirements for interstate movement than cattle from Class B and Class C States or areas, since cattle from Class A States or areas are less likely to be affected with brucellosis than cattle from Class B or C States or areas. Therefore, proposed § 78.9(b)(1)(i) would permit the interstate movement of such cattle from a farm of origin or nonquarantined feedlot in Class A States or areas for immediate slaughter without restriction.

Present § 78.9(c)(1)(i) and § 78.9(d)(1)(i) permit the interstate movement of test-eligible cattle from herds not known to be affected from a farm of origin or a nonquarantined feedlot to a recognized slaughtering establishment or directly to a specifically approved stockyard for sale to a recognized slaughtering establishment without being "S" branded and without being accompanied by an "S" brand permit. This document would amend § 78.9(c)(1)(i) and § 78.9(d)(1)(i) to allow the interstate movement of such cattle from a farm or origin or a nonquarantined feedlot to a recognized slaughtering establishment without restriction. This amendment would not constitute a substantive change. This proposal would provide, however, that such cattle moved from a farm of origin or nonquarantined feedlot to a specifically approved stockyard and then directly to a recognized slaughtering establishment be moved only if: (1) They are subjected to an official test for brucellosis at the specifically approved stockyard and found negative and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; or (2) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (3) they are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit; or (4) they are moved in vehicles closed with official seals at the specifically approved stockyard and are accompanied by an "S" brand permit. These additional restrictions are necessary to assist in ensuring that such cattle arriving at the specifically approved stockyard for sale to a recognized slaughtering establishment will, in fact, be moved to a recognized slaughtering establishment.

Present § 78.9(c)(1)(i), § 78.9(c)(1)(ii), § 78.9(d)(1)(i) and § 78.9(d)(1)(ii) would also be amended to require that test-eligible cattle tested and found negative within 30 days of movement, moving from other than a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment, be accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests. Since no documentation is now required for this type of movement, confirmation of testing and movement only to recognized slaughtering establishments has been a problem. In order to more fully ensure compliance with these requirements, it is proposed that these cattle be accompanied by a certificate. This will allow for confirmation of testing.

Present § 78.9(c)(1)(iii) and § 78.9(d)(1)(iv) provide that test-eligible cattle from other than a farm of origin or a nonquarantined feedlot may also be moved from immediate slaughter without being "S" branded, if they are accompanied by a VS Form 1–27 permit and are moved in vehicles closed with official seals. This proposal would amend these requirements to provide that such cattle be accompanied by an "S" brand permit instead of a VS Form 1–27 permit. The use of an "S" brand permit and official seal should provide adequate assurance that these restricted cattle are only moved for immediate slaughter. This proposed change would also assist in reserving the use of the VS Form 1–27 permit to verify and confirm movements of brucellosis reactor and brucellosis exposed animals. Since the VS Form 1–27 also meets the requirements of an "S" brand permit, the VS Form 1–27 may continue to be used with the sealed vehicle movement. It may, however, be preferable in some areas to utilize a form, other than the VS Form 1–27, which meets the requirements for an "S" brand permit as defined in § 78.1.

Present § 78.9(c)(2)(i) and § 78.9(d)(2)(i) permit the interstate movement of test-eligible cattle from herds not known to be affected with brucellosis directly from a farm of origin to a specifically approved stockyard for sale to a quarantined feedlot without being "S" branded and without being accompanied by an "S" brand permit. This proposal would require that such cattle could be moved from a farm of origin to a specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit to the quarantined feedlot. These additional restrictions are necessary to assist in ensuring that such cattle arriving at the specifically approved stockyard to be moved directly to a quarantined feedlot will, in fact, be moved to a quarantined feedlot.

Present § 78.9(c)(2)(ii) and § 78.9(d)(2)(ii) would be amended to require that test-eligible cattle moving from other than a farm of origin directly to a quarantined feedlot, subjected to an official test and found negative, be accompanied by a certificate which shows, in addition to the items specified in § 78.1, the dates and results of the official tests. Under current regulations, these cattle may be moved interstate if they have been tested and found negative prior to movement. Since no documentation is required for this type of movement, confirmation of testing and movement only to quarantined feedlots has been a problem. In order to more fully ensure compliance with these requirements, it is proposed that these cattle be accompanied by a certificate. This would provide a means to confirm that the cattle have been subjected to the test and to ensure that movements are made only to the permitted destinations.

Present § 78.9(c)(3)(iii) would be amended to delete a sentence added to this paragraph in error. This paragraph permits test-eligible cattle moved from a farm of origin in a Class B State or area directly to a specifically approved stockyard provided such cattle are subjected to an official test for brucellosis upon arrival at the specifically approved stockyard. The second sentence of this paragraph requires that such cattle be accompanied by a certificate showing official test results. This proposal would delete the requirements that such cattle be accompanied by such a certificate since no test or certificate is required for this movement. Two letters of comment in support of this change were received during the comment period following publication of the December 13, 1982, final rule. Requirement of a certificate for movement from a farm of origin in a Class B State to a specifically approved stockyard was believed to be "unworkable" and "unduly restrictive." The Department concurs in this assessment and has amended this section accordingly in this proposal.

Present § 78.9(c)(3)(iv) and § 78.9(d)(3)(vii) provide alternate methods for moving test-eligible cattle from Class B and Class C States or areas respectively. These two paragraphs require that such cattle originate from herds in which: (A) All the cattle were subjected to a complete herd test for brucellosis within 12 months of the date of the interstate movement; (B) any cattle which were added to the herd subsequent to such complete herd test were tested and found negative to an official test for brucellosis within 30 days prior to the date the cattle were added to the herd; (C) the cattle subjected to the complete herd test have to changed ownership from the date of such test; and (D) none of the cattle in the herd have come in contact with any other cattle which have not been tested. This proposal would amend these two paragraphs to require that test-eligible cattle from Class B and Class C States or areas may move interstate from a farm of origin or may be returned to a farm or origin in the course of normal ranching operations without change of ownership if the cattle originate in a herd which meets the requirements set forth in present § 78.9(c)(3)(iv)(A), 78.9(c)(3)(iv)(B), and 78.9(c)(3)(vii)(D), or 78.9(c)(3)(vii)(A), 78.9(c)(3)(vii)(B) and 78.9(c)(3)(vii)(D). This proposal would eliminate the requirement set forth in present § 78.9(c)(3)(iv)(C) and 78.9(d)(3)(vii)(C) because these two paragraphs merely require that such cattle not change ownership from the date of the herd test. The proposed introductory language in these two paragraphs would include the requirement that the movement be made without change of ownership and in the course of normal ranching operations. Present § 78.9(c)(3)(iv) and § 78.9(d)(3)(vii) are intended to permit the interstate movement of cattle in the course of normal ranching operations from or to farms of origin. The proposed introductory language in proposed § 78.9(c)(3)(iv) and § 78.9(c)(3)(vii) would more clearly indicate the intent of the present regulations.

This proposal would also add a new requirement to § 78.9(c)(3)(iv) and § 78.9(c)(3)(vii) that such cattle be accompanied interstate by a document which contains the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted. This additional requirement would aid animal health officials should confirmation of the herd blood test became necessary. Any document, including test reports from the laboratory, which contains the information required by this proposed rulemaking document would be sufficient.

Present § 78.9(d)(3)(vi) set forth in this proposal as § 78.9(d)(3)(v) would be amended by deleting the requirement that official vaccinates moving directly from a farm of origin in a Class C State or area to a specifically approved stockyard to be tested at that stockyard be accompanied interstate by a "document which shows the date of vaccination." Official vaccinates are identified by a vaccination tattoo, official vaccination eartag, or "V" hot brand. Such identification is sufficient to establish the official vaccination status of cattle for the purposes of interstate movement. The document requirement proposed for deletion has proven to be excessive because cattle frequently change ownership several times and vaccination certificates are often misplaced or lost during the life of an animal.

A new provision set forth as proposed § 78.9(d)(3)(vi) would permit cattle from a farm of origin which have been subjected to a herd blood test and found negative to move from a Class C State or area within 1 year of the herd blood test if no other cattle have been added to the herd since the date of the herd blood test and the individual cattle are tested within 30 days prior to movement. If the movement is within 30 days of the herd blood test, no further testing is required. Such cattle would be required to have been issued a permit for entry and be accompanied interstate by a certificate which shows that such cattle originate from a farm or origin and the test dates and results of the official tests. This proposed amendment was recommended by the USAHA and permits cattle which have been in an intact herd, a herd to which no cattle have been added, for 120 days or more to move interstate following a single negative test of the herd. The risk of such cattle being affected with brucellosis is low since the negative herd blood test follows a period of time consistent with that required in most States for release from quarantine of an infected herd following removal of the last brucellosis reactor.

This proposal would add a new requirement set forth in proposed § 78.10 which would require certain cattle to be official vaccinates to move into or out of Class B and C States or areas.

The United States Animal Health Association at its 1983 meeting recommended the following vaccination requirements for the movement of cattle:

All female dairy cattle born on or after January 1, 1984, 4 months of age or over, must after July 1, 1984, be offical calfhood vaccinates to move into or out of Class A, B or C States." Effective July 1, 1984, all female cattle born after January 1, 1984, and are over 4 months of age moving in or out of Class C areas must be official vaccinates, spayed heifers or "S" branded.

Brucellosis vaccination has been an important tool in the brucellosis eradication program throughout the United States. Officially vaccinated cattle are more resistant to infection and are less likely to transmit the disease to other animals. The basis of the USAHA recommendations for mandatory calfhood vaccination for the movement of certain cattle is to offer protection to those dairy and beef cattle moved into or out of the higher incidence Class C States or areas and to those animals they come in contact within marketing channels and at destination. The large amount of interstate movement of dairy cattle and the higher costs resulting from brucellosis infection in dairy herds have resulted in recommendations for more stringent vaccination requirements for dairy cattle moving interstate. Vaccination would offer protection for those cattle entering areas of high infection levels and for those cattle potentially in contact with affected cattle prior to moving from such areas.

Further discussion and comment from industry representatives and State officials have clarified the intent of these recommendations. It was not intended that these requirements apply to cattle moving interstate directly to slaughtering establishments or to quarantined feedlots. Spayed heifers are already exempt under present § 78.6 from all regulations contained in subpart B of Part 78. The recommendation that the requirements apply only to cattle born after Janury 1, 1984, would exempt cattle not eligible for official calfhood vaccination and born prior to that date. Further industry and State officials have suggested that dairy cattle moving into or out of Class Free and Class A States or areas be exempt from the vaccination requirements in this proposal. This would permit the movement of nonvaccinated cattle between Class Free and Class A States or areas. The prevalence of brucellosis in these States or areas is very low the benefits of the vaccination requirements would be considerably less than for areas with a higher prevalence of brucellosis.

A subsequent recommendation of the USAHA was to permit an exemption from the vaccination requirements for cattle imported into the United States with the concurrence of the State animal health official of the State of destination. Frequently cattle imported

into the United States exceed 12 months of age and are therefore ineligible for official calfhood vaccination upon entry into the United States. Vaccine approved for use in the United States is also often unavailable or not recognized for use in countries exporting cattle to the United States. Due to the practical problems in obtaining and administering vaccine, and certifying that such cattle are officially vaccinated in these countries, it is proposed that exemption from the vaccination requirements be permitted for these cattle with the concurrence of State animal health officials in the States of destination prior to importation. Any interstate movement of such cattle subsequent to the importation would be subject to the provisions of interstate regulations. Since Title 9, Code of Federal Regulations, Part 78, pertains only to the interstate movement of animals with respect to brucellosis, this proposed requirement for imported cattle is set forth in a footnote to § 78.10(a) and (b).

Two other modifications in the USAHA recommendations were also made in this proposed amendment. The terminology "official vaccinate" was substituted for "calfhood vaccinate" in the requirement for dairy cattle moving into or out of Class B States or areas. This would make the vaccination requirements consistent in terms of recognizing adult vaccination and calfhood vaccination for the purposes of interstate movement under Part 78. A provision was also made in this proposal to permit calves eligible for calfhood vaccination which would be required to be official vaccinates to move interstate from a farm of origin directly to a specifically approved stockyard and to be vaccinated upon arrival at the stockyard. Other requirements for movement in the current regulations have been permitted to be completed at the specifically approved stockyard, and this modification would permit current marketing patterns to continue.

A new § 78.11 would be added to require that certain cattle moved to specifically approved stockyards not in accordance with this part be further restricted. This proposed section would require that all cattle, except brucellosis reactors and brucellosis exposed cattle, which cannot comply with the requirements of the regulations for release from the specifically approved stockyard be moved to a recognized slaughtering establishment, a quarantined feedlot, or be returned in vehicles closed with official seals and accompanied by an "S" brand permit to their State of origin with the concurrence of the State animal health officials of the States of origin and destination. Specifically approved stockyards are approved to facilitate the interstate movement of cattle in accordance with the regulations. This proposed amendment would provide assurance that cattle, except brucellosis reactors and brucellosis exposed cattle, moved contrary to the provisions of Part 78 to specifically approved stockyards are released in a manner which would prevent the possible interstate spread of brucellosis to other cattle, other than cattle at a recognized slaughtering establishment or a quarantined feedlot. Proposed § 78.11 would not apply to cattle which are known to be brucellosis reactors or brucellosis exposed cattle at the time they are moved interstate or cattle which are found to be brucellosis reactors or brucellosis exposed at the specifically approved stockyard or elsewhere.

The provisions in present § 78.12 (Other movements) would be placed in proposed § 78.13. The provisions for cattle from quarantined areas in present § 78.12a would be placed in proposed § 78.12 and the following substantive changes would be made.

Proposed § 78.12 would require that cattle from a quarantined area move in accordance with proposed § 78.10 as well as the provisions in present § 78.12a. Proposed § 78.10 is discussed above.

Present § 78.12a(e) regulates the interstate movement of cattle which originate in herds of unknown status in a quarantined area. The present regulations do not define "a herd of unknown status". However, the intention of the present regulations was that § 78.12a(e) apply to cattle from herds not known to be affected which are not qualified. Since these two terms are defined in the present regulations and would be defined in this proposal, present § 78.12a(e) would be amended to use the defined terms in proposed § 78.12(e).

This proposal would reserve §§ 78.14—78.19.

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

This proposal would renumber the present regulations so that present § 78.13, (General restrictions) would be set forth in § 78.20; present § 78.14 (Bison steers and spayed heifers) would be set forth in § 78.21; present § 78.15 (Brucellosis reactor bison) would be set forth in § 78.22; present § 78.16 (Brucellosis exposed bison) would be set forth in § 78.23; present § 78.17 (Bison from herds not known to be affected with brucellosis) would be set forth in § 78.24; present § 78.18 (Movement of bison from public zoo to public zoo) would be set forth in § 78.24(c) and present § 78.19 (Other movements) would be set forth in § 78.25. This proposal would reseve §§ 78.26—29. Three substantive changes have been proposed in this subpart.

Present § 78.14 provides that bison steers and spayed heifers over 6 months of age may be moved interstate without restriction. Proposed § 78.21 would provide that all bison steers and spayed heifers may be moved interstate without restriction. Steers and spayed heifers under 6 months of age do not constitute a threat of spreading brucellosis. Therefore, there is no reason to require that the interstate movement of such bison be restricted.

This proposal would provide for two types of specifically approved stockyards. One type would be approved to handle all cattle and bison; the other would be prohibited from allowing the entry into the stockyard of known brucellosis reactor and exposed cattle or bison. Therefore, this proposal would amend present §§ 78.15 and 78.16 to limit interstate movement of brucellosis reactor bison and brucellosis exposed bison to specifically approved stockyards which would be permitted to handle such bison.

As stated above, this document would amend the definition of certified brucellosis-free herd to provide for certification of bison herds as well as cattle herds. Therefore, present § 78.17(c), set forth as proposed § 78.24(d), would be amended to provide that bison from herds not known to be affected may be moved interstate if they originate in a certified brucellosis free-herd. Present § 78.17(c)(3), which permits bison from a herd which has been declared free of brucellosis by State and Federal officials to move interstate if accompanied by a certificate, has been removed from proposed § 78.24(d). Since there is no definition of a herd declared free of brucellosis in the present or proposed regulations, it is proposed that such herds meet the qualifications for a certified brucellosis-free herd and be permitted to move interstate accompanied by a certificate which states, in additon to the items specified in § 78.1, that the bison originated in a certified brucellosis-free herd. These bison pose no greater risk of spreading brucellosis interstate than cattle from certified brucellosis-free herds which are presently allowed to move interstate under provisions identical to proposed § 78.24(d)(4).

Subpart D—Designation of Brucellosis Areas and Specifically Approved Stockyards

This proposal would reorganize Part 78 and place the provisions in present Subpart D in proposed Subpart E. Further, this proposal would renumber the present regulations in present Subpart D (proposed Subpart E) so that present § 78.20 (State/Area Classification) would be set forth in proposed § 78.41; present § 78.22 (Quarantined Areas) would be set forth in proposed § 78.42 and would be amended as discussed above; present § 78.23 would be set forth in a footnote to the proposed definition of specifically approved stockyards in proposed § 78.1 as discussed above; present § 78.25(a), concerning the designation of State/Areas, would be set forth in proposed § 78.40; present § 78.25(b), concerning approval of stockyards, would be set forth in proposed § 78.44 (a), (c), and (d) and would be substantively amended as discussed below; and present § 78.25(c), concerning withdrawal of stockyard approval, would be set forth in proposed § 78.44(b).

Present § 78.25(b) set forth in proposed § 78.44 (a), (c), and (d) concerns the approval of specifically approved stockyards. Present § 78.25(b) requires that, in order to be specifically approved, the State in which the stockyard is located must enter into a Memorandum of Understanding setting forth certain standards for such stockyards. Present § 78.25(b) provides that approval may be withdrawn from stockyards which do not inspect or handle livestock in a manner adequate to effectuate the purposes of Part 78 or in accordance with the provisions of the standards in the Memorandum of Understanding. This proposal would delete the requirement that States enter into a Memorandum of Understanding and would provide that any stockyard requesting approval enter into an agreement which sets forth the standards necessary to obtain and maintain approval. Since those legally responsibile for operation of the stockyard can ensure that the standards necessary for approval are met, it appears to be more appropriate to have the operator of the stockyard enter into such agreement. This proposal would set forth the specific agreements in proposed § 78.44 (c) and (d).

Stockyards are specifically approved to facilitate the interstate movement of cattle and bison in accordance with the regulations. Specifically, the present regulations and this proposal provide for the fulfillment of many of the requirements for interstate movement of certain cattle and bison, at the specifically approved stockyard, rather than at the point from which the cattle or bison are moved interstate. This not only facilitates interstate movement but reduces the cost of movement to cattle and bison producers.

The standards set forth in the Memorandum of Understanding required to be executed by present § 78.25(b) and in the agreements set forth in proposed § 78.44 (c) and (d) are necessary to ensure that cattle and bison are received, handled, and released by the stockyard in accordance with the regulations and in a manner which will help ensure the prevention of the spread of brucellosis.

This proposal would set forth two agreements. Proposed § 78.44(c) would be entered into by operators of stockyards which are requesting approval to handle all cattle and bison. Proposed § 78.44(d) would be entered into by operators of stockyards which are requesting approval to receive cattle and bison, except brucellosis reactors, brucellosis exposed, and brucellosis suspects. The only difference between the two proposed agreements are that those stockyards requesting approval to handle all cattle and bison (1) must handle brucellosis reactors, brucellosis exposed, and brucellosis suspect cattle and bison in accordance with provisions of Title 9, Code of Federal Regulations, Part 78, and (2) must have permanent quarantined pens in which to place brucellosis reactor, brucellosis exposed, and brucellosis suspect cattle and bison entering the stockyard. These additional requirements are necessary to ensure that brucellosis reactor, brucellosis exposed, and brucellosis suspect cattle and bison, which pose a known threat of spreading brucellosis, are handled in a manner which will reduce the likelihood of the spread of brucellosis.

Subpart E—Restrictions on Interstate Movement of Swine Because of Brucellosis

This proposal would reorganize Part 78 and place the provisions in present Subpart E in proposed Subpart D. Further, this proposal would renumber the regulations in present Subpart D (proposed Subpart E) so that present § 78.26 (General restrictions) and present § 78.30(c) would be set forth in § 78.30; present § 78.27 (Brucellosis exposed swine) would be set forth in § 78.31; present § 78.28 (Brucellosis reactor swine) would be set forth in § 78.32; present § 78.29 (Brucellosis testing of breeding swine) and § 78.30(b) would be set forth in § 78.33(b); present § 78.30(a) pertaining to sows and boars moved for slaughter would be set forth in § 78.33(a) and present § 78.31 (Other movements) would be set forth in § 78.34. Further, this document incorporates proposed amendments to the regulations concerning the movement of swine as proposed in the rulemaking document set forth at Volume 50, **Federal Register** pages 15,166–15,169. Although a major reorganization of this subpart has been proposed in this document, no further substantive changes to this subpart have been proposed. This proposal would reserve §§ 78.35–78.39.

Miscellaneous

This proposal would amend incorrect references to Part 78 in 9 CFR Parts 51, 71, 80, and 92. Further, this document incorporates proposed amendments to the first sentence of 9 CFR 71.18(a) as proposed in the rulemaking document set forth at 50 FR 15166–15169, April 17, 1985.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of the Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and have been assigned OMB #0579-0064.

Executive Order 12291

This proposed action is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information complied by the Department, it has been determined that this action would have an annual effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; would not have a significant adverse effect on competition, employment or investment, productivity, innovation, or the ability of United States-based enterprises to to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities because both direct and indirect costs to producers should be minimal. Approximately 22 million female calves are born in the United States each year. Nine million calves were officially vaccinated against brucellosis in Fiscal Year 1984. Only those female cattle moving into or out of Class C States or areas and those dairy cattle moving into or out of Class B States or areas will

require vaccination under the provisions of this proposed amendment. It is estimated that a maximum of 2 million more calves may be vaccinated in order to move interstate under the provisions of the proposed amendment at a cost of approximately $5.0 million. The $2.50 cost per animal is relatively small in comparison to the other costs of production and to the value of the cattle vaccinated.

List of Subjects

9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

9 CFR Part 80

Animal diseases, Livestock & livestock products, Transportation.

9 CFR Part 92

Animal diseases, Canada, Imports, Livestock & livestock products, Mexico, Poultry & poultry products, Quarantine, Transportation Wildlife.

Accordingly, the following amendments are proposed.

1. Part 78 would be revised to read as follows:

PART 78—BRUCELLOSIS

Subpart A—General Provisions

Sec.

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

Sec.

Subpart D—Restrictions on Movement of Swine Because of Brucellosis

Subpart E—Designation of Brucellosis Areas, and Specifically Approved Stockyards

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.15, and 371.2(d).

Subpart A—General Provisions

§ 78.1 Definitions.

The following terms are defined in this section:

Accredited veterinarian
Animals
Approved brucella vaccine
Approved individual herd plan
Area
Boar
Brucellosis
Brucellosis exposed
Brucellosis negative
Brucellosis reactor
Brucellosis ring test
Brucellosis suspect
Certificate
Certified brucellosis-free herd
Class A State or area
Class B State or area
Class C State or area
Class Free State or area
Dairy cattle
Deputy Administrator
Directly
Epidemiologist
Epidemiology
Farm of origin
Finished fed cattle
Herd
Herd blood test
Herd known to be affected
Herd not known to be affected
Herd of origin of swine
Interstate
Market cattle identification test cattle
Moved
Moved (movement) in interstate commerce
Official adult vaccinate
Official brand inspection certificate
Official brand recording agency
Official calfhood vaccinate
Official eartag
Official seal
Official test
Official vaccinate
Originate
Parturient
Permit
Permit for entry
Person
Postparturient
Qualified herd
Quarantined area
Quarantined feedlot
Quarantined pasture
Recognized slaughtering establishment
"S" branded
"S" brand permit
Sow
Specifically approved stockyard
State
State animal health offical
State representative
Test-eligible cattle and bison
Validated brucellosis-free herd
Validated brucellosis-free State
Veterinarian in Charge
Veterinary Services
Veterinary Services representative
Whole herd vaccination

As used in this part, the following terms shall have the meanings set forth in this section.

Accredited veterinarian. An accredited veterinarian as defined in Part 160 of this chapter.

Animals. Cattle, bison, and swine.

Approved brucella vaccine. A *Brucella abortus* Strain 19 product that is approved by and produced under license of the United States Department of Agriculture for injection into cattle and bison to enhance their resistance to brucellosis.

Approved individual herd plan. A herd management and testing plan which is designed by the herd owner, the owner's veterinarian if so requested, and a State representative or Veterinary Services representative to determine the disease status of animals in the herd and to control and eradicate brucellosis within the herd and which has been jointly approved by the State animal health official and the Veterinarian in Charge.

Area. That portion of any State which has a separate brucellosis classification under this part.

Boar. An uncastrated male swine 6 months of age or over which is or has been capable of being used for breeding purposes.

Brucellosis. The contagious, infectious, and communicable disease

caused by bacteria of the genus *Brucella*. It is also known as Bangs disease, undulant fever, and contagious abortion.

Brucellosis exposed. Except for brucellosis reactors, animals that are part of a herd known to be affected, or are in a quarantined feedlot or a quarantined pasture, or are brucellosis suspects, or that have been in contact with a brucellosis reactor for a period of 24 hours or for a period of less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days or has a vaginal or uterine discharge.

Brucellosis negative. An animal which has been subjected to one or more official tests and has been classified as brucellosis negative based on the results of each test conducted or has been reclassified as brucellosis negative by a designated epidemiologist as provided for in the definition of official test.

Brucellosis reactor. An animal which has been subjected to an official test for brucellosis which results in a brucellosis reactor classification or has been subjected to a bacteriological examination for field strain *Brucella abortus* and found to be positive or is reclassified as a brucellosis reactor by a designated epidemiologist as provided for in the definition of official test.

Brucellosis ring test. The brucellosis ring test conducted on composite milk or cream samples from dairy herds is classified as either negative or suspicious (positive). Negative brucellosis ring tests classify herds, which are not quarantined as brucellosis affected, as negative for public health ordinances and for surveillance purposes. Herds classfied as suspicious require a herd blood test to determine the animal and herd status.

Brucellosis suspect. An animal which has been subjected to an official test for brucellosis which results in a brucellosis suspect classification or has been reclassified as a brucellosis suspect by a designated epidemiologist as provided for in the definition of official test.

Certificate. An official document issued by a Veterinary Services representative, State representative, or accredited veterinarian at the point of origin of a movement of animals which shows the official eartag, individual animal registered breed association registration tattoo, or registration number or similar individual identification of each animal to be moved, the number of animals covered by the document, the purpose for which the animals are to be moved, the points of origin and destination, the consignor, and the consignee. Ownership brands may be used as identification on certificates for cattle being moved interstate when no official test for brucellosis is required under this part; provided, the ownership brands are registered with the official brand recording agency and the cattle being moved are accompanied by official brand inspection certificates.

Certified brucellosis-free herd. A herd of cattle or bison which has qualified for and has been issued a certified brucellosis-free herd certificate signed by both the appropriate State animal health offical and by the Veterinarian in Charge.

(a) *Certification.* A herd may qualify by either of the two following methods:

(1) In the case of a dairy herd, by conducting a minimum of four consecutive negative brucellosis ring tests at not less than 90-day intervals, followed by a negative herd blood test conducted within 90 days after the last negative brucellosis ring test; or

(2) By conducting at least two consecutive negative herd blood tests. Herd blood tests shall not be less than 10 months nor more than 14 months apart.

(b) *Maintaining Certification.* Certified brucellosis-free herd status will remain in effect for 1 year beginning with the certification date (the date of issuance of the certified brucellosis-free herd certificate is the certification date). A negative herd blood test must be conducted within 10 to 12 months of the last certification date for continuous status. Lapsed certification may be reinstated if a herd blood test is conducted within 14 months of the last certification date. A new recertification test date may be established if requested by the owner and if the herd is subjected to a herd blood test and found negative on that date providing that date is within 1 year of the previous certification date. If a herd is decertified because a brucellosis reactor is found, it may be recertified only by repeating the entire certification process.

Class A State or area. A State or area which meets standards for classification as a Class A State or area and which has been certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower class can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class A status.

(a) *Surveillance.*

(1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producting milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle Identification (MCI) program.* (i) *Coverage.* All recognized slaughtering establishments in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test; (ii) *Brucellosis Reactors.* At least 90 percent of all brucellosis reactors found in the course of market cattle identification testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 15 days of the notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of the notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (i) States or areas must not exceed a herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* of 0.25 percent or 2.5 herds per 1,000, except in States with 10,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such small herd population States would qualify for Class A status. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) An epidemiologic investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by State representatives or Veterinary Services representatives within 15 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 15 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area must maintain a 12 consecutive month MCI reactor prevalence rate for brucellosis not to exceed 1 brucellosis reactor per 1,000 cattle tested (0.10 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in the market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected, and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

Class B State or area. A State or area which meets standards for classification as a Class B State or area and which has been certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower class can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class B status.

(a) *Surveillance.* (1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producing milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle Identification (MCI) program.* (i) *Coverage.* All recognized slaughtering establishment in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at recognized slaughtering establishments and subjected to an official test; (ii) *Brucellosis Reactors.* At least 80 percent of all brucellosis reactors found in the course of market cattle identification testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 30 days of the notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds are to be confined to the premises under quarantine within 30 days of the notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (i) States or areas must not exceed a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* of 1.5 percent or 15 herds per 1,000, except in States with 1,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such small herd population States would qualify for Class B status. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) An epidemiologic investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by State representatives or Veterinary Services representatives within 45 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 30 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area must maintain a 12 consecutive month MCI reactor prevalence rate for brucellosis not to exceed 3 brucellosis reactors per 1,000 cattle tested (0.30 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected, and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate for brucellosis will be permitted when it is affected by unusual marketing conditions.

Class C State or area. A State or area which meets standards for classification as a Class C State or area and which has been certified as such, on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reduction in status to "quarantined area" can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class C status.

(a) *Surveillance.* (1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producing milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle identification (MCI) program.* (i) *Coverage.* All recognized slaughtering establishments in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test; (ii) *Brucellosis Reactors.* At least 80 percent of all brucellosis reactors found in the

course of market cattle identification testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 30 days of the notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of the official notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan for testing or monitoring the herd in effect within 45 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (1) States or areas having a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* exceeding 1.5 percent or 15 herds or more per 1,000, except in States with 1,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such a small herd population State with a herd infection rate exceeding 1.5 percent should be classified as a Class C State. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) An epidemiologic investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by State representatives or Veterinary Services representatives within 45 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 30 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area which maintains a 12 consecutive month MCI reactor prevalence rate for brucellosis exceeding 3 brucellosis reactors per 1,000 cattle tested (0.30 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected, and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate for brucellosis will be permitted when it is affected by unusual marketing conditions.

(d) *Compliance with minimum procedural standards.* (1) A State must implement and maintain minimum procedural standards.

(2) A State or area must make continued progress as judged over a 2 year period in reducing the prevalence of brucellosis as determined by epidemiologic evaluation or it will be placed under Federal quarantine.

Class Free State or area. A State or area which meets standards for classification as a Class Free State or area and which has been certified as such on initial classification or on reclassification from a lower class, by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower status can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. All cattle herds in the State or area in which brucellosis has been known to exist must be released from any State or Federal brucellosis quarantine prior to classification. In addition, if any herds of other species of domestic livestock have been found to be affected with brucellosis they must be subjected to an official test and found negative, slaughtered, or quarantined so that no known foci of brucellosis in any species of domestic livestock is left uncontrolled. The following are the standards to attain and maintain Class Free Status.

(a) *Surveillance.* (1) *Brucellosis ring test.* The brucellosis ring test shall be conducted on dairy herds in the State or area at least four times per year at approximately equal intervals. All dairy herds producing milk to be sold shall be included in at least three of the four brucellosis ring tests per year.

(2) *Market Cattle Identification (MCI) program. (i) Coverage.* All recognized slaughtering establishments in the State or area must participate in the market cattle identification program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subject to an official test; (ii) *Brucellosis reactors.* Al least 90 percent of all brucellosis reactors found in the course of market cattle identification testing must be traced to the farm or origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 15 days of their official notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the market cattle identification test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of the notification that brucellosis reactors were found on the market cattle identification test.

(3) *Epidemiologic surveillance.* (i) *Adjacent herds.* All adjacent herds or other herds having contact with cattle in a herd known to be affected shall be placed under quarantine and have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of notification of brucellosis in the herd known to be affected; (ii) *Epidemiologically traced herds.* All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall be placed under quarantine and have an approved individual herd plan for testing or monitoring the herd in effect within 15 days of locating the source herd or recipient herd.

(b) *Herd infection rate.* (1) All cattle herds in the State or area must remain free of field strain *Brucella abortus* for 12 consecutive months. States or areas must have a cattle herd infection rate, based on the number of herd found to have brucellosis reactors within the State or area during any 12 consecutive months, due to field strain *Brucella abortus* of 0.0 percent or 0 heads per thousand.

(2) An epidemiological investigation of each herd with brucellosis reactor cattle shall be conducted to identify possible sources of brucellosis by a

State representative or Veterinary Services representative within 15 days of notification that brucellosis reactor cattle have been identified by the cooperative State-Federal laboratory. All possible sources of brucellosis identified shall be contacted within an additional 15 days to determine appropriate action.

(c) *MCI reactor prevalence rate.* The State or area must maintain a 12 consecutive month MCI reactor prevalence rate for brucellosis not to exceed 1 brucellosis reactor per 2,000 cattle tested (0.050 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum dilution or greater or positive to the modified card test will be counted as MCI reactors in determining the MCI reactor prevalence rate for brucellosis. The MCI reactor prevalence rate for brucellosis is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in market cattle identification test cattle. The MCI reactor prevalence rate for brucellosis will be adjusted by eliminating out-of-State and out-of-area MCI reactor cattle, recordkeeping errors, MCI reactor cattle traced to herds known to be affected and MCI reactor cattle from herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

Dairy cattle. A bovine animal of a recognized dairy breed.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official to whom authority has heretofore been delegated or may hereafter be delegated to act in the Deputy Administrator's stead.

Directly. Without unloading en route, if moved in a means of conveyance, or without stopping, if moved in any other manner.

Epidemiologist. A veterinarian who has received a master's degree in epidemiology or one who has completed a course of study in epidemiology sponsored or approved by the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

Epidemiology. A branch of medical science that deals with the incidence, distribution, and control of disease in the animal population.

Farm of origin.

(a) A premises where cattle or bison were born and have remained prior to the date of movement from that premises but which has not been used to assemble cattle or bison from any other premises within 4 months prior to the date of movement; or

(b) A premises where cattle or bison have remained for not less than 4 months immediately prior to the date of movement from that premises but which has not been used to assemble cattle or bison from any other premises within 4 months prior to the date of movement.

Finished fed cattle. Cattle which have been fattened on a ration of feed concentrates to reach a slaughter condition equivalent to the slaughter condition which would be attained on full feed on a high concentrate grain ration for 90 days.

Herd. A herd is:

(a) all animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch) and

(b) all animals under common ownership or supervision on two or more premises which are geographically separarted, but on which the animals have been interchanged or where there has been contract among the animals on the different premises.

Herd blood test.

(a) *Cattle or bison.* A blood test for brucellosis of all cattle or bison 6 months of age or over, except steers, spayed heifers, official calfhood vacinates of the dairy breeds under 20 months of age, official calfhood vaccinates of bison or beef breeds under 2 years of age (2 years of age is evidenced by the presence of the first pair of permanent incisor teeth) which are not parturient or postparturient.

(b) *Swine.* A blood test for brucellosis of all swine 6 months of age or over maintained for breeding purposes in a herd.

Herd known to be affected. Any herd in which any animal has been classified as a burcellosis reactor, and which has not been released from quarantine.

Herd not known to be affected. Any herd in which no animal has been classified as a brucellosis reactor or any herd in which one of more animals have been classified as a brucellosis reactors but which has been released from quarantine.

Herd of origin of swine. Any herd in which swine are farrowed and have remained prior to the date of movement or any herd in which swine have remained for a period of 30 days immediately prior to movement.

Interstate. From any State into or through any other State.

Market cattle identification test cattle. Cows and bulls 2 years of age or over which have moved to recognized slaughtering establishments, and test-eligible cattle which are tested for the purposes of movement at farms, ranches, auction markets, stockyards, or other assembly points. Such cattle shall be identified by official eartag and/or USDA backtag prior to or at the first market, stockard or slaughtering establishment they reach.

Moved. Shipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved.

Moved (movement) in interstate commerce. Moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale.

Official adult vaccinate.

(a)(1) Female cattle or female bison which are older than the specified ages, as defined for official calfhood vaccinate, vaccinated by a Veterinary Services representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine, diluted so as to contain at least 300 million and not more than 1 billion live cells per 2 ml dose, as a part of a whole herd vaccination plan authorized jointly by the States aninmal health official and the Veterinarian in Charge: or (2) Female cattle or female bison vaccinated prior to December 31, 1984, in accordance with the definition of an official adult vaccinate in this part at the date of said vaccination; and

(b)(1) Permanently identified by a "V" hot brand on the right jaw or high on the hip near the tailhead, or by an official AV (adult vaccination) tattoo in the right ear preceded by the quarter of the year and followed by the last digit of the year; and (2) identified with an official eartag or individual animal registered breed association registration brand.

Official brand inspection certificate. A document issued by an official brand inspection agency in any State in which such document is required for movement of cattle.

Official brand recording agency. The duly constituted body authorized by a State or governmental subdivision thereof, to administer laws, regulations, ordinances or rules pertaining to the brand identification of cattle.

Official calfhood vaccinate.

(a)(1) Female cattle or female bison vaccinated while from 4 through 12 months (120 to 365 days) of age by a Veterinary Services representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine containing at least 3 billion and not more than 10 billion live cells per ml. dose; or (2) Female cattle or female bison vaccinated prior to December 31, 1984, in accordance with the definition of an official vaccinate in this part at the date of said vaccination; and

(b) Permanently identified by tattoo in the right ear and by an official vaccination eartag in the right ear. However, if already identified with an official eartag prior to vaccination, an additional tag is not required. The tattoo must include the U.S. Registered Shield and "V," preceded by the quarter of the year and followed by the last digit of the year in which the vaccination was done. The official eartag must include the State numberical prefix as assigned by the National Uniform eartagging System and a "V," followed by two letters and four numbers which will uniquely and individually identify such vaccinated animal. States which require more official vaccination eartags than the number of combinations available in the "V" series of tags shall use a "T" or "S" followed by two letters and four numbers. Duplicate reissue of offical calfhood vaccination eartags shall not be made more often than once each 15 years. Individual animal registered breed association registration brands may be substituted for official eartags.

Official eartag. A Veterinary Services approved identification eartag conforming to the nine-character alpha-numeric National Uniform Eartagging System which provides unique identification for each individual animal with no duplication of alpha-numeric identification.

Official seal. A serially numbered, metal or plastic strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged, which cannot be reused if opened, or a serially numbered, self-locking button which can be used for this purpose.

Official test.

(a) *Classification of cattle and bison.*

(1) *Standard card test (standard sensitivity pH 3.8).* A test to determine the brucellosis disease status of test-eligible cattle and bison in livestock markets when the State animal health official specifically designates the standard card test as an official test in all livestock markets in that State and conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Stanard card test results are interpreted as either negative or positive. A moderate to marked clumping agglutination reaction is a positive result. Test-eligible cattle and bison which are not official vaccinates and are positive to the standard card test are classified as brucellosis reactors. Test-eligible official vaccinates which are positive to the standard card test are classified as brucellosis reactors or, if subjected to the modified card test and found negative, are classified as brucellosis suspects. Test-eligible cattle and bison which are negative to the standard card test are classified as brucellosis negative.

(2) *Modified card test (reduced sensitivity pH 3.3).* A test to determine the brucellosis disease status of official vaccinates which have been sujected to the standard card test and found positive in livestock markets when the State animal health official and the Veteranarian in Charge specifically designate the modified card test as an official test in all livestock markets in that State and conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Modified card test results are interpreted as either negative or positive. Any agglutination reaction is a positive result. Official vaccinates subjected to the modified card test and found positive are classified as brucellosis reactors. Official vaccinates positive to the standard card test but negative to the modified card test are classified as brucellosis suspects.

(3) *Standard tube test (STT) or standard plate test (SPT).* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following agglutination reactions:

SPT OR STT CLASSIFICATION

Titer			Classification
1:50	1:100	1:200	
Official vaccinates			
–	–	–	Negative.
I	–	–	Do.
+	–	–	Do.
+	I	–	Suspect.
+	+	–	Do.
+	+	I	Do.
+	+	+	Reactor.
All cattle and bison which are not official vaccinates			
–	–	–	Negative.
I	–	–	Suspect.
+	–	–	Do.
+	I	–	Do.

SPT OR STT CLASSIFICATION—Continued

Titer			Classification
1:50	1:100	1:200	
+	+	–	Reactor.
+	+	I	Do.
+	+	+	Do.

– No agglutination.
I Incomplete agglutination.
+ Complete agglutination.

(4) *Manual complement-fixation (CF) test.* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following reactions: (i) Cattle and bison which are not official vaccinates:

(A) Fifty percent fixation (2 plus) in a dilution of 1:20 or higher—brucellosis reactor;

(B) Fifty percent fixation (2 plus) in a dilution of 1:10 but less than 50 percent fixation (2 plus) in a dilution of 1:20—brucellosis suspect;

(C) Less than 50 percent fixation (2 plus) in a dilution of 1:10—brucellosis negative;

(ii) Official vaccinates:

(A) Twenty-five percent fixation (1 plus) in a dilution of 1:40 or higher—brucellosis reactor;

(B) Fifty percent fixation (2 plus) in a dilution of 1:10 but less than 25 percent fixation (1 plus) in a dilution of 1:40—brucellosis suspect;

(C) Less than 50 percent fixation (2 plus) in a dilution of 1:10—brucellosis negative.

(5) *Technicon automated complement-fixation test.* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following reactions: (i) Cattle and bison which are not official vaccinates:

(A) Fixation in a dilution of 1:10 or higher—brucellosis reactor;

(B) Fixation in a dilution of 1:5 but no fixation in a dilution of 1:10—brucellosis suspect;

(C) No fixation in a dilution of 1:5 or lower—brucellosis negative;

(ii) Official vaccinates:

(A) Fixation in a dilution of 1:20 or higher—brucellosis reactor;

(B) Fixation in a dilution of 1:10 but no fixation in a dilution of 1:20—brucellosis suspect;

(C) Fixation in a dilution of 1:5 or less but no fixation in a dilution of 1:10—brucellosis negative;

(6) *Rivanol test.* A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following agglutination reactions:

(i) Cattle and bison which are not official vaccinates:

(A) Complete agglutination at a titer of 1:25 or higher—brucellosis reactor;

(B) Less than complete agglutination at a titer of 1:25—brucellosis negative;

(ii) Official adult vaccinates more than 5 months after vaccination and official calfhood vaccinates:

(A) Incomplete agglutination at a titer of 1:100 or higher-brucellosis reactor;

(B) Complete agglutination at a titer of 1:25 or higher when the complement-fixation test is not conducted—brucellosis reactor;

(C) Complete agglutination at a titer of 1:50 or less when the manual or technicon automated complement-fixation test is conducted and the complement-fixation test results in a classification of brucellosis suspect or brucellosis negative—brucellosis suspect;

(D) Less than complete agglutination at a titer of 1:25—brucellosis negative;

(iii) Official adult vaccinates less than 5 months after vaccination: Less than complete agglutination at the 1:50 titer—brucellosis negative.

(7) *Semen plasma test.* A test to determine the brucellosis disease status of bulls used for artificial insemination when conducted in conjunction with an official serological test when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. The classification of such bulls shall be based on the maximum agglutination titer of either the official serological test or the semen plasma test.

(8) *Buffered acidified plate antigen (BAPA) test.* A test to determine the brucellosis disease status of test-eligible cattle and bison at slaughtering establishments and livestock markets when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. BAPA test results are interpreted as either negative or positive. Cattle and bison subjected only to the BAPA test and found negative are classified as brucellosis negative. Cattle and bison subjected to the BAPA test and found to be positive shall be subjected to other official tests to determine their brucellosis classification.

(9) *Rapid screening test (RST).* A test to determine the brucellosis disease status of test-eligible cattle and bison in cooperative State-Federal laboratories when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. The RST test results are interpreted as either negative or positive. Cattle and bison subjected only to the RST test and found negative are classified as brucellosis negative. Cattle and bison subjected to the RST test and found positive shall be subjected to other official tests to determine their brucellosis classification.

(10) The evaluation of test results for all cattle and bison shall be the responsibility of an epidemiologist who has been designated to perform and/or supervise this function in each of the States. The designated epidemiologist shall take into consideration the animal and herd history and other epidemiologic considerations when determining the brucellosis classification or cattle and bison. Deviations from the brucellosis classification criteria as provided in this definition of official test are acceptable when made by the designated epidemiologist.

(b) *Classification of Swine.* (1) *Standard Card test.* A test to determine the brucellosis disease status of swine. Standard card test results are interpreted as either negative or positive. A moderate to marked clumping agglutination reaction is a positive result. Swine which are negative to the standard card test are classified as brucellosis negative. Swine which are positive to the standard card test in a herd not known to be affected and otherwise found to be negative to any other official test or bacteriological culture for brucella are classified as brucellosis.suspects. Other swine positive to the standard card test are classified as brucellosis reactors.

(2) *Standard tube test.* A test to determine the brucellosis disease status of swine.

(i) If all of the following apply: (A) The swine are not part of a herd known to be affected; (B) if no swine being tested, individually or as part of a group, are found to have a complete agglutination reaction at a dilution of 1:100 or higher; and (C) the swine are tested as part of a herd blood test or are part of a validated brucellosis-free herd, then swine are classified according to the following agglutination reactions:

Titer			Classification
1:25	1:50	1:100	
I	–	–	Negative
+	–	–	Do.
+	I	–	Do.
+	+	–	Do.
+	+	I	Do.

(ii) If any of the following apply: (A) The swine are part of a herd known to be affected; (B) if any swine being tested, individually or as part of a group, are found to have a complete agglutination reaction at a dilution of 1:100 or higher or; (C) the swine are not part of a validated brucellosis-free herd and are not being tested as part of a herd blood test, then swine are classified according to the following agglutination reactions:

Titer			Classification
1:25	1:50	1:100	
I	0–	–	Negative
+	–	–	Reactor
+	I	–	Do.
+	+	–	Do.
+	+	I	Do.
+	+	+	Do.

– No agglutination.
I Incomplete agglutination.
+ Complete agglutination.

Official vaccinate. An official calfhood vaccinated or an official adult vaccinate.

Originate.

(a) Animals will have the status of the herd from which they are being moved if:

(1) They were born and maintained in the herd or

(2) They have been in the herd for at least 120 days.

(b) Animals will have the status of the State or area from which they are being moved if:

(1) They were born and maintained in the State or area, or

(2) They were previously moved from an area of equal or higher class to the State or area, or

(3) They were previously moved from an area of lower class to the State or area where they are now located and have been in the State or area for at least 120 days. (Animals that have not been in the State or area for at least 120 days will have the status of the area of lower class.)

Parturient. Visibly prepared to give birth or within 2 weeks of giving birth (springers).

Permit. An official document (VS Form 1–27 or State form which contains the same information but not a "permit for entry" or "S brand permit) issued by a Veterinary Services representative, State representative, or accredited

veterinarian which lists the owner's name and address, the points of origin and destination, the number of animals covered, the purpose of the movement, and reactor tag number, and one of the following: the official eartag, individual animal registered breed association tattoo, USDA backtag (when applied serially, only the beginning and the ending numbers need be recorded), registered breed association registration number, or similar individual identification. (If a change in destination is desired or becomes necessary, a new permit must be obtained.)

Permit for entry. A premovement authorization for entry of cattle into a State from the State animal health official of the State of destination. It may be oral or written.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company or other legal entity.

Postparturient. Having given birth.

Qualified herd.

(a) *Qualification.* (1) Any herd of cattle or bison in a quarantined area which is not known to be affected with brucellosis and which has been subject to two consecutive herd blood tests for brucellosis and found negative. The first of these two herd blood tests shall be conducted not more than 240 days nor less than 120 days prior to the date of classification as a qualified herd. The second herd blood test may not be conducted less than 90 days nor more than 150 days after the first test. Additionally, the second herd blood test must be within 120 days of the date of classification as a qualified herd; or (2) any certified brucellosis-free herd which has been subjected to a herd blood test 120 days prior to or after designation of the area as a quarantined area and found negative.

(b) *Requalification.* In order to remain a qualified herd, a herd must be subjected to successive requalifying herd blood tests and found negative on each test. Each such requalifying test shall be conducted not more than 120 days from the date of the preceding herd blood test. All cattle or bison added to a qualified herd must have been included in the preceding two herd blood tests to qualify as cattle or bison from the qualified herd.

Quarantined area. An area in which brucellosis exists but in which control and eradication procedures are not adequate to prevent the interstate dissemination of brucellosis.

Quarantined feedlot.[1] A confined area under State quarantine approved by the State animal health official and the Veterinarian in Charge. Approval will be granted only after inspection by a State representative or Veterinary Service representative and after it is determined that all cattle and bison in the confined area are secure and isolated from contact with all other cattle and bison, that there are facilities for identifying cattle and bison, and that there is no possibility of brucellosis being mechanically transmitted from the confined area. The quarantined feedlot shall be maintained for feeding of cattle and bison for slaughter, with no provisions for pasturing or grazing. All cattle and bison, except steers and spayed heifers, leaving the quarantined feedlot must move directly to a slaughtering establishment accompanied by a permit, directly to another quarantined feedlot accompanied by a permit issued by the State animal health official, or, after being "S" branded at the quarantined feedlot, directly to a specifically approved stockyard to be sold for movement to a slaughtering establishment or another quarantined feedlot accompanied by a permit. However, finished fed cattle moving directly to recognized slaughtering establishments are exempt from the permit requirement. The State representative shall establish procedures for accounting for all cattle and bison entering or leaving the quarantined feedlots.

Quarantined pasture. A confined grazing area under State quarantine approved by the State animal health official, Veterinarian in Charge and the Deputy Administrator. A justification of the need for the quarantined pasture must be prepared by the State animal health official and/or Veterinarian in Charge and submitted to the Deputy Administrator. An intensified brucellosis eradication effort which produces large numbers of brucellosis exposed cattle, brucellosis exposed bison, or official adult vaccinates needing the grazing period to reach slaughter condition would be an acceptable justification. Approval will be granted only after inspection by a State representative or Veterinary Services representative and a determination that all cattle and bison in the confined grazing area are secure and isolated from contact with all other cattle and bison, that there are facilities for identifying cattle and bison, and that there is no possibility of brucellosis being mechanically transmitted from the confined grazing area. The quarantined pasture shall be for the purpose of utilizing available forage for growth or to improve flesh condition of cattle or bison. No cattle or bison may be moved interstate into these quarantined pastures, but they shall be restricted in use for cattle or bison originating within the State. All cattle or bison shall be of the same sex except that neutered cattle and bison may share the quarantined pasture. All cattle and bison, except steers and spayed heifers, must be "S" branded upon entering the quarantined pasture. All cattle and bison, except steers and spayed heifers, leaving the quarantined pasture must move to a recognized slaughtering establishment for immediate slaughter or to a quarantined feedlot. The movement shall be in accordance with established procedures for handling brucellosis exposed cattle and bison, including issuance of "S" brand permits prior to movement. The State animal health official and Veterinarian in Charge shall establish procedures for accounting for all cattle and bison entering and leaving the quarantined pasture. All brucellosis exposed cattle and brucellosis exposed bison must vacate the premises on or before the expiration of approval, which may not last longer than 10 months.

Recognized slaughtering establishment.[2] Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or a State meat inspection act.

"S" branded. Branding with a hot iron the letter "S" at least 5cm (2 x 2 inches) in size on the left jaw or high on the tailhead (over the fourth to the seventh coccygeal vertebrae).

"S" brand permit. A document prepared at the point of origin which lists the points of origin and destination, the number of such animals covered, the purpose of the movement, and one of the following: the official eartag, individual animal registered breed association tattoo, individual registered breed association registration number, USDA backtag (when applied serially, only the beginning and the ending numbers need be recorded), or similar individual identification. If the document is prepared at a quarantined feedlot, it shall be prepared by an accredited veterinarian, a State representative, or an individual designated for that purpose by the State animal health

[1] A list of quarantined feedlots in any State may be obtained from the State animal health official or State representative.

[2] A list of recognized slaughtering establishments in any State may be obtained from a Veterinary Services representative, the State animal health official, or a State representative.

official. If this document is prepared at any other point of origin, it shall be prepared by an accredited veterinarian, State representative, or Veterinary Services representative.

Sow. A female swine which has given birth to one or more pigs or which is parturient.

Specifically approved stockyard.[3] A premises where cattle or bison are assembled for sale or sale purposes which meets the standards set forth in § 78.44 and is approved by the Deputy Administrator.

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands or any other territory or possession of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Test-eligible cattle and bison. Cattle and bison 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth) except steers, spayed heifers, official calfhood vaccinates of bison or beef breeds under 2 years of age (2 years of age is evidenced by the presence of the first pair of permanent incisor teeth), official calfhood vaccinates of the dairy breeds under 20 months of age, and which are not parturient or postparturient.

Validated brucellosis-free herd. (a) *Validation.* A herd of swine in which all sows and boars maintained for breeding purposes have been subjected to an official test for brucellosis and found negative. (b) *Revalidation.* In order to remain a validated brucellosis free herd, all sows and boars maintained for breeding purposes in the herd shall be subjected to an official test for brucellosis and found negative within 10 to 14 months of the last validation test date or by showing that at least 20 percent of the sows and boars maintained for breeding purposes in the herd were tested under a market swine testing program (MST) during the year and that at least one-half of the MST sampling occurred during the last 6 months of the validation period, or that all sows and boars maintained for breeding purposes in the herd are tested in groups according to an approved individual herd plan with each sow and boar maintained for breeding purposes tested at least once during a 1-year period.

Validated brucellosis-free State. (a) *Validation.* A State which: (1) Has necessary authorities for classification as a validated brucellosis-free State for swine;

(2)(i) Has no known foci of swine brucellosis at the time of validation and has completed one of the following methods of surveillance: (A) all sows are boars maintained for breeding purposes in the State have been subjected to an official test for brucellosis during and 18-month period preceding validation and no more than 3 percent of the herds in the State are found to have brucellosis; (B) herds from which swine maintained for breeding purposes which have sold are subjected to an official test and 90 percent of all sows and boars marketed for slaughter have been subjected to an official test and 90 percent of the brucellosis reactors have traced to their herds of origin during the 12-month period preceding validation and no more than 3 percent of the herds in the State are found to have brucellosis; (C) during a 2 year period all herds from which sows and boars maintained for breeding purposes have been sold are subjected to a herd blood test and slaughter surveillance has maintained a traceback capability from slaughter to the herd of origin of 50 percent or greater and no more than 3 percent of the herds in the State are found to have brucellosis; or

(ii) Has no diagnosed a case of swine brucellosis in the preceding 12 months and a statistical analysis of combined test results of the market swine testing program (MST), change of ownership testing, farm validation tests, and diagnostic tests conducted during the period shows the testing to be equivalent to either complete herd testing or slaughter surveillance during a 1 or 2-year period, as chosen by the State as most appropriae to its marketing needs; and

(3) Has been certified as such by the appropriate State animal health official, the Veterianarian in Charge, and the Deputy Administrator. A State may qualify as a validated brucellosis-free State regardless of the brucellosis status of feral swine in that State if the feral swine are not in contact with domestic swine.

(b) *Revalidation.* May be obtained by either herd testing, slaughter surveillance, or combined surveillance, as chosen by the State as most appropriate to its marketing needs.

Veterinarian in Charge. The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

Veterinary Services. Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Veterinary Services representative. An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

Whole herd vaccination. The vaccination of all female cattle and bison over 4 months of age in herd when authorized by the State animal health official and the Veterinarian in Charge, and conducted in accordance with the definitions of official adult vaccinate and official calfhood vaccinate.

§ 78.2 Handling of certificates, permits, and "S" brand permits for movement of animals.

(a) Any certificate, permit, or "S" brand permit required by this part for the interstate movement of animals shall be delivered to the person moving the animals by the shipper or shipper's agent at the time the animals are delivered for movement and shall accompany the animals to their destination and shall be delivered to the consignee, or to the person to whom the animals are delivered.

(b) The veterinary Services representative, State representative, or accredited veterinarian issuing a certificate or permit required for the interstate movement of animals under this part shall forward a copy thereof to the State animal health official of the State of destination of the animals.

§ 78.3 Handling in transit of cattle and bison moved interstate.

Cattle and bison moved interstate, except cattle and bison moved directly to a slaughtering establishment or to a quarantined feedlot, shall be moved only in a means of conveyance which has been cleaned in accordance with §§ 71.5, 71.7, 71.10, and 71.11 of this chapter and, if unloaded in the course of such movement, shall be handled only in pens cleaned in accordance with the

[3] Notices containing lists of specifically approved stockyards are published in the Federal Register. The lists of specifically approved stockyards also may be obtained from Veterinary Services representatives, the State animal health official, or State representatives.

provisions of §§ 71.4, 71.7, 71.10, and 71.11 of this chapter.

§ 78.4 [Reserved]

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis.

§ 78.5 General restrictions.

Cattle may not be moved interstate except in compliance with this subpart.

§ 78.6 Steers and sprayed heifers.

Steers and spayed heifers may be moved interstate without restriction under this subpart.

§ 78.7 Brucellosis reactor cattle.

Brucellosis reactor cattle may be moved interstate for immediate slaughter directly to a recognized slaughtering establishment or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis reactor cattle and then directly to a recognized slaughtering establishment only in accordance with the following requirements:

(a) *Identification.* Brucellosis reactor cattle shall be individually identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high, and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors.

(b) *Permit.* Brucellosis reactor cattle shall be accompanied to destination by a permit.

(c) *Marking of records.* Each person moving brucellosis reactor cattle in the course of their interstate movement shall plainly write or stamp upon the face of any document, which that person prepares in connection with such movement, the words "Brucellosis Reactor."

(d) *Segregation en route.* Brucellosis reactor cattle shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactors unless all of the animals are for immediate slaughter, or unless the brucellosis reactor cattle are kept separate from the other animals by a partition securely affixed to the sides of the means of conveyance.

§ 78.8 Brucellosis exposed cattle.

(a) Brucellosis exposed cattle may be moved interstate for immediate slaughter as follows

(1) Finished fed cattle from a quarantined feedlot may be moved directly to a recognized slaughtering establishment without further restriction under this part.

(2) All other brucellosis exposed cattle may be moved directly to a recognized slaughtering establishment, or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis exposed cattle and then directly to a recognized slaughtering establishment, only if such cattle are:

(i) Individually identified by an official eartag or a USDA backtag;

(ii) Accompanied by a permit or "S" brand permit; and

(iii) (A) "S" branded before the cattle leave the premises from which they are to be moved interstate; or (B) individually identified with the letter "B" as prescribed in § 51.5 of this chapter, when a claim for indemnity is being made under Part 51 of this chapter; or (C) official adult vaccinates; or (D) moved in vehicles closed with official seals which are applied and removed by a Veterinary Services representative, State representative, accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative and the official seal number is recorded on the accompanying permit or "S" brand permit; or (E) moved directly from a quarantined feedlot to a recognized slaughtering establishment.

(b) Brucellosis exposed cattle for which no claim for indemnity is being made, under Part 51 of this chapter, may be moved interstate directly to a quarantined feedlot or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis exposed cattle and then directly to a quarantined feedlot only if such cattle are:

(1) Individually identified by an official eartag or a USDA backtag;

(2) Accompanied by a permit or "S" brand permit; and

(3) (i) "S" branded before the cattle leave the premises from which they are to be moved interstate, or (ii) official adult vaccinates.

(c) Brucellosis exposed cattle for which no claim for indemnity is being made, under Part 51 of this chapter, may also be moved interstate in accordance with § 78.10 and as follows:

(1) Such brucellosis exposed cattle from herds known to be affected with brucellosis may be moved interstate if the cattle:

(i) Are under 6 months of age and have been weaned from brucellosis reactor or brucellosis exposed cows for not less than 30 days immediately preceding interstate movement; or

(ii) Are under 6 months of age and are nursing brucellosis exposed cows in a herd which has been subjected to a herd blood test within 10 days prior to interstate movement; or

(iii) Are official vaccinates under 1 year of age from a herd which is following an approved individual herd plan, provided that the official vaccinates are individually identified with a hole, at least ¾ inch in diameter, in the left ear.

(2) Cattle that were moved interstate directly from a farm of origin to a specifically approved stockyard in accordance with § 78.9(b)(3)(iii), § 78.9(c)(3)(iii), § 78.9(d)(3)(iv), or § 78.9(d)(3)(v) and which have been subsequently determined to be brucellosis exposed cattle, may be moved interstate directly back to the farm of origin under the following conditions:

(i) Prior to interstate movement, a State representative of the State in which the cattle are located and of the State to which the cattle are to be moved advise Veterinary Services that such movement would not be contrary to the laws and regulations of their respective States;

(ii) Prior to interstate movement, a State representative of the State to which the cattle are to be moved advises Veterinary Services that the cattle will be quarantined upon arrival and that all test-eligible cattle on the farm of origin will be subjected to an official test for brucellosis; and

(iii) The cattle are accompanied to the farm of origin by a permit.

§ 78.9 Cattle from herds not known to be affected with brucellosis.

Cattle which are not test-eligible from herds not known to be affected with brucellosis may be moved interstate without further restriction if officially vaccinated as required in § 78.10. Test-eligible cattle which are not brucellosis exposed and which are from a herd not known to be affected with brucellosis may only be moved interstate in accordance with § 78.10 and as follows:

(a) *Class Free States/Areas.* Test-eligible cattle which are not brucellosis exposed and which are from herds not known to be affected with brucellosis which originate in Class Free States or areas may only be moved interstate from such States or areas if accompanied by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a Class Free State or area. However, no certificate is required if such cattle are: (1) Moved interstate directly to a recognized slaughtering establishment or to a quarantined feedlot; (2) moved interstate directly to a specifically approved stockyard and then moved

directly to a recognized slaughtering establishment or to a quarantined feedlot; (3) moved interstate directly from a farm of origin to a specifically approved stockyard; or (4) moved interstate from a farm of origin or returned to a farm of origin in the course of normal ranching operations without change of ownership to or from another premises owned, leased, or rented by the same individual.

(b) *Class A States/Areas.* Test-eligible cattle which are not brucellosis exposed and which are from a herd not known to be affected with brucellosis which originate in Class A States or areas may only be moved interstate from such States or areas under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved for immediate slaughter directly from a farm of origin or a nonquarantined feedlot to a recognized slaughtering establishment or to a specifically approved stockyard and then directly to a recognized slaughtering establishment without restrictions under this subpart.

(ii) Such cattle from other than a farm of origin or nonquarantined feedlot may be moved interstate directly to a recognized slaughtering establishment or to a specifically approved stockyard and then directly to a recognized slaughtering establishment if identity to the Class A State or area is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from one farm or State or area apart from other animals.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved from a farm of origin directly to a quarantined feedlot or to a specifically approved stockyard and then directly to a quarantined feedlot if identity to the farm of origin is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from the farm of origin apart from other animals.

(ii) Such cattle from other than a farm of origin may be moved interstate directly to a quarantined feedlot or to a specifically approved stockyard and then directly to a quarantined feedlot if identity to the Class A State or area is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from one farm or State or area apart from other animals.

(3) *Movement other than in accordance with paragraphs (b) (1) and (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (b) (1) and (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and they are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement, are accompanied interstate by a certificate, and the certificate shows in addition to items specified in § 78.1, the test dates and results of the official tests; or

(iii) Such cattle are moved directly from a farm of origin to a specifically approved stockyard and are subjected to an official test for brucellosis upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; or

(iv) Such cattle are from a farm of origin or returned to a farm of origin in the course of normal ranching operations, without change of ownership, to or from another premise owned, leased, or rented by the same individual.

(c) *Class B States/Areas.* Test-eligible cattle which are not brucellosis exposed and which are from a herd not known to be affected with brucellosis which originate in Class B States or areas may only be moved interstate from such States or areas under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.*

(i) Such cattle may be moved for immediate slaughter directly from a farm of origin or a nonquarantined feedlot to (A) a recognized slaughtering establishment without restriction under this subpart; or (B) a specifically approved stockyard and then directly to a recognized slaughtering establishment if: (*1*) They are subjected to an official test for brucellosis at the specifically approved stockyard and found negative and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; or (*2*) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (*3*) they are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit; or (*4*) they are moved in vehicles closed at the specifically approved stockyard with official seals which are applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative and are accompanied by an "S" brand permit.

(ii) Such cattle from other than a farm of origin or a nonquarantined feedlot may only be moved interstate directly to a recognized slaughtering establishment if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement, and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; or (B) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (C) they are "S" branded and are accompanied by an "S" brand permit; or (D) they are moved in vehicles closed with official seals which are applied and removed only by a Veterinary Services representative, a State representative, an accredited veterinarian, or by an individual authorized for this purpose by a Veterinary Services representative and are accompanied by an "S" brand permit.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved from a farm of origin directly to: (A) a quarantined feedlot if such cattle are "S" branded upon arrival at the quarantined feedlot, or (B) a specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied by an "S" brand permit to the quarantined feedlot.

(ii) Such cattle from other than a farm of origin may be moved interstate directly to a quarantined feedlow if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such movement and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) they are "S" branded and are accompanied by an "S" brand permit.

(3) *Movement other than in accordance with paragraphs (c) (1) and (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (c) (1) and (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and they are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are subjected to an official test for brucellosis and found

negative within 30 days prior to interstate movement, have been issued a permit for entry, and are accompanied interstate by a certificate which shows, in addition to items specified in § 78.1, the test dates and results of the official tests;

(iii) Such cattle are moved directly from a farm of origin to a specifically approved stockyard and are subjected to an official test for brucellosis upon arrival at such stockyard, prior to losing their identity with the farm of origin; or

(iv) Such cattle are moved from a farm of origin or returned to a farm of origin in the course of normal ranching operations without change of ownership and the cattle being moved originate from a herd in which: (A) All the cattle were subjected to a herd blood test and found negative within 1 year prior to the interstate movement; (B) any cattle which were added to the herd subsequent to such a herd blood test were subjected to an official test for brucellosis and found negative within 30 days prior to the date the cattle were added to the herd; (C) none of the cattle in the herd have come in contact with any other cattle; and (D) the cattle are accompanied interstate by a document which shows the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted; or

(v) The State animal health officials of the State of origin and State of destination may waive the requirements of paragraph (c)(3)(iv) of this section in writing.

(d) *Class C States/Areas.* Test-eligible cattle which are not brucellosis exposed and are from a herd not known to be affected with brucellosis which originate in Class C States or areas may only be moved interstate from such States or areas under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved for immediate slaughter directly from a farm of origin or a nonquarantined feedlot to: (A) A recognized slaughtering establishment without restrictions under this subpart; or (B) a specifically approved stockyard and then directly to a recognized slaughtering establishment if: (*1*) They are subjected to an official test for brucellosis at the specifically approved stockyard and found negative and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (*2*) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (*3*) they are "S" branded at the specifically approved stockyard and are accompanied by an "S" brand permit; or (*4*) they are moved in vehicles closed with official seals at the specifically approved stockyard and are accompanied by an "S" brand permit. (Official seals shall only applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative.)

(ii) Such cattle from other than a farm of origin or a nonquarantined feedlot may only be moved interstate directly to a recognized slaughtering establishment if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) they originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (C) they are "S" branded and are accompanied by an "S" brand permit; or (D) they are moved in vehicles closed with official seals which are applied or removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or by an individual authorized for this purpose by the Veterinary Services representative and are accompanied by an "S" brand permit.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved from a farm of origin directly to: (A) a quarantined feedlot if such cattle are "S" branded upon arrival at the quarantined feedlot; or (B) a specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied by an "S" brand permit to the quarantined feedlot.

(ii) Such cattle from other than a farm of origin may be moved interstate directly to a quarantined feedlot if: (A) They are subjected to an official test for brucellosis and found negative within 30 days prior to such movement and are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) they are "S" branded and are accompanied by an "S" brand permit.

(3) *Movement other than in accordance with paragraphs (d) (1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d) (1) or (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and they are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle (A) have been subjected to two consecutive official tests at least 60 days apart for brucellosis and found negative with the first test not less than 60 days nor more than 1 year before interstate movement and the second test not more than 30 days before the date of the interstate movement; (B) are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official tests; and (C) have been issued a permit for entry; or

(iii) Such cattle (A) are official vaccinates of the beef breeds 24 months of age and over, or of the dairy breeds 20 months of age and over; (B) have been subjected to an official test for brucellosis and found negative within 30 days prior to the date of interstate movement; (C) are accompanied by a certificate which shows, in addition to the items specified in § 78.1, the test dates and results of the official test; and (D) have been issued a permit for entry; or

(iv) Such cattle (A) have been subjected to an official test for brucellosis and found negative, not less than 60 days nor more than 1 year before the interstate movement; (B) are moved directly from a farm of origin to a specifically approved stockyard and are subjected to an official test for brucellosis upon arrival at such stockyard prior to losing their identity with the farm of origin; and (C) are accompanied by a document which shows the test dates and results of the official test conducted prior to the interstate movement to the specifically approved sotckyard; or

(v) Such cattle are official vaccinates of the beef breeds 24 months of age and over or of the dairy breeds 20 months of age and over, are moved directly from a farm of origin to a specifically approved sotckyard, and are subjected to an official test for brucellosis upon arrival at such stockyard prior to losing their identity with the farm of origin; or

(vi) Such cattle are from a farm of origin and are then subjected to a herd blood test and found negative within 1 year of interstate movement providing no cattle have been added to the herd since the date of the herd blood test and, if the herd blood test is not conducted within 30 days of movement, such cattle are subjected to an official test for brucellosis and found negative within 30 days of movement, have been issued a

permit for entry, and are accompanied by a certificate which states, in addition to the items specified in § 78.1, that such cattle originate from a farm of origin and shows the test dates and results of the official tests; or

(vii) Such cattle are moved from a farm of origin or are returned to a farm of origin in the course of normal ranching operations without change of ownership and the cattle being moved originate from a herd in which: (A) all the cattle were subjected to a herd blood test and found negative for brucellosis within 1 year prior to the interstate movement; (B) any cattle which were added to the herd subsequent to such a herd blood test were subjected to an official test for brucellosis and found negative within 30 days prior to the date the cattle were added to the herd; (C) none of the cattle in the herd have come in contact with any other cattle; and (D) the cattle are accompanied interstate by a document which shows the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted.

§ 78.10 Official vaccination of cattle moving into and out of Class B and Class C States or areas.

(a) Female dairy cattle which were born after January 1, 1984, and are 4 months of age and over must be official vaccinates if moved interstate into or out of a Class B State [4] or area unless they are moved directly to a recognized slaughtering establishment or to a quarantined feedlot. Female cattle eligible for official calfhood vaccination and required to be officially vaccinated in this paragraph may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

(b) Female cattle which were born after January 1, 1984, and are 4 months of age and over must be official vaccinates if moved interstate into or out of a Class C State [4] or area unless they are moved directly to a recognized slaughtering establishment or to a quarantined feedlot. Female cattle eligible for official calfhood vaccination and required to be officially vaccinated in this paragraph may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

§ 78.11 Cattle moved to a specifically approved stockyard not in accordance with this Part.

Cattle, except brucellosis reactors and brucellosis exposed cattle, moved interstate to a specifically approved stockyard other than in accordance with the provisions of this part may only be moved directly to a recognized slaughtering establishment or to a quarantined feedlot or returned to the State of origin with the concurrence of the State animal health officials of the States of origin and destination and then only if "S" branded or moved in vehicles closed with official seals which are applied and removed by a Veterinary Services representative, State representative, accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative, and accompanied by an "S" brand permit.

§ 78.12 Cattle from quarantined areas.

Not withstanding any provisions in this subpart to the contrary, cattle may be moved interstate from a quarantined area only in accordance with § 78.10 and with the provisions of this section.

(a) *Steers and spayed heifers.* Steers and spayed heifers may be moved without restriction under this section.

(b) *Brucellosis reactor cattle.* Brucellosis reactor cattle may be moved in accordance with § 78.7.

(c) *Brucellosis exposed cattle.* Brucellosis exposed cattle may be moved in accordance with § 78.8 (a) or (b).

(d) *Movement from qualified herds.* Cattle from qualified herds in any quarantined area may be moved interstate only as follows:

(1) *Movement to recognized slaughtering establishments.*

(i) Such cattle may be moved for immediate slaughter directly from a farm or origin to a recognized slaughtering establishment or to a specifically approved stockyard and then directly to a recognized slaughtering establishment if they are accompanied by a certificate, are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement and the certificate shows, in addition to items specified in § 78.1, the test dates and results of the official tests; or

(ii) Such cattle may be moved in accordance with § 78.8(a).

(2) *Movement to quarantined feedlots.*

(i) Such cattle may be moved to a quarantined feedlot directly from a farm of origin or directly from a farm of origin to a specifically approved stockyard and then directly to a quarantined feedlot if they are accompanied by a certificate, are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement and the certificate shows, in addition to items specified in § 78.1, the test dates and results of the official tests; or

(ii) Such cattle are moved in accordance with § 78.8(b).

(3) *Movement other than in accordance with paragraph (d) (1) or (2) of this section.* Such cattle may be moved other than in accordance with paragraph (d) (1) or (2) of this section, either directly from a farm of origin or through no more than one specifically approved stockyard, if the cattle are accompanied by a certificate and the cattle, except official vaccinates less than 1 year of age and cattle less than 6 months of age, are subjected to an official test for brucellosis and found negative within 30 days prior to such interstate movement, and the certificate shows, in addition to items specified in § 78.1, the test dates and results of the official tests.

(e) *Movement from herds which are not qualified.* Cattle from herds known to be affected and from herds which are not qualified herds in any quarantined area may be moved interstate only for immediate slaughter or directly to a quarantined feedlot in accordance with § 78.8 (a) of (b).[5]

§ 78.13 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the interstate movement of cattle not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator will promptly notify the appropriate State animal health officials of the States involved of any such action.

§ 78.14-78.19 [Reserved]

Subpart C—Restriction on Interstate Movement of Bison Because of Brucellosis

§ 78.20 General restrictions.

Bison may not be moved interstate except in compliance with this subpart.

[4] Female cattle which are imported into the United States may be exempted from the vaccination requirements of this paragraph with the concurrence of the State animal health official of the State of destination. This concurrence would be required prior to importation of the cattle into the United States.

[5] A herd which is not qualified in a quarantined area may become a qualified herd upon compliance with the provisions set forth in the definition of "qualified herd" in §78.1.

§ 78.21 Bison steers and spayed heifers.

Bison steers and spayed heifers may be moved interstate without restriction under this subpart.

§ 78.22 Brucellosis reactor bison.

Brucellosis reactor bison may only be moved interstate for immediate slaughter directly to a recognized slaughtering establishment or from a farm of origin directly to a specifically approved stockyard approved to handle brucellosis reactor bison and then directly to a recognized slaughtering establishment only in accordance with the following requirements:

(a) *Identification.* Brucellosis reactor bison shall be individually identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors.

(b) *Permit.* Brucellosis reactor bison shall be accompanied to destination by a permit.

(c) *Marking of records.* Each person moving brucellosis reactor bison in the course of their interstate movement shall plainly write or stamp upon the face of any document, which that person prepares in connection with such movement, the words, "Brucellosis Reactor."

(d) *Segregration en route.* Brucellosis reactor bison shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactor unless all of the animals are for immediate slaughter, or unless the Brucellosis reactor bison are kept separate from the other animals by a partition securely affixed to the sides of the means of conveyance.

§ 78.23 Brucellosis exposed bison.

Brucellosis exposed bison may be moved interstate only as follows:

(a) *Movement of brucellosis reactor bison to recognized slaughtering establishments.* Such bison may be moved directly to a recognized slaughtering establishment or directly from a farm of origin to a specifically approved stockyard approved to handle brucellosis exposed bison and then directly to a recognized slaughtering establishment. Such bison shall be accompanied by a permit. If the movement is through a specifically approved stockyard approved to handle brucellosis exposed bison to a recognized slaughtering establishment, a separate permit shall be required for the subsequent interstate movement of the bison from the specifically approved stockyard approved to handle brucellosis exposed bison to the recognized slaughtering establishment.

(b) *Movement of brucellosis exposed bison to quarantined feedlots.* Such bison may be moved directly to a quarantined feedlot or directly from a farm of origin to a specifically approved stockyard approved to handle brucellosis exposed bison and then directly to a quarantine feedlot. Such bison shall be accompanied by a permit. If the movement is through a specifically approved stockyard approved to handle brucellosis exposed bison to a quarantined feedlot, a separate permit shall be required for the subsequent interstate movement of the bison from the specifically approved stockyard approved to handle brucellosis exposed bison to the quarantined feedlot.

(c) *Movement of brucellosis exposed bison other than in accordance with paragraph (a) or (b) of this section.* Brucellosis exposed bison from herds known to be affected with brucellosis which are not part of a herd being depopulated under Part 51 of this chapter may move without restriction if the bison: (1) Are under 6 months of age and have been weaned from brucellosis reactor or brucellosis exposed bison not less than 30 days immediately preceding interstate movement; or (2) are under 6 months of age and are nursing brucellosis exposed bison in a herd which has been subjected to a herd blood test within 10 days prior to interstate movement; or (3) are official vaccinates under 1 year of age from a herd which is following an approved individual herd plan.

§ 78.24 Bison from herds not known to be affected with brucellosis.

Bison from herds not known to be affected with brucellosis may be moved interstate only as follows:

(a) *Movement to recognized slaughtering establishments.* Such bison may be moved directly to a recognized slaughtering establishment without restriction.

(b) *Movement to quarantined feedlot.* Such bison may be moved directly to a quarantined feedlot without restriction.

(c) *Movement from public zoo to public zoo.* Such bison may be moved from a zoo owned by a governmental agency to another such zoo if handled in accordance with § 78.3.

(d) *Movement other than in accordance with paragraphs (a), (b), or (c) of this section.* Such bison may be moved interstate other than in accordance with paragraphs (a), (b), or (c) of this section only as follows:

(1) Such bison under 6 months of age may be moved when accompanied by a certificate.

(2) Such bison which are official vaccinates under 2 years of age and which are not parturient or postparturient may be moved when accompanied by a certificate.

(3) Such bison may be moved if they are accompanied by a certificate, are subjected to an official test for brucellosis and found negative within 30 days prior to such movement and the certificate shows, in addition to items specified in § 78.1, the dates and results of the official tests.

(4) Such bison may be moved if they originate in a certified brucellosis-free herd and they are accompanied by a certificate which states, in addition to the items specified in § 78.1, that the bison originated in a certified brucellosis-free herd.

§ 78.25 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the interstate movement of bison not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator will promptly notify the appropriate State animal health officials of the States involved of any such action.

§ 78.26–29 [Reserved]

Subpart D—Restrictions on Movement of Swine Because of Brucellosis.

§ 78.30 General restrictions.

(a) Brucellosis reactor swine, brucellosis exposed swine, and sows and boars may not be moved interstate or in interstate commerce except in compliance with this subpart.

(b) Each person who causes the movement of swine in interstate commerce is responsible for the identification of the swine as required by this subpart. No such person shall remove or tamper with or cause the removal of or tampering with a Veterinary Services approved tattoo or approved swine identification tag required in this subpart for the movement in interstate commerce of swine, except at the time of slaughter, or as may be authorized by the Deputy Administrator, upon request in specific cases and under such conditions as the Deputy Administrator may impose to insure continuing identification.

§ 78.31 Brucellosis reactor swine.

Brucellosis reactor swine may only be moved interstate for immediate

slaughter directly to a recognized slaughtering establishment or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 et seq.) or directly to a market agency or dealer registered under said Packers and Stockyards Act, for sale to a recognized slaughtering establishment in accordance with the following requirements:

(a) *Identification.* Brucellosis reactor swine shall be individually identified by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S.C. Reactor" or a metal tag bearing a serial number which has been disignated by the State animal health official for the purpose of identifying brucellosis reactors.

(b) *Permit.* Brucellosis reactor swine shall be accompanied to destination by a permit.

(c) *Marking of records.* Each person moving brucellosis reactor swine in the course of their interstate movement shall plainly write or stamp upon the face of any document, which that person prepares in connection with such movement, the words "Brucellosis Reactor."

(d) *Segregation en route.* Brucellosis reactor swine shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactors unless all of the animals are for immediate slaughter, or unless the brucellosis reactor swine are kept separate from other animals by a partition securely affixed to the sides of the means of conveyance.

§ 78.32 Brucellosis exposed swine.

Brucellosis exposed swine may be moved interstate only for immediate slaughter directly to a recognized slaughtering establishment or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*) directly to a market agecny dealer registered under said Packers and Stockyards Act, for sale to a recognized slaughtering establishment, if such swine are accompained by a permit.

§ 78.3 Sows and boars.

(a) Sows and boars may be moved in interstate commerce for slaughter or for sale for slaughter only if such swine are:

(1)(i) Individually identified by a Veterinary Service approved tattoo [6] applied to the back of each swine prior to the movement in interstate commerce and before they are mixed with swine from any other source; or (ii) when approved by the State animal health official and the Veterinarian in Charge, individually identified by an approved swine identification tag;[7] or

(2) Moved directly from a herd of origin of swine to a recognized slaughtering establishment of directly to a stockyard posted under the provisions of the Packers and Stockyard Act, as amended (7 U.S.C. 181 et seq.), or a market agency or dealer registered under said Packers and Stockyard Act if such swine are identified to the herd of origin by a Veterinary Services approved tattoo applied to the back of each swine or individually identified by an approved swine identification tag [7] upon arrival and before they are mixed with swine from any other source.[8]

(b) Sows and boars may be moved in interstate commerce for breeding only if such swine are:

(1)(i) Individually identified by an approved swine identification tag [7] prior to the movement in interstate commerce and before they are mixed with swine from any other source or, (ii) if the swine are registered with a registry association, individually identified in the same manner as recorded with the registry association; and

(2)(i) From a validated brucellosis-free herd or a validated brucellosis-free State and accompanied by certificate and such certificate states, in addition to the items specified in § 78.1, that the swine originated in either a validated brucellosis-free herd or in validated brucellosis-free State; or (ii) from nonvalidated brucellosis-free herds in nonvalidated brucellosis-free States and subjected to an official test for brucellosis and found negative within 30 days prior to the movement in interstate commerce and are accompanied by a certificate which shows, in addition to items specified in § 78.1, the dates and the results of the official test.

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart.

§ 78.34 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the movement in interstate commerce of swine not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator will promptly notify the State animal health oficials of the States involved of any such action.

§ 78.35–78.39 [Reserved]

Subpart E—Designation of Brucellosis Areas, and Specifically Approved Stockyards

§ 78.40 Designations of State/Areas.

The Deputy Administrator may amend §§ 78.41 and 78.42 to reclassify States and Areas as Class Free, Class A, Class B, or Class C, or quarantined areas when the Deputy Administrator determines that the States or areas meet the appropriate definitions in § 78.1, the Deputy Administrator may amend § 78.43 to reclassify States as validated brucellosis-free States or remove such status when the Deputy Administrator determines that such States meet or do not meet the standards of a validated brucellosis-free State as defined in § 78.1. In the case of any reclassification to a lower status or removal of validated brucellosis-free status, the State animal health official of the State involved will be notified and given an opportunity to be heard prior to the reduction of status.

§ 78.41 State/Area classification.

(a) *Class Free*—Alaska, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virgin Islands, Wisconsin, and Wyoming.

(b) *Class A*—Arizona, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Nebraska, New Jersey, New Mexico, Ohio, Oregon, South Dakota, Tennessee, Virginia, Washington, West Virginia, and Puerto Rico.

(c) *Class B*—Alabama, Kentucky, Missouri, Nevada, and Oklahoma. Counties of Florida west of the Suwanee: Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla,

[6] Veterinary Services approved tattoo codes will be assigned to persons upon application to the State animal health official or the Veterinarian in Charge, for the State in which such persons maintain their principal place of business.

[7] Serial numbers of approved swine identification tags to be used will be assigned to persons upon application to the State animal health official or the Veterinarian in Charge for the State in which such persons maintain their place of business.

[8] It is requested that the operator of each place of business where such swine are identified on arrival in accordance with this section, enter such identification on the yarding receipt, sale ticket, invoice, waybill, or similar document relating to the swine, and that such document be maintained on file at the place of business for at least 1 year and be made available for inspection during ordinary business hours upon request by a Veterinary Services representative or State representative.

Walton, and Washington. The Texas counties of: Andrews, Archer, Armstrong, Bailey, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Erath, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lipscomb, Llano, Loving, Lubbock, Lynn, McCulloch, Martin, Mason, Maverick, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Winkler, Wise, Yoakum, Young and Zavala.

(d) *Class C*—Arkansas, Florida, (counties east and south of the Suwanee River), Louisiana, Mississippi, and the Texas counties of: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Dallas, Delta, Denton, DeWitt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kaufman, Kenedy, Kleberg, Lamar, LaSalle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, McLennan, McMullen, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Wood and Zapata.

§ 78.42 Quarantined areas.

None.

§ 78.43 Validated Brucellosis-Free States.

Alaska, Arizona, California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Rhode Island, Pennsylvania, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming, Puerto Rico, Virgin Islands.

§ 78.44 Specifically approved stockyard.

(a) To qualify for approval by the Deputy Administrator as a specifically approved stockyard and to retain such designation, the operator [9] of the stockyard shall have executed one of the agreements set forth in paragraphs (c) or (d) of this section and the stockyard shall be maintained and operated in accordance with the standards specified in the agreement.

(b) (1) The Deputy Administrator shall withdraw the approval of any specifically approved stockyard when the operator [9] of the stockyard notifies the Deputy Administrator in writing that the agreement to operate as a specifically approved stockyard is terminated. (2) The Deputy Administrator may withdraw the approval of any specifically approved stockyard when the Deputy Administrator determines that the stockyard is not maintained and operated in accordance with the standards specified in the agreement. Before the Deputy Administrator withdraws approval from a specifically approved stockyard based upon a failure to maintain or operate the stockyard in accordance with the standards specified in the agreement, the operator of the stockyard will be informed of the reasons for the proposed withdrawal of approval, and upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of the action to withdraw approval, in accordance with rules of practice which shall be adopted for the proceeding. (3) The Deputy Administrator shall remove a stockyard from the list of specifically approved stockyards if the approval of such stockyard is withdrawn.

(c) In order to obtain approval as a specifically approved stockyard to handle cattle and bison pursuant to this part, the operator [9] of the stockyard shall execute the following agreement:

[9] The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

Agreement Specifically Approved Stockyard for Handling Cattle and Bison Pursuant to Title 9 of the Code of Federal Regulations

(Name of Stockyard)

(Address of Stockyard)

I, (name of operator), operator of (name of stockyard), hearby agree to maintain and operate this stockyard at (premises location) in accordance with each of the provisios set forth herein.

Cooperation

(1) An accredited veterinarian, State representative, or Veterinary Services representative shall be on the stockyard premises on sale days to perform duties in accordance with State and Federal Regulations.

(2) The State animal health official and the Veterinarian in Charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and Veterinary Services representatives shall be granted at reasonable hours, access to stockyard premises and facilities to determine compliance with the requirements of Title 9, Code of Federal Regulations and the standards of this agreement.

Handling of Cattle and Bison

(4) Cattle and bison shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) All brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle or bison arriving at the stockyard shall be placed in quarantined pens and consigned from the stockyard only in accordance with Title 9, Code of Federal Regulations, Part 78.

(6) Cattle and bison which have not been classified as brucellosis reactors, brucellosis suspects, or brucellosis exposed shall not be placed in quarantined pens without cleaning and disinfection of such pens in accordance with paragraph 14 of this agreement.

(7) Any cattle or bison classified as brucellosis reactors at the stockyard shall be (a) identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors (b) placed in quarantined pens and (c) consigned from the stockyard only to a slaughtering establishment in accordance with Title 9, Code of Federal Regulations, Part 78.

(8) Any cattle or bison classified as brucellosis exposed at the stockyard shall be: (a) identified in accordance with Title 9, Code of Federal Regulations, Part 78, (b) placed in quarantined pens, and (c) consigned from the stockyard only to a slaughtering establishment, quarantined feedlot as defined in Title 9, Code of Fedeal Regulations, § 78.1.

or farm of origin in accordance with Title 9, Code of Federal Regulations, Part 78.

(9) Identify of cattle from Class Free States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(10) Identity of cattle from Class A States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(11) Identity of cattle from Class B States or areas shall be maintained and such cattle shall not be place in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(12) Identify of cattle from Class C States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(13) Identity of cattle from quarantined areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

Facilities

(14) Quarantined pens, for the confinement of brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle and bison shall be (a) clearly labeled with paint or placarded as follows: "Quarantined," "Brucellosis," or "Bangs" and (b) cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4 before being used to pen cattle and bison which are not brucellosis reactors, brucellosis suspects, or brucellosis exposed. Such quarantined pens, confining brucellosis reactors or brucellosis suspects after May 1, 1986, shall have impervious floor surfaces and adequate draining for the purposes of cleaning and disinfection.

(15) Well-lighted cattle chutes shall be furnished and maintained to provide for proper restraint of cattle and bison for inspection, identification, vaccination, testing, and branding. Adequate electrical outlets shall be provided at the chute area for branding purposes.

(16) Laboratory space shall be furnished and maintained for conducting brucellosis tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative brucellosis eradication program on the stockyard premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting brucellosis tests.

(17) Serviceable equipment for cleaning and disinfecting shall be furnished and maintained with adequate disinfectant on hand.

Cleaning and Disinfection

(18) The stockyard shall be cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, section 71.4.

Records

(19) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year.

(20) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained pursuant to paragraph 19 of this agreement and authority to reproduce such documents upon request.

I,————, hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Parts 71 and 78 and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval

_____

*Operator of the Stockyard

Date _____

Recommend Approval

_____

State Animal Health Official

Date _____

*The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

Recommended Approval

_____

Veterinarian in Charge

Date _____

Approval Granted

_____

Deputy Administrator, Veterinary Services

Date _____

(d) In order to obtain approval as a specifically approved stockyard to handle cattle and bison, except to receive known brucellosis reactor, brucellosis suspect, or brucellosis exposed cattle or bison, pursuant to this part the operator of the stockyard shall execute the following agreement:

Agreement Specifically Approved Stockyard for Handling Cattle and Bison Except To Receive Brucellosis Reactor, Brucellosis Suspect, and Brucellosis Exposed Cattle or Bison Pursuant to Title 9 of the Code of Federal Regulations

_____

(Name of Stockyard)

_____

(Address of Stockyard)

I, (name of operator) , operator of (name of stockyard) , hereby agree to maintain and operate this stockyard at (premises location) in accordance with each of the provisions set forth herein.

Cooperation

(1) An accredited veterinarian, State representative, or Veterinary Services representative shall be on the stockyard premises on sale days to perform duties in accordance with State and Federal Regulations.

(2) The State animal health official and the Veterinarian in Charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and Veterinary Services representatives shall be granted at reasonable hours, access to stockyard premises and facilities to determine compliance with the requirements of Title 9, Code of Federal Regulations and the standards of this agreement.

Handling of Cattle and Bison

(4) Cattle and bison shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) No cattle or bison known to be brucellosis reactor, brucellosis suspect, or brucellosis exposed shall be permitted to enter the stockyard.

(6) Any cattle or bison classified as brucellosis reactors at the stockyard shall be (a) identified by branding the letter "B" on the left jaw in letters not less than 2 nor more than 3 inches high and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor" or a metal tag bearing a serial number which has been designated by the State animal health official for the purpose of identifying brucellosis reactors (b) placed in quarantined pens and (c) consigned from the stockyard only to a slaughtering establishment in accordance with Title 9, Code of Federal Regulations, Part 78.

(7) Any cattle or bison classified as brucellosis exposed at the stockyard shall be: (a) identified in accordance with Title 9, Code of Federal Regulations (b) placed in quarantined pens, and (c) consigned from the stockyard only to a slaughtering establishment, quarantined feedlot as defined in Title 9 Code of Federal Regulations, or farm of origin in accordance with Title 9, Code of Federal Regulations, Part 78.

(8) Cattle and bison which have not been classified as brucellosis reactors, brucellosis suspect, or brucellosis exposed shall not be placed in quarantined pens without prior cleaning and disinfection of such pens in accordance with paragraph 14 of this agreement.

(9) Identity of cattle from Class Free States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(10) Identity of cattle from Class A States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(11) Identity of cattle from Class B States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(12) Identity of cattle from Class C States or areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(13) Identity of cattle from quarantined areas shall be maintained and such cattle shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

Facilities

(14) Quarantined pens, for the confinement of brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle and bison tested and classified at the stockyard, shall be (a) clearly placarded as follows: "Quarantined," "Brucellosis," or "Bangs" and (b) cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, section 71.4 before being used to pen cattle and bison which are not brucellosis reactor, brucellosis suspect, or brucellosis exposed.

(15) Well-lighted cattle chutes shall be furnished and maintained to provide for proper restraint of cattle and bison for inspection, identification, vaccination, testing, and branding. Adequate electrical outlets shall be provided at chute area for branding purposes.

(16) Laboratory space shall be furnished and maintained for conducting brucellosis tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative brucellosis eradication program on the stockyard premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting brucellosis tests.

(17) Serviceable equipment for cleaning and disinfecting shall be furnished and maintained with adequate disinfectant on hand.

Cleaning and Disinfection

(18) The stockyard shall be cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, section 71.4

Records

(19) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year.

(20) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained pursuant to paragraph 19 of this agreement and authority to reproduce such documents upon request.

I, ———, hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Parts 71 and 78 and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval

*Operator of the Stockyard

Date ———

Recommend Approval

State Animal Health Official

Date ———

*The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

Recommend Approval

Veterinarian in Charge

Date ———

Approval Granted

Deputy Administrator, Veterinary Services

Date ———

PART 51—[AMENDED]

The authority citation for Part 51 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 51.3 [Amended]

2. In footnote number 3 referenced in § 51.3, the reference to "§ 78.1(dd)" would be revised to read "§ 78.1."

3. In § 51.6, paragraph (a) would be revised to read as follows:

§ 51.6 Destruction of animals; time limit for destruction of animals.

(a) The claimant shall be responsible for insuring that cattle subject to this part shall be sold under permit to a recognized slaughtering establishment,[5] or to a specifically approved stockyard [5] for sale to a recognized slaughtering establishment.

* * * * *

4. Footnote number 5, referenced in § 51.6, would be revised to read as follows:

[5]The terms "recognized slaughtering establishment" and "specifically approved stockyard" ar defined in § 78.1 of this chapter.

PART 71—[AMENDED]

The authority citation for Part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d)

5. In § 71.1, the introductory language would be revised to read as follows:

§ 71.1 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section.

* * * * *

§ 71.3 [Amended]

6. In § 71.3(c), the reference to "the provisions of Subpart B of Part 78 of this subchapter" would be revised to read "Part 78 of this chapter."

7. In § 71.18, the first sentence of paragraph (a) would be revised to read as follows:

§ 71.18 Individual indentification of certain cattle 2 years of age or over for interstate movement.

(a) No cattle 2 years of age or over, except steers and spayed heifers and cattle of any age which are being moved in interstate commerce during the course of normal ranching operations without change of ownership to another premises owned, leased, or rented by the same individual as provided in § 78.9(a), § 78.9(b)(3)(iv), § 78.9(c)(3)(iv), and § 78.9(d)(3)(vii) of this chapter, shall be moved in interstate commerce other than in accordance with the requirements of this section. * * *

* * * * *

8. Footnote number 1, referenced in § 71.18 would be revised to read as follows:

[1]Department-approved backtags are available at recognized slaughtering establishments and specifically approved stockyards; from State representatives and Veterinary Services representatives. A list of recognized slaughtering establishments and specifically approved stockyards may be obtained as indicated in § 78.1 of this Chapter. The terms "State representative" and "Veterinary Services representative" are defined in § 78.1 of this chapter.

9. In § 71.18 (a)(1)(i) and (a)(1)(ii), "slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or slaughtering establishment specifically approved under § 78.16(b) of this subchapter" would be revised to read "recognized slaughtering establishment as defined in § 78.1 of this chapter".

PART 80—[AMENDED]

The authority citation for Part 80 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

10. In § 80.1, paragraph (j) would be revised to read as follows:

§ 80.1 Definitions.

* * * * *

(j) *Specifically approved stockyard.* A stockyard, livestock aution market, buying station, concentration point, or any other premises which meets the standards set forth in § 78.44 of this chapter and is approved by the Deputy

Administrator to handle brucellosis reactor animals.

§ 80.4 [Amended]

11. In § 80.4 introductory text, "a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), or a slaughtering establishment approved with respect to brucellosis reactors pursuant to § 78.16(b) of this subchapter" would be amended to read "a recognized slaughtering establishment as defined in § 78.1 of this chapter."

PART 92—[AMENDED]

The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.35 [Amended]

12. In § 92.35(d)(2) "a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act or a slaughtering establishment specifically approved as specified in § 78.24 of this chapter" would be amended to read "a recognized slaughtering establishment as defined in § 78.1 of this chapter."

13. In § 92.35(d) the reference to "§ 78.1(oo)" would be revised to read "§ 78.1" and the reference to "§ 78.12(a)" would be revised to read "§ 78.12."

Done at Washington, D.C., this 5th day of September, 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-21786 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9191]

Oklahoma 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 Oklahoma Optometric Association, among other things, to cease prohibiting any member optometrist from: affiliating with or operating franchises; operating branch offices; or truthfully advertising the prices, terms and availability of optometric services or optical goods.

DATE: Comments must be received on or before November 12, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-823, Arthur N. Lerner, Washington, D.C. 20580. (202) 724-1341.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the 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.

Before Federal Trade Commission

[Docket No. 9191]

In the matter of Oklahoma Optometric Association, a corporation.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between the Oklahoma Optometric Association, a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Oklahoma Optometric Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma with its mailing address at 4545 N. Lincoln Blvd., Suite 173, Oklahoma City, OK 73105.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all of the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. 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.

5. 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 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 decision, in disposition of the proceeding.

6. 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 complaint.

7. 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 § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondent: (1) Issue 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 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 may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the 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 Oklahoma Optometric Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns.

B. "Optometrist" means any individual licensed to engage in the practice of optometry in the State of Oklahoma.

C. "Franchise Arrangement" means any arrangement to market and sell optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office where optometric services are provided.

II

It is ordered that respondent, directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall cease and desist from:

A. Prohibiting, restricting, restraining, or coercing any optometrist from entering into or maintaining a franchise arrangement, or from affiliating with an optometrist who has done so or is doing so, through any means, including, but not limited to:

1. Declaring it to be an unethical or objectionable practice or mode of practice for any optometrist to enter into or maintain a franchise arrangement, or to affiliate with an optometrist who has done so or is doing so;

2. Expelling, excluding, suspending, or threatening to expel, exclude, or suspend, any optometrist from membership for entering into or maintaining a franchise arrangement, or for affiliating with an optometrist who has done so or is doing so;

3. Adopting or maintaining a rule, policy, guideline, or ethical standard that prohibits optometrists from practicing optometry in proximity to a retail optical establishment; and

4. Adopting or maintaining any rule, policy, guideline, or ethical standard that prohibits any optometrist from associating his or her title with a lay practice;

B. Prohibiting, restricting, restraining, or coercing any optometrist from establishing or maintaining any separate or branch office; and

C. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising, publishing, or disseminating by any person of the prices, terms, availability, characteriestics, or conditions of sale of optometric services or optical goods and devices that are offered for sale or made availabe by an optometrist or by any organization with which an optometrist is affiliated through any means, including, but not limited to, the adopting or maintaining of any rule or policy that prohibits any member from:

1. Representing that he or she has particular or special qualities, including, but not limited to, those that may be the result of special training, skills, or experience;

2. Engaging in comparative advertising, including, but not limited to, advertising that could be construed as criticizing another optometrist;

3. Displaying eyeglasses, representations of eyes, or other optical goods; or

4. Offering guarantees, including, but not limited to, offering to refund the cost of optical goods if a patient is dissatisfied with them or offering to match a competitor's price for the same goods.

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, including unsubstantiated representations, that Respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

III

It is further ordered, that respondent shall cease and desist from:

A. Taking any action against a person alleged to have violated any rule, policy, guideline, or ethical standard without first providing such person with written notice of any such allegation, and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the rule, policy, guideline, or ethical standard alleged to have been violated, the specific conduct that is alleged to have violated the rule, policy, guideline, or ethical standard, and the reasons the conduct is alleged to have violated the rule or ethical standard; and

B. Failing to maintain for five (5) years following the taking of any action referred to in this part, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

IV

It is further ordered that this order shall not be construed to prevent Respondent from:

A. Exercising rights guaranteed against infringement by the First Amendment of the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding; or

B. Reporting to appropriate governmental authorities any act or practice that it in good faith believes is a violation of federal or state laws or regulations, along with the basis for such belief.

V

It is further ordered, that respondent shall:

A. Within sixty (60) days after 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 complaint to each optometrist who has been suspended from membership, whether permanently, temporarily, or indefinitely, because of his or her "mode of practice;" offer to reinstate any such optometrist's membership; and if any optometrist so desires, reinstate such membership within thirty (30) days after the application is returned;

B. Within sixty (60) days after this Order becomes final, send by first-class mail the letter attached hereto as Attachment B to every optometrist who is licensed to practice in the State of Oklahoma;

C. For a period of seven (7) years after this Order becomes final, provide each applicant for membership in Respondent Oklahoma Optometric Association with a copy of this Order and the complaint;

D. Within sixty (60) days after this Order becomes final, publish a copy of this Order and the complaint in "Oklahoma OD," the Respondent's newsletter, or in any successor publication, with the same prominence as regularly published feature articles:

E. Within ninety (90) days after this Order becomes final, remove from its Code of Ethics, Rules of Practice, Constitution, bylaws, and any other existing policy statement or guideline of Respondent, any provision, interpretation or policy statement that is inconsistent with Part II of this Order, or amend any such inconsistency in such a manner as to eliminate the inconsistency so that the amended language does not violate the prohibitions contained in this Order, and, within one hundred and twenty (120) days after this Order becomes final, publish in the "Oklahoma OD," or in any successor publication, notice of the removal or amendment of any such provision, interpretation, or policy statement;

F. Within one hundred and twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order;

G. For a period of seven (7) years after 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 Part II of this Order, including, but not limited to, the rendering of any advice or interpretation with respect to any advertising or franchise arrangement involving any optometrist; and

H. Within one (1) year after this Order becomes final, and annually thereafter for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with any activity covered by Part II of this Order, including, but not limited to, any advice or interpretation rendered with respect to any advertising or franchise arrangement involving any optometrist.

VI

It is further ordered, that respondent shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution or reorganization resulting in the emergence of a successor corporation, association, or other entity or any other change in the respondent which may affect compliance obligations arising out of this Order.

Attachment A

Dear Dr. ————:

This letter is to inform you of a Consent Order (copy enclosed) entered by the Federal Trade Commission. Under the terms of this Order, the Oklahoma Optometric Association has agreed that we will not prevent or impede any optometrist from: entering into or operating a franchise arrangement for the sale of optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office, or affiliating with an optometrist who has done so; operating a separate or branch office; or engaging in any form of truthful, non-deceptive advertising.

The Consent Order provides that we may not declare it to be an unethical or objectionable mode of practice for an optometrist to enter into or operate a franchise arrangement, or to affiliate with an optometrist who has done so. In addition, we may not expel, exclude, or suspend an optometrist for entering into, operating, or affiliating with such an arrangement. The Consent Order also provides that we may not prohibit or restrict optometrists from operating a branch office, and that we may not restrict optometrists from engaging in any form of advertising, except to the extent that there is reason to believe that such advertising is false or deceptive.

Under the Consent Order, we must amend our Code of Ethics and Rules of Practice to comply with the term of the Order. In addition, if we take action against a person alleged to have violated any of our rules or ethical standards, we must provide that person with written notice of the specific allegations and a reasonable opportunity to respond to them.

Accordingly, you have a right to reinstatement of your membership in the Oklahoma Optometric Association. If your wish to reinstate your membership, please fill out the enclosed application form and return it to the Association.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title),

Oklahoma Optometric Association.

Attachment B

Dear Dr. ————:

This letter is to inform you of a Consent Order (copy enclosed) entered by the Federal Trade Commission. Under the terms of this Order, the Oklahoma Optometric Association has agreed that we will not prevent or impede any optometrist from: entering into or operating a franchise arrangement for the sale of optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office, or affiliating with an optometrist who has done so; operating a separate or branch office; or engaging in any form of truthful, non-deceptive advertising.

The Consent Order provides that we may not declare it to be an unethical or objectionable mode of practice for an optometrist to enter into or operate a franchise arrangement, or to affiliate with an optometrist who has done so. In addition, we may not expel, exclude, or suspend an optometrist for entering into, operating, or affiliating with such an arrangement. The Consent Order also provides that we may not prohibit or restrict optometrists from operating a branch office, and that we may not restrict optometrists from engaging in any form of advertising, except to the extent that there is reason to believe that such advertising is false or deceptive.

Under the Consent Order, we must amend our Code of Ethics and Rules of Practice to comply with the term of the Order. In addition, if we take action against a person alleged to have violated any of our rules or ethical standards, we must provide that person with written notice of the specific allegations and a reasonable opportunity to respond to them.

Consequently, membership in the Oklahoma Optometric Association is now open to any optometrist licensed in the State of Oklahoma, regardless of any affiliation with a franchisor or franchisee of optical goods and devices, or the structure or location of his or her practice, or the optometrist's decision to engage in truthful advertising.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title),

Oklahoma Optometric Association.

Oklahoma Optometric Association

[Docket No. 9191]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Oklahoma Optometric Association.

The proposed consent order has been placed on the public record for sixty (60) days for receipt 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

The Commission issued a complaint against the Oklahoma Optometric Association ("the Association") on February 28, 1985. The complaint charged the Association with unlawfully restricting the development of innovative forms of competition among optometrists in the State of Oklahoma in violation of section 5 of the Federal Trade Commission Act. The complaint alleged that the Association unlawfully prohibited its members from: (1) Entering into franchise arrangements for the sale of optical goods and devices; (2) providing optometric services from a separate or branch office; and (3) engaging in certain kings of truthful advertising, non-deceptive marketing, and other forms of dissemination of truthful information to consumers. The complaint further charged that the effect of the Association's conduct has been to suppress competition in the delivery of optometric services and the sale of optical goods and devices and to injure consumers.

The Association is a professional association of optometrists who practice in Oklahoma. It has approximately 300 members, constituting approximately 90 percent of the practicing optometrists in Oklahoma. Membership in the Association entitles optometrists to a variety of benefits, such as the right to become a member of the American Optometric Association, the major national association for optometrists, and the right to attend continuing education programs necessary for licensure. According to the complaint, the Association's members are in competition with each other.

The complaint alleged that the Association has declared that optometrists who are affiliated with franchise arrangements for the sale of optical goods and devices are engaged in an unethical and objectionable mode of practice and has summarily suspended such optometrists from membership, despite having no reasonable basis to believe that they have engaged in deceptive practices or that they have violated Oklahoma law. The complaint also alleged that various provisions of the Association's rules and ethical code have unreasonable restrained competition and injured consumers by inhibiting the development of retail optical franchise arrangements and branch offices and by restricting truthful advertising.

The complaint alleged that the Association's conduct has injured competition and consumers in several ways. First, it has frustrated and restrained competition in the delivery of optometric services and the sale of optical goods and devices on the basis of price, service, and quality. Second, it has deprived consumers of the potential cost savings, convenience, and efficiency benefits of retail optical franchise arrangements and separate or branch offices in their purchases of optometric services and optical goods and devices. Third, it has deprived consumers of the benefits of truthful information about the availability of optometric services and optical goods.

The Proposed Consent Order

The consent order is designed to remedy the violations charged in the Commission's complaint and to prevent the Association from engaging in similar allegedly illegal acts and practices in the future. The proposed order is intended to ensure that the Association ceases all conduct restricting: (1) Franchise arrangements for the sale of optical goods and devices, (2) the operation of branch offices by optometrists, or (3) truthful advertising by optometrists. It is also intended to ensure that optometrists in Oklahoma are made aware that these practices are no longer prohibited by the Association.

Part I of the proposed order contains definitions of various terms used in the order. Part II prevents the Association from: (1) Prohibiting, restricting, or restraining any optometrist from affiliating with a franchise arrangement for the sale of optical goods and devices; (2) prohibiting, restricting, or restraining any optometrist from maintaining a separate or branch office; and (3) restricting, regulating, interfering with, or advising against advertising or disseminating the prices or availability of, or other information about, optometric services or optical goods and devices.

Part II of the consent order also provides that the Association is not prohibited from formulating and enforcing reasonable ethical guidelines with respect to advertising that it reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act or with respect to uninvited, in-person solicitation of patients who are vulnerable to undue influence.

Part III of the proposed order requires the Association to provide persons alleged to have violated the Association's rules or ethical guidelines with certain procedural protections, including written notice of the allegations and an opportunity to respond to them.

Part IV provides that the order does not prevent the Association from exercising its First Amendment rights to petition the government or to participate in administrative or judicial proceedings or from reporting to appropriate governmental authorities acts or practices that it in good faith believes to be violations of law.

Part V of the proposed order requires the Association to send a copy of the order to the members it has suspended because of their mode of practice and offer to reinstate their membership. It further provides that the Association must notify all currently licensed Oklahoma optometrists of the terms of the order both by mail and by publishing the order in its newsletter and furnish all applicants for membership in the Association with copies of the order for a period of seven years after the order becomes final. The texts of the required notices are contained in Attachments A and B to the proposed order. Part V also requires the Association to modify its rules and ethical code to delete provisions that are inconsistent with the terms of the proposed order.

The purpose of the 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 modify in any way its terms.

Emily H. Rock

Secretary.

[FR Doc. 85-21823 Filed 9-11-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 9-85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a new system of records entitled the "General Files System of the Office of the Attorney General (JUSTICE/OAG-001)" from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), and (g) of the Privacy Act, 5 U.S.C. 552a. The records contained in this system relate to official investigations and to internal policy decisions. The exemption is needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633–4414.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "General Files System of the Office of the Attorney General (JUSTICE/OAG–001).".

This order relates to individuals 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, 28 CFR Part 16 is amended to add § 16.70 as set forth below.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.70 to read as follows:

§ 16.70 Exemption of the Office of the Attorney General System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files System of the Office of the Attorney General (JUSTICE/OAG–001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(5).

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

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidener, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might comprise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of the criminal. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations of duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 85–21837 Filed 9–11–85; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 16

[AAG/A Order No. 10–85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to revise 28 CFR 16.71 by redesignating certain systems of records to accomplish consistency with reorganizations and by making necessary editorial changes. The changes are made to achieve clarity and consistency for the public. The Department also proposes to exempt two systems of records from certain Privacy Act provisions. The "General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG–013)" will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), and (g) of the Privacy Act, 5 U.S.C. 552a. The records contained in this system relate to official investigations and to major policy issues. The exemption is needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations. The "Miscellaneous Attorney Personnel Records System (JUSTICE/DAG–011)" will be exempted from subsections (d)(1) and (e)(1) of the Privacy Act. The exemption is needed to protect the identities of confidential sources and to ensure the unhampered collection of information for investigative and evaluative purposes concerning the subject's candidacy for the position of attorney.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave, NW, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633–4414.

SUPPLEMENTARY INFORMATION: The Office of the Deputy Attorney General (ODAG) is revising paragraph (a) of § 16.71 to remove a system and to correct other system number identifiers so that they are consistent with a reorganization of functions and with the respective system notices as currently published in the **Federal Register** (45 FR 60303). By Attorney General Order No. 945–81, dated May 26, 1981, the management roles of the Deputy Attorney General and the Associate Attorney General were restructured, and the Office of Legal Policy (OLP) was established. As a result, a system of records now identified as "United States Judges Records System (JUSTICE/DAG–014)" is removed from § 16.71(a) and redesignated under a new section, § 16.73, as "United States Judges Records System (JUSTICE/OLP–002);" and other system number identifiers in this section are renumbered. In addition, the ODAG is revising paragraph (a) to exempt a system of records entitled "Miscellaneous Attorney Personnel Records System (JUSTICE/DAG–011)" from certain Privacy Act provisions. This system was last published in the **Federal Register** on December 9, 1981 (46 FR 60310). Finally, the ODAG is adding a new paragraph (c) to exempt the "General Files System of the Office of Deputy Attorney General (JUSTICE/DAG–013)" from certain provisions of the Act. In the notice section of today's **Federal Register**, the Department of Justice provides a description of this system.

This order relates to individuals 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, 28 CFR 16.71 is revised as set forth below.

Dated: May 24,1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16, is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by revising § 16.71 to read as follows:

§ 16.71 Exemption of the Office of the Deputy Attorney General System—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG–002).

(2) Assistant United States Attorneys Applicant Records System (JUSTICE/DAG–003).

(3) Presidential Appointee Candidate Records System (JUSTICE/DAG–006).

(4) Presidential Appointee Records System (JUSTICE/DAG–007).

(5) Special Candidates for Presidential Appointments Records System (JUSTICE/DAG–008).

(6) Miscellaneous Attorney Personnel Records Systems (JUSTICE/DAG–011).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

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

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a Presidential appointee, Assistant U.S. Attorney, or Department attorney position. Access could reveal the identify of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluating purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files Systems of the Office of the Deputy Attorney General (JUSTICE/DAG–013).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5).

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

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personnel privacy of third parties who are involved in a certain investigation. Amendment of the records would interfer with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the

existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4)(G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system of records is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (j) and (k) of the Privacy Act.

[FR Doc. 85-21838 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

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28 CFR Part 16

[AAG/A Order No. 11-85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt two systems from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act, 5 U.S.C. 552a. They are the "General Files System of the Office of the Associate Attorney General (JUSTICE/AAG-001)" and the "Drug Enforcement Task Force Evaluation and Reporting System of the Office of Associate Attorney General (JUSTICE/AAG-002)." Records contained in these systems relate to official investigations and to internal policy decisions. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave. NW, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633-4414.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "General Files System of the Office of the Associate Attorney General (JUSTICE/AAG-001)" and the "Drug Enforcement Task Force Evaluation and Reporting System (JUSTICE-AAG-002)."

This order relates to individuals 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, and 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, 28 CFR Part 16 is amended to add § 16.72 as set forth below.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.72 to read as follows:

§ 16.72 Exemption of Office of the Associate Attorney General System—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files Systems of the Office of the Associate Attorney General (JUSTICE/AAG-001).

(2) Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002).

The exemptions for the General Files System apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). The exemptions for the Task Force System apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because these systems are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in these systems relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations of duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because these systems are exempt from the access provisions of subsection (d)

pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because these systems are exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 85-21839 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

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28 CFR Part 16

[AAG/A Order No. 12-85]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to redesignate two Privacy Act systems of records and publish them under a new 28 CFR Section, § 16.73. They are the "Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001)" and the United States Judges Records System (JUSTICE/OLP-002)." These redesignations are made to accomplish consistency with reorganizational changes and have no effect on the public. In addition, the Department proposes to exempt the Appeals Index system from subsections (d) (1), (2), (3) and (4); (e) (1) and (2), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act, 5 U.S.C. 552a. Information in this record system relates to official Federal investigations and matters of law enforcement. The exemption is needed to protect ongoing investigations, the privacy of third parties, and the identities of confidential sources involved in such investigations.

The Department also proposes to exempt a new system, the "General Files System of the Office of Legal Policy (JUSTICE/OLP-003)," from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act. The records contained in this system relate to official investigations and to major policy issues. The exemption is needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATES: Submit any comments by November 12, 1985.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Ave., NW Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 633-4414.

SUPPLEMENTARY INFORMATION: OLP is establishing a new section, § 16.73. By Attorney General Order No. 945-81, dated May 26, 1981, the management roles of the Deputy Attorney General and the Associate Attorney General were restructured, and OLP was established. Paragraphs (a) and (b) of this section exempt from certain Privacy Act provisions a system of records entitled "Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001)," now under the management of OLP as a result of Attorney General Order No. 945-81. Paragraphs (c) and (d) of this section are merely a republication of an exempt system of records currently identified in § 16.71 as "United States Judges Records System (JUSTICE/DAG-014)." JUSTICE/DAG-014 is being removed from § 16.71 and reprinted in § 16.73 as "United States Judges Record System (JUSTICE/OLP-002)" since the system is now under the management of OLP. The "Freedom of Information and Privacy Appeals Index" was last published in the **Federal Register** on February 4, 1983 (48 FR 5368); in the notice section of today's **Federal Register**, the Department of Justice provides a description of the "United States Judges Records System" and the "General Files System of the Office of Legal Policy."

This order relates to individuals 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, 28 CFR Part 16 is amended to add § 16.73 as set forth below.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.73 to read as follows:

§ 16.73 Exemption of Office of Legal Policy System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (d) (1), (2), (3) and (4); (e) (1) and (2), (e)(4) (G) and (H), (e)(5); and (g):

(1) Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5).

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

(1) From subsections (d) (1), (2), (3) and (4) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(2) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(3) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(4) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(5) From subsection (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(c) The following system of records is exempt from 5 U.S.C. 552a (d)(1) and (e)(1):

(1) United States Judges Records System (JUSTICE/OLP-002).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

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

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a judgeship. Access could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department. Such breaches ultimately would restrict the free flow of information vital to the determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may seem irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate which assists in determining whether that candidate should be nominated for appointment.

(e) The following system of records is exempt from U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files System of the Office of Legal Policy (JUSTICE/OLP-003).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

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

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information since it may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigation process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsections (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 85-21840 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD9-85-017]

Special Anchorage Area; Neenah Harbor, Neenah, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal by the Neenah, Wisconsin Harbor Commission to establish a second Special Anchorage Area in the Northwest portion of Neenah Harbor adjacent to and south of the Theda Clark Regional Medical Center. A lack of mooring space for vessels with drafts from 3.5' to 5' in Neenah Harbor creates the need for designating this area as a vessel anchorage to accommodate these type vessels.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Comments should be mailed to Commander, Ninth Coast Guard District (mpes), 1240 East Ninth Street, Cleveland, Ohio, 44199. The comments and other materials referenced in this notice will be available for inspection and copying at Marine Safety Division, Room 2019, 1240 East Ninth Street. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns, 1240 East Ninth Street, Cleveland, Ohio 44199 Telephone (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD9-85-017) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to

make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are ENS George H. Burns III, Marine Port and Environmental Safety Board, project officer and LCDR M. A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Neenah Harbor Commission, in Neenah, Wisconsin, has requested that a Special Anchorage Area be designated in the northwest portion of Neenah Harbor adjacent to and south of the Theda Clark Regional Medical Center. The requested Special Anchorage Area is for up to fifteen sailboats, typically with 3.5 to 5 foot drafts, ranging in length up to at least 30 feet. Excluding the navigation channel, this is one of the few areas of the harbor with sufficient depth for this type of boat. Such boats have, in fact, anchored in this area during the summer months for at least the last ten years. According to the Neenah Harbor Commission, the Theda Clark Regional Medical Center has offered no opposition to the city's proposal. Access to the area is through a public walkway leading from the end of Clark Street. Approval of this project was given by the Neenah City Council at its regular council meeting on September 19, 1984. Use of the proposed Special Anchorage Area will be for the general public. This area will be under the administration of the Neenah Harbor Commission.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal was approved by the Neenah, Wisconsin City Council on 19 September 1984. Additionally, vessels have used this area as an anchorage for many years.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

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

2. 33 CFR Part 110 is amended by revising § 110.79a to read as follows:

§ 110.79a Neenah Harbor, Neenah, Wisconsin.

(a) *Area 1.* The area of Neenah Habor south of the main shipping channel within the following boundary; A line beginning at a point bearing 117.5°, 1,050 feet from the point where the southeasterly side of the First Street/Oak Street Bridge crosses the south shoreline of the river; thence 254°, 162 feet; thence 146°, 462 feet; 164°, 138 feet; 123°, 367 feet; 068°, 400 feet; 044°, 400 feet; thence 320°, 107 feet; thence 283°, 1,054 feet to the point of beginning.

(b) *Area 2.* Commencing at a point where the west line of Second Street extended meets the north edge of the harbor, thence south to intersect the north edge of the private mid river channel at latitude 44° 11′ 04.2″ North, longitude 88 27′ 13.2″ West, thence northwesterly to a point at latitude 44° 11′ 06.3″ North, longitude 88° 27′ 16.4″ West, thence north to the easterly end of the Neenah Dam Spillway.

Note.—An ordinance of the city of Neenah, Wis., requires approval of the Neenah Police Department for the location and type of individual moorings placed in this special anchorage area.

Dated: August 30, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District

[FR Doc. 85–21832 Filed 9–11–85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-2896-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Rulemaking; extension of the public comment period.

SUMMARY: On July 11, 1985 (50 FR 28224), USEPA proposed rulemaking on a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision pertains to rules developed to satisfy the reasonably available control technology (RACT) requirements for sources of volatile organic compounds (VOC) which are covered by USEPA's second set of Control Techniques Guidelines (CTGs). USEPA's action was based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act). USEPA proposed to approve a portion of the Illinois submittal, to disapprove a portion, and to disapprove the Illinois Part D stationary source control strategy for ozone due to Illinois' failure to adopt adequate RACT rules for several required source categories. At the request of the State of Illinois and several other commentors, the public comment period is being extended until September 26, 1985, to allow additional time to develop comments on the complex issues presented in the proposed rulemaking.

DATE: Comments must be received on or before September 26, 1985.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch Region V, US Environmental Protection Agency (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886–6035.

Dated: August 23, 1985.

Charles H. Sutfin,

Acting Regional Administrator.

[FR Doc. 85–21810 Filed 9–11–85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Region II Docket No. 55; A-2-FRL-2893-5]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces that, under the provisions of the Clean Air Act, the Environmental Protection Agency is proposing to approve a revision to the New Jersey State Implementation Plan (SIP) for particulate matter, which was submitted by the State.

The revision consists of a change in the procedure used by New Jersey to test the opacity level of the exhaust emitted from buses. It also provides full self-inspection privileges to the New Jersey Transit Corporation and its fully owned subsidiaries, and partial self-inspection privileges to all other bus operators.

DATE: Comments must be received by October 15, 1985.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State's submittal are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

New Jersey Department of Environmental Protection, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Background

The New Jersey Department of Environmental Protection (NJDEP) adopted as a part of the New Jersey Administrative Code, Title 7, Chapter 27, Subchapter 14 (Subchapter 14) a standard for the inspection and the control of smoke from diesel-powered trucks and diesel-powered buses. Subchapter 14 entitled, "Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles," has been in effect since June 18, 1971. The diesel-powered vehicle inspection program, as contained in Subchapter 14, is included in the New Jersey State Implementation Plan (SIP) for particulate matter. Although the SIP did not quantify the effectiveness of the program as part of its demonstration of attainment and maintenance of the particulate matter standards, this program does promote reductions in emissions.

All areas of New Jersey are currently classified as attaining the primary national ambient air quality standards for particulate matter except for Jersey City and Camden, which are classified as "cannot be classified" with regard to attainment of the primary standards. New Jersey is not in attainment of the secondary particulate matter standards in nine communities of the State.

On March 20, 1984 (49 FR 10408) the Environmental Protection Agency (EPA) proposed revisions to the particulate matter standards. These revisions, if adopted, change the primary standards that are currently measured as total suspended particulates to standards that consider only those particulates with an aerodynamic diameter smaller than or equal to 10 micrometers (PM_{10}). Particulates emitted from diesel-powered buses generally are below 10 micrometers. Therefore, a diesel-powered bus inspection program could become an even more important instrument to attain and maintain the proposed PM_{10} standards.

II. Summary of Proposal

On February 21 and March 14, 1985, NJDEP submitted a revision to its SIP for particulate matter. The revision changes the procedure used to test the opacity level of the exhaust from buses. The previous test procedure for buses called for the vehicle to be driven with a smokemeter atached to its exhaust tailpipe. A smokemeter was used to measure smoke opacity.

This test procedure proved adequate until problems were encountered with many new buses since they are equipped with vertical exhaust stacks instead of horizontal tailpipes. The vertical stacks are not readily accessible for installation of the smokemeter. The possibility of using ladders for attaching the smokemeter to the exhaust outlet was unacceptable to the bus operators due to liability problems. The inspections are performed at the operator's facilities.

Due to the problems encountered with vertical exhaust stacks, NJDEP has revised its current dynamic testing procedures to a static test procedure. Instead of testing the vehicle while being driven with rapid acceleration (acceleration test), the new method simulates acceleration while maintaining a stationary position (standing acceleration test). Extension handles will be used to position the smokemeter against the vertical exhaust outlet. Due to the revised testing method, NJDEP has lowered the current opacity standard of 40% to 12%. NJDEP arrived at the revised opacity standard of 12% by correlating the previous and revised procedures with failure rates at various smoke opacities. The new test procedures for buses have been adopted in the New Jersey Administrative Code, Title 7, Chapter 27B, Subchapter 4, Section 4 entitled, "Smoke Opacity Testing Procedure for Diesel-Powered Autobuses Subject to the Inspection Rules and and Regulations of the New Jersey Department of Transportation". The test procedures from Chapter 27, Subchapter 14 have been revoked.

The New Jersey Department of Transportation (NJDOT) used to be responsible for performing semiannual inspections. However, due to staff reductions within NJDOT, NJDEP is allowing the New Jersey Transit Corporation (NJT) and its wholly-owned subsidiaries to fully self-inspect their buses. In addition, all other bus operators now have the authority to perform self-inspections for one of the two inspections that are required each year. NJDOT will perform the second inspection. This transfer of authority became effective October 17, 1983, through amendments adopted to New Jersey Administrative Code, Title 16, Chapter 53, Subchapter 3 entitled, "Autobus Specifications".

NJDEP does not anticipate any change in air quality with the adoption of the standing acceleration test procedure and the 12% opacity standard. The lower opacity standard compensates for the change in testing procedure and should be equivalent in stringency to the current procedure and standard.

Through NJDOT audit of opacity inspections, NJDEP does not expect any significant deterioration in air quality from the self-inspection privileges allowed to NJT and all private owner operators.

III. Conclusion

EPA is proposing to approve this SIP revision. The revision incorporates amendments to State regulations into the SIP. It provides for the continuance of New Jersey's heavy-duty diesel-powered vehicle inspection program. This program provides a useful method of identifying vehicles that are not functioning correctly and contributes to the attainment and maintenance of air quality standards. The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of the Clean Air Act, as amended.

EPA is soliciting comments only on the material discussed in today's notice.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: July 16, 1985.

Herbert Barrack,

Acting Regional Administrator, Environmental Protection Agency.

[FR Doc. 85–21813 Filed 9–11–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–18, Notice 27]

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose several changes in Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays*, to permit greater flexibility in the illumination and identification of controls and displays. It proposes to allow gauges to have a two-level lighting intensity, rather than being continuously variable over a wide range. It proposes to distinguish between critical telltales, such as the turn signal indicators, which must be visible under all lighting conditions, and less significant telltales, such as the water temperature indicator, which would be permitted the same range of intensity as gauges. The term "informational readout display" would be eliminated as no longer useful. To accommodate new display technologies, the notice proposes to permit the cancellation of messages, but would require them to be retrievable by the driver. A display that automatically flashes messages in sequence would be prohibited. It proposes to permit the use of specified words to identify controls, as an alternative to the symbols now required for many controls, and would permit the use of symbols substantially similar to those specified. The action was initiated in response to several petitions for rulemaking.

DATES: Comments must be submitted by October 28, 1985. The proposed effective date for an amendment to prohibit automatic sequencing of displays is September 1, 1988. The proposed date for all other amendments is 30 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Neill, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1750).

SUPPLEMENTARY INFORMATION: Standard No. 101, *Controls and Displays*, specifies requirements for the accessibility, identification and illumination of controls and displays in passenger cars, multipurpose passenger vehicles, trucks and buses. The purpose of the standard is to ensure that motor vehicle controls and displays can be seen and reached by the driver and to ensure that they can be quickly identified and selected by the driver in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

Since 1980, when the last major revision of Standard No. 101 took effect, significant changes have occurred in a number of areas affecting the design and application of controls and displays. Electronic technology has developed very rapidly for both controls and displays and has become a major factor in most new vehicle designs. At the same time, the market for automobiles has increasingly become a "world" market, with the result that there are greater incentives to produce vehicle designs which can be sold throughout the world.

These changed circumstances and other factors have led vehicle manufacturers to submit several petitions for rulemaking requesting amendments to Standard No. 101. BMW, BL Technology and Volkswagen have each submitted one petition, and General Motors (GM) has submitted two. (The petitions submitted by GM are hereafter referred to as the GM I and GM II petitions.) The petitions request various amendments to the standard to increase technological and design flexibility.

NHTSA has previously granted these petitions for rulemaking, either by Federal Register notice or by letter. The agency has addressed some of the issues raised by the petitions in two notices of proposed rulemaking (NPRM's) published in 1982, a final rule published on July 27, 1984 (49 FR 30191), and a final rule responding to petitions for reconsideration published on June 4, 1985. As discussed in the two final rules, NHTSA's analysis of the petitions for rulemaking and comments on the two NPRM's prompted the agency to conduct an overall examination of issues related to Standard No. 101, with the expectation that an additional NPRM would be issued. This notice, the product of that examination, proposes a number of amendments to the lighting intensity and identification requirements of the standard.

Light Intensity Requirements

The lighting intensity requirements of Standard No. 101 and their application to new types of displays have prompted a number of questions. The essential purpose of the requirements is to ensure that a driver is able to see the controls and displays necessary to operate the vehicle safely under all ambient lighting conditions. A secondary purpose, however, is to ensure that the vehicle's internal lighting will not be so intense under nighttime conditions as to interfere with the driver's view of the road. There has often been tension between these purposes, as documented by the agency's attempts in successive rulemaking proposals to establish requirements that will serve both the need for visibility and the need to avoid glare from overly bright displays or other light sources in the passenger compartment.

One means selected to reconcile these needs has been to provide different intensity requirements for telltales than for gauges. Under the standard, a "telltale" is defined as a display that indicates, by means of a light-emitting signal, the actuation of a device, existence of a correct or defective condition, or of a failure to function. Telltales indicate such things as brake failure, unfastened safety belts, and activated high beams. The term "gauge" is defined as a display listed in the standard (S5.1 or Table 2) that is not a telltale. Gauges include such things as the speedometer, odometer, and fuel level.

As amended in 1978, the standard provides that light intensities for gauges and their identification must be continuously variable from a position at which either there is no light emitted, or the light is barely discernible to a driver who has adapted to dark ambient roadway conditions, to a position providing illumination sufficient for the driver to identify the display readily under conditions of reduced visibility. In contrast, the light intensity of each telltale must not be variable and must be such that, when activated, the telltale

and its identification are visible to the driver under all daytime and nighttime conditions.

To accommodate new display technologies, the 1978 amendment defined a new type of display, an "informational readout display" (IRD). An IRD is a special type of display which uses any of various technologies, such as light-emitting diodes or liquid crystals, and which may display one or more than one type of information or message. Among its attributes, an IRD is required to have at least two levels of lighting intensity, a higher level for daytime and a lower level for night. Unlike non-IRD gauges, it is not required to have intermediate lighting intensities.

It was anticipated that IRD's would incorporate gauges of various kinds. A gauge may be incorporated into an IRD if the IRD has continuously variable lighting. A telltale, on the other hand, presents a conflict for the manufacturer who might wish to include it in an IRD. A telltale is required to have an invariable intensity, whereas the IRD is required to have at least two. One common approach to the development of IRD's incorporates a single light source for the display. A single source cannot be both variable and invariable, so that the manufacturers have encountered a regulatory barrier to the incorporation of telltales into IRD's.

In response to a petition from General Motors on this subject (GM I), the agency issued a notice of proposed rulemaking in 1982 in which it proposed to allow two levels of intensity for telltales and gauges incorporated into IRD's. For the reasons discussed at greater length in the final rule published on June 4, 1985, the agency has decided not to adopt the proposed amendments. Instead, it has conducted a reexamination of the safety functions performed by gauges and telltales to determine the lighting intensity requirements appropriate for each.

In addition to the issues raised by the GM I rulemaking,the agency has also considered the issues presented by BMW relating to the use of a single space, such as a small TV screen, to display a variety of messages. The inclusion of telltales among these messages presents issues analogous to those involving lighting intensity: Must a telltale be displayed at all times, or may it be held in a queue while other messages are displayed? If it is permitted to be held, what information should the driver have about the existence of a telltale message, and what control should there be over its visibility?

The following discussion takes the approach of first presenting the agency's tentative evaluation of what requirements are necessary to meet the need for safety in a particular area, then providing a comparison of those requirements with the standard's current requirements, and finally discussing the proposed requirements more specifically with respect to the GM I and BMW petitions for rulemaking and existing vehicle designs.

A. Light Intensity Requirements for Gauges

Overview

The agency has tenatively concluded that adequate visibility and the avoidance of glare from gauges would be ensured by the following requirements:

(a) Means shall be provided for making gauges and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility—

(1) Shall be adjustable to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark embient roadway conditions,

(2) May be operable manually by the driver, automatically or both and

(3) May have levels of brightness at which those items and their identification are not visible.

(c) If the level of brightness is adjusted automatically a means shall be provided to enable the driver to override the adjustment.

Discussion

The proposal would eliminate the requirement that the lighting intensity for gauges must be continously variable over a broad range. The proposed requirements would ensure that drivers are capable of seeing their gauges under all driving conditions, i.e., bright sunlight, darkness, and the diminished light of dawn and dusk. Depending on the design, drivers might find it necessary at times to take some action, such as adjusting a control, in order to be able to see their gauges. Since drivers are accustomed to gauges always being activated when the ignition is on, drivers are likely to take note when they are unable to see a gauge and be motivated to take whatever action is necessary to achieve visibility. As a result, the agency does not believe that drivers will inadvertantly drive with their gauges not visible. For example, drivers must typically turn a rheostat control on conventional instrument panels in order to be able to see their gauges at night. For a gauge using electronic technology where the display information is self-illuminated, drivers might at times find it necessary to turn a knob increasing brightness in order to see the gauge during bright sunlight.

The purpose of the requirement in (c) would be to prevent a driver from having difficulty seeing gauges when driving with headlamps on in the daytime. It is current practice in the design of electonic displays to provide two levels of illumination which are controlled by means of the headlamp switch: headlamps off—daytime level (relatively bright), headlamps on—nighttime level (less bright). A limitation of this arrangement, however, is that the display illumination is switched from the daytime to the nighttime level whenever the headlamps are turned on, regardless of whether it is night or day. When the headlights, and thus the less bright level of display illumination intensity intended for night driving, are activated during the day, the result may be that the display would not be visible to the driver.

Driving with headlamps on during the daytime is not an infrequent occurrence, even in the presence of bright sunlight. If a person driving under such circumstances were in a vehicle with the display illumination controlled by the headlamp switch, one way of increasing the visibility of the gauges would be simply to turn off the headlamps. In some situations, however, such as driving during daytime rain showers, or at dawn or dusk, turning off headlamps could create safety problems. Therefore, the agency would not consider it appropriate to confront drivers with the necessity of choosing between seeing their gauges or turning off their headlamps. A simple way to solve this potential safety problem is for the manufacturer to provide a control that enables the driver to override the effect of the headlight control on the display illumination level.

The agency tentatively concludes that requiring these two levels of brightness would encourage manufacturers to insure that drivers will be able to avoid glare. The agency believes that this reqiurement would be appropriate for both electronic displays and conventional displays. For electronic displays, several manufacturer comments on the 1982 NPRM emphasized that an illumination level sufficient to be visible during the daytime would result in glare at night. For conventional displays, where illumination is only needed when headlamps are needed, usually at night, a single level of brightness that is sufficient to provide visibility around dawn or dusk could cause glare at night.

The agency believes that a requirement for a second, lower level of brightness would enable manufacturers to design displays that would avoid glare at night. The different levels could be provided either automatically, or through manual means operable by the driver or both. In the interest of avoiding glare, the lower intensity level proposed by this notice is the same as that currently applicable to variable-intensity systems. Comments are invited as to the advisability of requiring the lower level to be barely discernable to a driver whose eyes have adjusted to dark ambient roadway conditions.

B. Light Intensity Requirements for Telltales

Overview

The agency has tentatively concluded that adequate visibility would be ensured for telltales by the following requirement:

1. (a) Means shall be provided that make the telltales for brakes, high beams, turn signals and seat belts and the identification for those telltales visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable to produce different levels of brightness, but may not be adjustable to levels of brightness at which those telltales and their identification are not visible under all driving conditions.

2. (a) Means shall be provided that are capable of making the telltales, other than those for brakes, high beams, turn signals and seat belts, and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable to produce different levels of brighness, including levels at which those telltales and their identification are not visible under all driving conditions.

While all of the telltales listed in Standard No. 101 are believed to be related to safety, the significance of that safety relationship is greater for some than for others. These requirements would ensure that what the agency tentatively considers to be the four most important safety telltales are visible to the driver under all driving conditions. Those telltales are the ones for brakes, safety belts, turn signals and high beams. The brake telltale is perhaps the most important safety telltale, since it warns of brake failure. The importance of the safety belt telltale is that it reminds the driver of the importance of wearing safety belts, the single most effective means of protection for vehicle occupants in an accident. Similarly, the turn signal telltale alerts the driver to turn signal malfunction, another factor that could lead to accidents. Visibility of the turn signal telltale is particularly important since drivers of other vehicles can be misled and become involved in accidents as a result of turn signals that have been inadvertenly left on. Visibility of the high beam telltale is particularly important since high beams inadvertently left on can cause serious glare problems for other drivers.

The other telltales listed in Standard No. 101 include hazard warning, fuel level, oil pressure, coolant temperature, and electrical charge. The proposed requirements would ensure that means are provided that are capable of making these other telltales visible to the driver under all driving conditions. However, these telltales would no longer be required to be automatically visible under all conditions. The means for providing the required visibility could be adjustable to create different levels of brightness, including levels at which the telltales are not visible.

Discussion

Issues relating to visibility and glare are somewhat different for telltales than gauges. While gauges are ordinarily activated whenever the ignition is on, most telltales are only rarely activated. This results in two consequences. First, if the brightness of a telltale can be adjusted down to a level where it would not be visible under all driving conditions, there would be a potential that the driver could inadvertently drive with the telltale not visible when actuated. This is not likely to occur with gauges, since the fact that they are ordinarily activated will cause a driver to take note if he or she cannot see a gauge. The second consequence is that glare at night does not pose the same safety problems for telltales as gauges, in that most telltales specified by Standard No. 101 are not continuously actuated.

In reevaluating the minimum performance requirements for telltales, the agency took note of several issues which have been raised by petitioners and commenters concerning application of various new technologies. First, some applications of electronic technology require that light intensity be the same for both telltales and gauges incorporated into the same display. As noted above, the system discussed in the GM I petition is an example of such an application. Several gauges and telltales are incorporated into one large electronic panel, with each gauge and telltale occupying its own physical space on the panel. The entire electronic panel is illuminated by a single light source. While light from that source is applied to gauges whenever the ignition is on, the light is applied to telltales only when the various underlying conditions for activating particular telltales are present. Since the same light source is used for both telltales and gauges, and since a single light source cannot be both variable and invariable at all times, it is necessary that the light intensity for both types of displays be either variable or invariable. For example, petitioners have indicated that it is not possible, using currently available technology, to design these panels to provide variable light intensity for gauges and single level light intensity for telltales.

Second, a requirement that telltales be visible under all driving conditions may prevent such telltales from being incorporated into the same electronic display as gauges, using some applications of technology. Manufacturer commenters have indicated that they have not been able to develop photosensitive devices which reliably sense daytime and nighttime conditions. In the absence of such devices, the effect of the requirements proposed in Notice 21 is that telltales must be visible to a driver under all driving conditions when the telltale is adjusted to its lowest level of brightness. According to manufacturer commenters, the lowest level of brightness which would ensure visibility of a telltale during daytime conditions could cause glare during nighttime driving. While such glare might not create a safety problem with respect to telltales, since most telltales are not ordinarily activated, glare could be a problem for gauges which are incorporated into the same electronic display and which may necessarily have the same light intensity.

The proposed distinction between the four most significant telltales and the lesser telltales would allow the manufacturers to group the lesser telltales with gauges in a combined display. The same lighting intensity requirements would apply to gauges as to the lesser telltales, so that a single light source could be used for both. The agency recognizes, for the reasons discussed above, that manufacturers may not in fact be able, using some applications of technology, to place the four most significant telltales in the same electronic display as gauges. To the extent that this result occurs, NHTSA believes that it is justified by safety need. The agency would not consider it appropriate to permit situations where drivers could drive with their most safety significant telltales not visible. It is possible that

manufacturers may be able to develop better photosensitive devices or use filters to solve this problem.

The agency expects that manufactures will find various ways to reduce the possibility of drivers inadvertently driving with the lesser telltales not visible. For example, incorporating these telltales in the same display as the speedometer would make it less likely that the telltales would be turned off, since drivers would likely adjust the brightness level to see the speedometer. Given that the safety significance of these telltales is less than that of the four discussed above, the agency believes that somewhat less stringent requirements are appropriate for these telltales.

The standard currently requires that the light intensity of telltales be invariable and be such that, when activated, the telltale and its identification are visible to the driver under all daytime and nightime conditions. The agency has tentatively concluded that variations in lighting intensity can be permitted, even with respect to the four principal telltales, so long as those telltales remain visible under all ambient lighting conditions. The proposed amendments would therefore permit the four principal telltales to vary in intensity. Other telltales specified by standard No. 101 could be adjusted downwards to the point of not being visible, so long as they are capable of being made visible under all conditions.

In view of the amendments proposed to the lighting intensity requirements for gauges and telltales, the utility of maintaining separate specifications for IRD's is substantially diminished. If the amendments are adopted as proposed, the manufacturers will be able to combine displays without resorting to the IRD provisions. In view of the frequent difficulty in ascertaining whether a particular combination is or is not an IRD, the agency has tentatively concluded that the term should be eliminated as having no further utility in the standard and accordingly proposes to delete it.

C. Other Light Intensity Requirements

NHTSA is proposing to amend Standard No. 101's light intensity requirements in two additional areas. First, the agency is proposing the same light intensity requirements for control identification as are being proposed for gauges. Issues concerning the light intensity for controls, including both visibility and avoidance of glare, are largely the same as for gauges. The standard's current light intensity requirements for controls are the same as for gauges. Some applications of electronic technology may involve placing controls into the same electronic display as gauges and telltales. For example, a driver might touch a screen something like a television picture to activate a control. The changes proposed by this notice will help facilitate such applications of new technology.

The second area concerns the light intensity of illuminations provided in the passenger compartment other than those for controls and displays listed in Standard No. 101. The standard currently requires that any illumination that is provided in the passenger compartment when and only when the headlights are activated must be variable in the same manner as that for controls and displays, i.e., continuously variable or, in the case of IRD's, must have at least two light intensities, a higher one for daytime and a lower one for nighttime conditions. The purpose of this requirement is to facilitate the avoidance of glare and to provide for the visibility of any information a driver may need. The agency is proposing two changes in these requirements.

The issues concerning glare are the same for these illuminations as for gauges. Therefore, the agency is proposing the same light intensity requirements for any illumination within the driver's field of view as it is proposing for gauges, i.e., at least two levels of brightness.

Many applications of electronic technology involve illumination in the passenger compartment at night whenever the ignition is on even though the illumination is not provided when and only when the headlights are activated. For example, clocks using light-emitting diodes involve illumination whenever the ignition is on, whether or not the headlights are activated. These types of illuminations may cause the same glare problems as illuminations provided when and only when the headlights are activated. The agency is therefore proposing to extend the requirements of this section to cover these types of illumination.

D. Multi-Message Displays

Overview

Applications of electronic technology in which more than one telltale may occupy the same space raise an additional safety issue. Some method of cancellability or sequencing is necessary in such a system to ensure that the driver can obtain all information. The issue is whether cancellability or sequencing results in any safety problems.

NHTSA believes that issues related to cancellability of telltales are largely the same as those discussed above with respect to general visibility, i.e., the four most safety significant telltales should always be visible to the driver, while the underlying conditions are present. The other telltales need not always be visible but must be capable of being made visible to the driver. The agency tentatively concludes that the following requirements should be added to ensure these safety goals:

Messages from sources other than the brake, high beam, turn signal, and safety belt telltales may occupy a common space and may be shown on a cancellable display. A telltale message shall be displayed at the initiation of any underlying condition. However, when the underlying condition exists for actuation of two or more messages, a visible indication of their existence and a means of selecting for viewing each of those messages must be provided to the driver. Messages may be cancellable automatically or by the driver, but may not be repeated automatically in sequence. If cancelled, they shall be retrievable by the driver. A visible indication of their availability for retrieval be provided to the driver.

Discussion

For the reasons discussed above, NHTSF believes that the four most safety significant telltales, i.e., those for the brake, safety belt, turn signal, and high beam, should always be visible to the driver. This would not be possible in a system where more than one telltale occupies a common space. Accordingly, the agency does not believe that these four telltales should occupy common space with any other display.

The agency believes that greater manufacturer flexibility is appropriate for other telltales. As discussed above, the agency is proposing a general requirement that means be provided that are capable of making these telltales visible under all driving conditions. The purpose of the requirement would be to ensure that a driver would always be capable of seeing telltale messages during all driving conditions. The agency believes that additional requirements are necessary to meet this safety goal for displays where more than one telltale may occupy the same space.

The requirements set forth above would ensure (1) that means are provided to alert the driver to situations where underlying conditions for more than one message occur at the same time and (2) that means are provided so that the driver can actually obtain all messages. Both requirements are necessary for the driver to be able to obtain all messages easily. While these

other telltales could be cancellable, either by the driver or automatically, they would be required to be retrievable by the driver.

Under the agency's proposal, manufacturers would be free to select from any of the following options under which telltales, other than the telltales identified in Section B, could be displayed on a common space:

(1) Manufacturers could provide systems where an activated telltale would continue to be displayed unless cancelled manually by the driver to obtain another message. These systems would have to indicate that other telltale are in storage, thereby permitting the driver to select the stored telltales manually.

(2) Alternatively, manufacturers could provide systems where a second telltale supersedes an earlier telltale automatically. This option would require that a telltale remain illuminated until the underlying condition no longer exists or until a second condition occurs which would require illumination of another telltale. An indicator would have to be provided that another telltale is in storage and the illuminated telltale would have to be manually cancellable by the driver.

(3) Finally, manufacturers could provide systems where the telltale automatically displayed depends on priorities established by the manufacturers among the various telltales. So long as there are activated telltales in storage, an indication would be provided to the driver that additional messages are in storage. Any activated telltale would have to be retrievable by the driver.

Under each of the above options, telltales could be manually cancelled or retrieved by the driver. These options do not prohibit having combinations of telltales that occupy a common space. This approach provides maximum flexibility to the manufacturer but provides no assurance that a telltale would always be illuminated when an underlying condition exists. The agency is aware that there are alternatives to this approach which may involve fewer actions by the driver. One such alternative is to provide for automatic sequencing of telltales which occupy a common space.

In a system with automatic sequencing, all activated messages could be presented to the driver in turn without any driver action other than glancing at the display. For these reasons, the agency's first conclusion was that sequencing might be superior to cancellability, a view which the agency noted in a letter to BMW. Another consideration favoring automatic sequencing is that it relieves the driver of remembering how to retrieve or cancel messages manually, an operation that may be performed infrequently and in less than optimal conditions. After further consideration of this approach, however, the agency notes two safety reservations. First, in occasionally glancing at a flashing display a driver might look down, observe one message, and fail to see that another message was also being presented. Second, and perhaps more important, drivers seeing a flashing display would be encouraged to keep their eyes on the display, and hence off the road, until they were certain that they had seen the entire sequence of messages being displayed. On the other hand, automatic sequencing relieves the driver of having to retrieve or cancel messages, operations which may be difficult in the dark. After weighing these considerations, the agency tentatively concludes that continuous automatic sequencing should be prohibited, but it invites comment on these issues.

The agency specifically invites comments on the safety implications of this proposal and the alternatives discussed here.

E. Other Display Requirements

Another issue related to use of telltales in electronic displays concerns Standard No. 101's color requirements for telltales. Section S5.3.2 requires that except for informational readout displays, each discrete and distinct telltale shall be of the color specified in Table 2. Various telltales must be either green, red, yellow or blue. As discussed above, the agency is proposing to eliminate the term informational readout display from the standard and specify the same requirements for all displays. While the agency is unaware of any significant data on the subject, the use of different colors for different telltales appears to be useful in aiding driver recognition and helping to indicate the importance of a particular message. The agency requests comments, however, on difficulties that might be caused by retaining these color requirements with respect to the use electronic displays. Since technology has been developing rapidly in this area, comments should be specific as to currently existing technological problems, and whether any such problems are ones of practicability or feasibility, and the prospect for solving those problems.

The agency is also proposing a change in the definition of "telltale". Telltale is currently defined as a display that indicates, by means of a light-emitting signal, the actuation of a device, a correct or defective functioning or condition, or a failure to function. The agency is proposing to delete the words "by means of a light-emitting signal." The agency does not believe that there is any reason to require that telltales provide their message by means of a light-emitting signal, so long as visibility requirements are met. Some applications of electronic technology, such as liquid crystals, provide messages by means other than light-emitting signals. Deleting the reference to light-emitting signal will increase design flexibility.

GM I and BMW Petitions for Rulemaking; Effect on Current Designs

The agency believes that the proposed light intensity requirements for gauges and telltales will resolve the concerns raised by the GM I and BMW petitions for rulemaking concerning several of Standard No. 101's requirements being design restrictive with respect to new technologies. As discussed below, the proposed requirements are somewhat different than those suggested by the two petitioners. Also, the proposed requirements could have the effect of requiring changes in some existing designs.

The amendments proposed by the agency's February 1982 NPRM were largely along the lines of those suggested by GM. As discussed by the final rule and response to petitions for reconsideration published on June 4, 1985, those proposed amendments did not adequately take account of the need to ensure visibility of the most important safety telltales. The agency believes that the amendments proposed by this notice would provide greater flexibility along the lines requested by GM, although that company may not be able, with existing technology, to incorporate the four most important safety telltales in displays along with gauges. As discussed above, however, the agency believes that the proposed requirements are justified by safety need. The agency also emphasizes that with improved technology, such as more reliable photosensitive devices to sense daytime and nighttime conditions, manufacturers may be able to incorporate those telltales in the same display as gauges.

The agency notes that a current system in production by GM, incorporating telltales and gauges in the same display, is designed to provide variable light intensity except when a telltale is activated, at which time single intensity illumination is provided. Since the display does not include any telltales which are likely to be illuminated for long periods of time at night, such as the high beam telltale,

glare does not appear to be a problem with this specific design. If telltales such as the high beam telltale were included in such a system, however, glare could be a problem. The agency requests comments on whether systems should be permitted where the light intensity of gauges may at times be invariable and, if so, whether any restrictions should be placed on such systems. The agency may adopt an amendment specifically covering such systems.

The BMW petition contemplated a design where the brake telltale would be separate from the display including numerous telltales occupying the same space. The design also provided an indication to the driver of additional messages in storage. The proposed requirements are primarily different with respect to the seat belt, turn signal, and high beam telltales. For the reasons discussed above, the agency believes that these telltales also should be separate from the type of display contemplated by BMW. Once again, this restriction is based on safety need and does not represent an inadvertent design restriction related to technology.

Identification Requirements

Summary

Three of the petitions for rulemaking requested changes in the identification requirements for controls and displays in Standard No. 101. The Standard currently requires that a number of controls and displays, other than informational readout displays, be identified by specified symbols. The standard permits the use of words and other symbols in addition to those specified symbols for purposes of clarity. The symbols specified by the standard are those developed by the International Standards Organization (ISO). The standard requires that certain other controls and displays, for which symbols are not specified, be identified by specified words.

The GM II petition requested that the identification requirements be taken out of the standard and placed in a regulation other than a safety standard, or, alternatively, that the agency provide manufacturers greater flexibility in meeting the standard's identification requirements. In the event that the agency chose to keep the requirements in a standard, GM requested that words similar to the specified words be permitted for controls and displays now required to be identified by specified words. GM stated that transferring the requirements to a regulation would reduce the burden on manufacturers and the agency in the event of minor identification errors, since manufacturers would not be required to petition for inconsequential noncompliance, and would provide a method by which to ensure a uniform, harmonized set of identification symbols without the unnecessary burdens associated with a safety standard.

A petition submitted by BL Technology requested that the agency permit greater flexibility in meeting the standard's requirements for specified symbols. Noting that the exact reproduction of specified symbols may not be possible in some applications of electronic technology, the petition requested that the standard be amended to permit symbols which "substantially resemble" those specified by the tables. The petition noted that the agency has previously stated in **Federal Register** notices that minor deviations are permissible.

A petition for rulemaking submitted by Volkswagen and the GM II petition requested greater flexibility in the standard's requirements for the identification of heating and air conditioning controls. The issues raised by the petitioners were discussed in the agency's final rule published in the **Federal Register** (49 FR 30191) on July 27, 1984.

The agency has carefully evaluated Standard No. 101's identification requirements in light of safety need. The agency declines to remove Standard No. 101's identification requirements to a separate regulation. As discussed below, however, the agency has tentatively concluded that manufacturers should have the option of identifying controls and displays listed in the standard by specified symbols *or* specified words. Assuming that a control or display is identified by either the specified symbol or specified word or words, additional identification, if any, would be at the discretion of the manufacturer. The agency also has tentatively concluded that the standard should permit manufacturers to use symbols which substantially resemble those specified by the tables. The agency declines, however, to remove Standard No. 101's identification requirements to a separate regulation.

Discussion

The first issue presented by the petitions is whether the identification requirements should remain in a standard. The agency declines to adopt GM's suggestion that the identification requirements be taken out of Standard No. 101 and placed in a regulation other than a safety standard. While NHTSA appreciates GM's concern about the burden on manufacturers in petitioning for inconsequential noncompliance for minor identification errors, the agency does not agree that promulgating the requirements as a regulation other than a safety standard is the answer. The agency believes that the identification requirements meet the need for safety. That being the case, the National Traffic and Motor Vehicle Safety Act contemplates that the requirements be part of a safety standard.

Although the agency intends to keep the identification requirements in Standard No. 101, it has tentatively concluded that the requirements can be made more flexible, as requested by the petitions. The agency will consider first whether to permit words to be used to identify those controls and displays which the current standard requires to be identified by symbols. The GM II petition stated:

> In the situation where the English language is common throughout the market area, as exists in the United States, the safety justification for symbol identification is tenuous at best. In spite of the rationale mentioned above, we are aware of no evidence that symbols do in fact convey information to American drivers any more quickly or accurately than do English words. On the other hand, we are concerned that an overabundance of symbols, or symbols that offer no intuitive recognizability, may not be in the best interest of our customers or the marketability of our products. While the existing set of symbols does not present a significant problem, the mandatory addition of more symbols could lead to increased customer resistance and driver confusion.

In the light of GM's critique of symbols, the agency has reexamined its rationale for requiring symbols to be used on certain controls. The original rationale, as stated in the final rule published on June 26, 1978 (43 FR 27541), was that symbols would convey information more quickly and more accurately than words, particularly for the large driving population that is not fluent in English. However, the agency's review of available studies suggests that the rationale lacks support. For example, a study published by the Society of Automotive Engineers (SAE), ("Investigation into the Identification and Interpretation of Automotive Indicators and Controls" SAE #780340, February 1978), indicates that, if anything, words are superior to symbols. In measuring their test subject's recognition of words and symbols, the SAE investigators found that controls identified by words were more accurately recognized than those identified by symbols. As the result of its reexamination, the agency has tentatively concluded that the safety need for understandable identification of controls can be met by either

understandable words or understandable symbols.

Accordingly, the agency is proposing to permit the use of either words or symbols for the controls and displays listed in Tables 1 and 2 of Standard No. 101. For those controls and displays for which no symbol is specified, manufacturers would be required to use the specified words. Comments are invited about the ease with which the non-English speaking population of this country can learn the identifying words associated with driving a motor vehicle.

As part of its proposal to permit the use of words as an alternative to symbols, however, the agency is proposing to require the use of specific words. This promotes uniformity and ensures that identifying words for the controls and displays listed by the standard are appropriate. The agency accordingly is proposing to insert specified words for controls in Table 1 of the standard as an alternative to the symbols in Table 1.

In response to GM's alternate request for flexibility in the choice of identifying words, the agency has tentatively concluded that it is not appropriate to permit identifying words similar to those specified by the standard as an alternative to the specified words. The agency believes that the flexibility afforded by such a requirement would be overbalanced by the potential for confusion from the use of different words, particularly for non-English speaking drivers. The specified words proposed in Table 1 include the most commonly used words for several controls. More flexibility does not seem warranted.

In response to the BL Technology petition, the agency has tentatively determined that the standard should permit symbols that substantially resemble those specified by the standard. The intent of this provision is to allow use of technology that cannot exactly reproduce the symbols as shown in the table. However, the technology must be capable of producing symbols that substantially resemble those in the table and any departures from the symbols in the tables should be due to the practicable reproduction capability limits of the technology. The agency believes that such a requirement would continue to meet the need for safety while providing greater manufacturer flexibility and permitting greater use of new electronic technologies.

Leadtime and Enforcement Issues

With the exception of the proposed amendment to prohibit automatic sequencing of displays, the amendments proposed by this notice would impose no new requirements but instead increase manufacturer flexibility. Since the amendment concerning sequencing may affect existing designs, the agency is proposing a three year leadtime after the date of publication of a final rule in the **Federal Register**. For the other amendments, the agency is proposing an effective date of 30 days after publication of a final rule in the **Federal Register**. The agency believes that a period of only 30 days is in the public interest since the amendments would impose no new requirements, would increase manufacturer flexibility, and offer possible benefits to consumers as manufacturers are able to use new technologies.

In the final rule and response to petitions for reconsideration (being published today), the agency announced that it will not enforce certain very limited requirements of section 5.3.3, pending completion of the rulemaking proposed today. The agency specifically requests comments on whether these proposed amendments to section 5.3.3 (or to any other affected sections of the standard) would affect any existing designs other than those involving automatic sequencing and, if so, how the agency should account for that fact in considering leadtime. The agency also requests comments on how the agency should account for leadtime in considering a possible amendment, as discussed above, covering systems where the light intensity of gauges may at times be invariable.

Impact Analyses

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. With the exception of the proposed amendment to prohibit automatic sequencing of display messages, none of the amendments proposed by this notice would impose any new requirements. The cost impact of changing an existing design from automatic sequencing to one which provides for cancellability is very small and would not significantly affect vehicle price. The other amendments increase manufacturer flexibility and could result in consumer benefits, safety and otherwise, as manufacturers are able to use new electronic technologies. The proposed amendments should also foster international harmonization by allowing the use of either words or symbols. Cost savings should result from commonality of components produced for the U.S. and foreign markets.

In accordance with the Regulatory Flexibility Act, the NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units would be affected by the proposed amendment only to the exent that they purchase motor vehicles. For the reasons discussed above, the amendments would not significantly affect vehicle prices. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes

available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.101 be amended as follows:

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

1. Section S4 would be amended by removing the sentence defining "Informational readout display".

2. Section S4 would be amended by removing the phrase "by means of a light emitting signal" from the definition of "Telltale".

3. The first two sentences of section S5.2.1(a) would be revised to read as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated for it in column 3 of that table shall be identified by either the symbol designated in column 3 (or symbol substantially similar in form to that shown in column 3) or the word or abbreviation shown in column 2 of that table. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2. * * *

4. Section S5.2.3 would be revised to read as follows:

Any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3 of that table. Any such display for which no symbol is shown in Table 2 shall be identified by the word or abbreviation shown in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjunction with a gauge need not be identified. The identification required or permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

5. Section S5.3.2 would be revised to read as follows:

S5.3.2. Each telltale shall be of the color shown in column 2 of Table 2. The identification of each telltale shall be in a color that contrasts with the background.

6. Section S5.3.3 would be revised to read as follows:

5.3.3 (a) Means shall be provided for making controls, gauges, and the identification for those items visible to the driver under all driving conditions.

(b) The means for providing the required visibility—

(1) Shall be adjustable to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions.

(2) May be operable manually by the driver, automatically or both, and

(3) May have levels of brightness at which those items and their identification are not visible.

(c) If the level of brigthness is adjusted by automatic means to a point that those items or their identification are not visible to the driver, a means shall be provided to enable the driver to restore visibility.

7. A new section S5.3.4 would be added to read as follows:

S5.3.4 (a) Means shall be provided that make the telltales for brakes, high beams, turn signals and seat belts and the identification for those telltales visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable manually by the driver, automatically or both to create different levels of bringhtness, but may not have a level of brightness at which those telltales and their identification are invisible under any driving conditions.

8. A new section S5.3.5 would be added to read as follows:

S5.3.5 (a) Means shall be provided for making the telltales, other than those for brakes, high beams, turn signals and seat belts, and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable manually by the driver, automatically or both to create different levels of brightness, including levels at which those telltales and their idenification are not visible under some driving conditions.

9. A new section S5.3.6 would be added to read as follows:

S5.3.6 Means shall be provided to enable the driver to vary the light intensities for any illumination within the driver's forward field of view, including illumination for purposes other than the controls and displays subject to this standard, that is provided in the passenger compartment. At least two levels of brightness shall be provided.

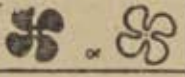
10. A new section S5.4 would be added to read as follows:

S5.4 Messages from sources other than the brake, high beam, turn signal, and safety belt telltales may occupy a common space and may be shown on a cancellable display. A telltale message shall be displayed at the initiation of any underlying condition. However, when the underlying condition exists for actuation of two or more messages, a visible indication of their existence and a means of selecting for viewing each of those messages must be provided to the driver. Messages may be cancellable automatically or by the driver, but may not be automatically repeated in sequence. If cancelled, they shall be retrievable by the driver. A visible indication of their availability for retrieval shall be provided to the driver.

11. Table 1 would be revised to read as set forth below.

BILLING CODE 4910-59-M

Table 1
Identification and Illumination of Controls

Column 1	Column 2	Column 3	Column 4
Hand Operated Controls	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Master Lighting Switch	Lights		—
Headlamps and Tail Lamps	(Mfr. Option)[3]	(Mfr. Option)[3]	—
Horn	Horn		—
Turn Signal	—		—
Hazard Warning Signal	Hazard		Yes
Windshield Wiping System	Wiper or Wipe		Yes
Windshield Washing System	Washer or Wash		Yes
Windshield Washing and Wiping Combined	Wash-Wipe		Yes
Heating and/or Air Conditioning Fan	Fan		Yes
Windshield Defrosting and Defogging System	Defrost, Defog or Def		Yes
Rear Window Defrosting and Defogging System	Rear Defrost, Rear Defog, or Rear Def		Yes
Identification, Side Marker and/or Clearance Lamps	Clearance Lamps or Cl Lps		Yes
Manual Choke	Choke	—	—
Engine Start	Engine Start[1]	—	—
Engine Stop	Engine Stop[1]	—	Yes
Hand Throttle	Throttle	—	—
Automatic Vehicle Speed	(Mfr. Option)	—	Yes
Heating and Air Conditioning System	(Mfr. Option)	(Mfr. Option)	Yes

[1] Use when engine control is separate from the key locking system.
[3] Separate identification not required if controlled by master lighting swtich.
[3] The pair of arrows is a single symbol. When the controls for left and right turn operate independently, however, the two arrows may be considered separate symbols and be spaced accordingly.
[4] Identification not required for vehicles with a GVWR greater than 10,000 lbs., or for narrow ring-type controls.
[5] Framed areas may be filled.

BILLING CODE 4910-59-C

Issued on September 4, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-21641 Filed 9-11-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Cupressus Abramsiana To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Cupressus abramsiana* C.B. Wolf (Santa Cruz cypress), to be an endangered species. Only five small populations of this endemic species remain, occurring in groves on private and county land in the Santa Cruz Mountains, Santa Cruz and San Mateo Counties, California. Portions of each have been destroyed or are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that maintains the cypress groves. One population also faces a potential threat from oil and gas drilling. The issuance of the lease and the approval of the drilling are the responsibility of the Bureau of Land Management. Determination of *Cupressus abramsiana* as an endangered species would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by November 12, 1985. Public hearing requests must be received by October 28, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, (see ADDRESS above) (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Cupressus abramsiana (Santa Cruz cypress) was first collected by M.E. Jones in 1881 and later described by C.B. Wolf (1948) based on specimens collected near "Bonnie Doon" in the Santa Cruz Mountains, Santa Cruz County, California. It is an erect, coniferous tree, approximately 10 meters (34 feet) tall, with a compact, symmetrical, pyramidal crown (Young, 1977). The scale-like foliage is a rich light green, while the bark is gray and fibrous (Wolf, 1948). Female cones, 20 to 30 millimeters (0.8 to 1.2 inches) long, are produced annually on the branches, where they remain for several years or until the supporting branch dies, generally as a result of fire (Bartel and Knudsen, 1982).

Habitat for *Cupressus abramsiana* consists of chaparral and closed-cone pine forest communities in sandstone- or granitic-derived soils, within an area of cool, wet winters and hot, dry summers with little to no coastal fog (Young, 1977). Cypress habitat ranges in elevation from 300 to 750 meters (1020 to 2550 feet). Associated species include *Pinus attenuata, Haplopappus ericoides* ssp. *blakei, Dendromecon rigida,* and *Arctostaphylos* spp. (Griffin and Critchfield, 1972).

This habitat type experiences periodic destruction by wildfire, a phenomenon upon which *Cupressus abramsiana* depends for its continued existence. Cypress trees are "obligate-seeders," that is, the trees fail to resprout from their stumps after fire and are thus totally dependent upon seed for post-fire regeneration. This, periodic fires at too short an interval to allow trees to reach seed-bearing age could lead to the extirpation of a given grove. Conversely, the absence of fire for too long a period can apparently result in lowered reproductive capability and a general increase in the probability of extirpation (Bartel and Knudsen, 1982).

The Santa Cruz cypress is presently limited to five small populations found in a two-county area of California. Groves are found on Butano Ridge, San Mateo County and in Santa Cruz County near Bonny Doon, Eagle Rock, Bracken Brae Creek, and between Majors and Laguna Creeks. These populations occur almost entirely on privately owned land, except for a portion of the Butano Ridge grove, which is found on Pescadero Creek County Park. This land is under the jurisdiction of the San Mateo County Department of Parks and Recreation. The five groves are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that maintain the cypress groves. An additional threat to the Butano Ridge gorve may arise from oil and gas drilling. Some groves also exhibit signs of past disturbance by construction (Bracken Brae), logging (Butano Ridge), and fire (Bonny Doon) (Bartel and Knudsen, 1982). Protective and cooperative action by Federal, State, and private parties is needed to ensure the species' safety and provide for its recovery.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2), of the Act (petition acceptance is now governed by section 4(b)(3) of the Act). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Cupressus abramsiana* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976, as *C. goveniana* var. *abramsiana* (Wolf) Little.

The Endangered Species Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired (44 FR 70796). In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Cupressus abramsiana* was included in this notice as a category-1 species, indicating that existing data warranted proposing to list the species as endangered or threatened.

The Endangered Species Act Amendments of 1982 require that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for making a finding on species covered by such petitions, including *Cupressus abramsiana*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Cupressus abramsiana* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424, revised October 1, 1984, see 49 FR 38900) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cupressus abramsiana* C.B. Wolf (Santa Cruz cypress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Santa Cruz cypress now occurs in a very limited range comprising five small groves in the Santa Cruz Mountains of California. All the groves are threatened by residential development, argicultural conversion, logging, and/or alteration of the natural fire frequency that maintains the groves. About one-third of the Bracken Brae Grove was destroyed in 1975 by a residential development project (Libby, 1979). Two further phases of the project threaten to destroy the remainder of the grove. The largest grove, at Bonny Doon, is being threatened by a proposed vineyard development. Over one-half of the cypress habitat at Bonny Doon could be lost as a result of this development. The Majors Creek and Eagle Rock groves are threatened by logging and residential development. The privately owned section of the Butano Ridge grove is subject to logging, and faces a potential threat from oil and gas drilling.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* No such threats are experienced by *Cupressus abramsiana* at this time.

D. *The inadequacy of existing regulatory mechanisms. Cupressus abramsiana* currently receives no specific protection under California State law.

E. *Other natural or manmade factors affecting its continued existence.* Areas where groves of *Cupressus abramsiana* occur are subject to periodic wildfire; the species is dependent on this phenomenon for its continued existence. Cypress are "obligate seeders" and thus totally rely upon seed for post-fire regeneration. Fires at too short an interval could lead to the extirpation of a given grove. Conversely, the absence of fire for too long a period apparently results in lower grove vitality, reduced cone production, reduced seedling establishment, and a general increase in the probability of extinction of the affected grove. The natural fire frequency is estimated at between 50 and 100 years, with a minimum of 20 years between fires necessary to avoid extinction (Keeley 1981, summarized in Bartel and Knudsen, 1982). It appears that the natural intervals between fires in the habitat of the Santa Cruz cypress has been altered by encroaching human inhabitation and utilization.

The largest tree in the Bonny Doon population was recently cut down. Similar threats of vandalism are faced by the remaining cypress trees.

The Service had carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cupressus abramsiana* as endangered. Only five small populations of this species remain, and these face current or potential threats from residential development, agricultural conversion, logging, and/or disruption of the natural frequency of fires that maintain the cypress groves. Given these conditions, the determination of endangered status for the Santa Cruz cypress is warranted because the species is in danger of extinction throughout its range and may soon disappear unless appropriate protection is extended. Critical habitat is not being designated for the species at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Cupressus abramsiana* is subject to acts of vandalism. Publication of critical habitat descriptions in the **Federal Register** would expose the species and its habitat to a greater number of people, thus increasing the risk of further incidents of vandalism. Therefore, it would not be prudent to designate critical habitat for *Cupressus abramsiana* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such acitons are initiated by the Service following listing. The protection required for Federal agencies and the prohibitions against taking are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency msut enter into formal consultation with the Service. The only known Federal action that could possibly affect the Santa Cruz cypress involves an oil and gas lease on Butano Ridge. The issuance of the lease and the approval of the drilling are the responsibility of the Bureau of Land Management. If the Santa Cruz cypress is likely to be affected by drilling activities, final approval of the drilling would require consultation with the Service pursuant to section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that

apply to all endangered plant species. With respect to *Cupressus abramsiana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species is known to occur and it is anticipated that few trade permits involving the species will ever be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This provision would apply to *Cupressus abramsiana* should it be found on Federal land. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417). Presently, the Santa Cruz cypress is only found on county and private land not under Federal jurisdiction. Few, if any, requests for collecting permits are expected. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cupressus abramsiana;*

(2) The location of any additional populations of *Cupressus abramsiana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Cupressus abramsiana.*

Final promulgation of the regulation on *Cupressus aframsiana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESS section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Bartel, J., and M. Knudsen. 1982. Status review of the Santa Cruz cypress. U.S. Fish and Wildlife Service, Sacramento, California. 7 pp.

Griffin, J.R., and W.B. Critchfield. 1972. The distribution of forest trees in California. USDA Forest Service Research Paper PSW–82.

Libby, J. 1979. *Cupressus aframsiana* goes to court. Fremontia 7(3):15.

Wolf, C.B. 1948. A New World cypress. I. Taxonomic and distributional studies on the New World cypresses. Aliso 1:1–250.

Young, P.G. 1977. Rare plant status report, *Cupressus aframsiana* C.B. Wolf. California Native Plant Society, Santa Cruz Chapter, Santa Cruz, California. 2 pp.

Authors

The primary authors for this proposed rule are Jim A. Bartel and Monty Knudsen, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440–4935 or FTS 468–4935).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Cupressaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cupressaceae—Cypress family:						
*	*	*	*	*	*	*
Cupressus abramsiana	Santa Cruz cypress	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	*

Dated: August 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21765 Filed 9-11-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Eriogonum Ovalifolium var. Williamsiae (Steamboat Buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for *Eriogonum ovalifolium* var. *williamsiae* (Steamboat buckwheat), pursuant to the Endangered Species Act of 1973, as amended. This plant is only known from one site at Steamboat Hot Springs, Washoe County, Nevada, where it grows in several colonies scattered over approximately 100 acres. This species is vulnerable to habitat alteration that may be caused by the potential threats of drilling for geothermal development, recreational and commercial development, and mining activities near where it occurs. It is presently detrimentally affected by off-road vehicle use, dumping of refuse, and alternations to moisture patterns. A determination that *Eriogonum ovalifolium* var. *williamsiae* is endangered would implement the protection provided by the Endangered Species Act. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by November 12, 1985. Public hearing requests must be received by October 28, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Steamboat buckwheat was first collected in 1884 by K.C. Brandegee, but was not recognized taxonomically until 1981, when James Reveal described it as a new variety of *Eriogonum ovalifolium*. The species is known only from one site at Steamboat Hot Springs in Washoe County, Nevada. Most of the plants are concentrated on 20 acres of a total of 80 acres of Bureau of Land management (BLM) land at the Hot Springs, and on 40 acres owned by a private citizen. The buckwheat occurs on open, slightly to steeply sloped areas composed of loose, gravelly, sandy-clay soil derived from hot springs deposits. The plant is a low perennial with small, oval, greenish white leaves that are densely congested in tight rosettes. It frequently forms large mats. It has small white flowers (often with a pink midrib on each sepal) that are clustered in a head at the end of an erect stem 4 to 10 inches (10 to 25 centimeters) high.

The species has only been collected from the area around Steamboat Hot Springs, but is thought to have been more widespread in the past. Approximately one acre of habitat was destroyed in about 1978 during the construction of a U.S. Post Office. It is not known what effects other past developments have had on the buckwheat. Two collections from the 1930's refer to Reno Hot Springs as a collection site. A mineral bath by that name was operated, in the past, a few miles from Steamboat Hot Springs. No plants occur there at this time. It is possible that this site was actually Steamboat Hot Springs, since herbarium labels are often quite general. At Steamboat Hot Springs Spa, a nearby commercial development, no plants have been found even though the habitat is similar to sites where colonies do occur. *Eriogonum ovalifolium* var. *williamsiae* is thought to have declined because of past development activities and is vulnerable, due to its restricted range, to any further alterations of its remaining habitat.

On December 15, 1980 (45 FR 82480), the Service published a notice of review of plant taxa for listing as endangered or threatened species, pursuant to the Endangered Species Act of 1973, as amended. *Eriogonum ovalifolium* var. *williamsiae* was included in that notice (as *E. ovalifolium* var. nov. ined.) as a category-1 species, indicating that the Service then had sufficient information on file to support proposing to list it. A supplement to the 1980 notice of review, published on November 28, 1983 (48 FR 53640), also placed this taxon in category 1 as *E. ovalifolium* var. *williamsiae*. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Species included in the December 15, 1980, notice of review are treated as under petition to be listed. A finding was required on such species on or before October 13, 1983. On October 13, 1983, and again on October 12, 1984, findings were made that the listing of the Steamboat wild buckwheat was warranted, but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Consequently, a new finding is required by October 13, 1985; this notice constitutes a finding that listing of this taxon is warranted and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Eriogonum ovalifolium* Nutt. var. *williamsiae* Reveal (Steamboat buckwheat) are as follows (abstracted from Williams, 1982):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the past, as discussed in the "Background" section, development lead to a decline in the

species. The *Eriogonum* is detrimentally affected by drilling of geothermal test wells, development of a park on one Bureau of Land Management (BLM) parcel that is leased to the Washoe County Parks and Recreation Department, and a planned commercial development on private land that is adjacent to a colony of plants. Also threatening this small population is the possibility of mining on private lands. BLM has restricted mining on public lands, but placer mining could still occur. Cinnabar is abundant enough to be commercially profitable and stibnite, gold, and silver are found in small amounts in the species; habitat.

Roads have been built through most of the colonies of *Eriogonum ovalifolium* var. *williamsiae*, and off-road vehicle (ORV) travel has further disturbed the habitat and destroyed plants. BLM had designated the main terrace with active geothermal activity as an Area of Critical Environmental Concern and has fenced this area on three sides. Although it is posted as closed to motor vehicles, ORV's have entered on the unfenced side and driven across the terrace. It is not known whether trespassers are intentionally damaging the Steamboat buckwheat, but with increased public awareness of the species it will become more vulnerable to such actions. Refuse has been dumped on and near the buckwheat colonies, resulting in additional loss of habitat.

The Steamboat buckwheat is sensitive to changes in moisture and has been observed to die when more than normal moisture is received. Degradation of its habitat by ORV use and dumping of refuse may alter moisture patterns, further threatening the species. There is also as possibility that drilling of geothermal test wells may contribute to changes in water regimes for the plants.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Species of *Eriogonum* are often collected for rock gardens. Although it is not known whether this species has been sought by collectors in the past, it is possible that its rare status may make it a desirable garden subject.

C. *Disease or predation.* Nothing is known about disease or predation that may harm this plant.

D. *The inadequacy of existing regulatory mechanisms.* This species is protected on private and State lands by the Nevada Division of Forestry under provision of NRS 526276. This regulation, however, does not apply to Federal lands on which the species is found, nor does it allow for protection of the species' habitat. Under provisions of the State law, the private landowner is required to notify the State if the plants are going to be destroyed so that they may be salvaged by the State prior to destruction. Listing under the Act would provide this taxon with additional habitat protection and protection from collecting on Federal land.

E. *Other natural or manmade factors affecting its continued existence.* The species is known from only one population, consisting of seven colonies on less than 100 acres of land. Even though the species is abundant where it occurs, with individual plants numbering about 10,000–15,000, its restricted distribution makes it vulnerable to fire or any other disturbance in its habitat. The further loss of individuals may have adverse effects on the reproductive capacity and survival of the species. During of field survey in 1981, no seedlings were found, indicating that the buckwheat may have low reproductive potential.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Eriogonum ovalifolium* var. *williamsiae* as endangered without critical habitat. The need for such listing is demonstrated by the restricted range of the lone population and the immediate and potential threats faced by the species. Critical habitat is not being proposed for *Eriogonum ovalifolium* var. *williamsiae* for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under threat factors A and B above, the Steamboat buckwheat is vulnerable to collecting and vandalism, activities not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to prossession of endangered plants on lands under Federal jurisdiction. Publication of precise critical habitat descriptions and maps delineating localities of colonies, would make this species more vulnerable to collecting pressures and vandalism than it is at present. Therefore, it would not be prudent to determine critical habitat for the Steamboat buckwheat at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat, if any is being designated. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since BLM closed to mining development its land on which *Eriogonum ovalifolium* var. *williamsiae* occurs, the only known Federal activity that may affect the species is the proposed development of a recreational area by Washoe County on land leased from BLM. Development of such an area will require measures for protection of the *Eriogonum* if the plant is listed. BLM has already expressed a willingness to work with the public and with the private landowner to develop conservation and management programs for the *Eriogonum* if it is listed. Such programs might include the development of a cooperative agreement with the landowner, and/or possibly a land exchange.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Eriogonum ovalifolium* var. *williamsiae*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species is known. It is anticipated that few trade permits involving *Eriogonum ovalifolium* var. *williamsiae* would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition would apply to *Eriogonum Ovalifolium* var. *williamsiae*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated these will be made final following public comment. Although *Eriogonum ovalifolium* var. *williamsiae* occurs on Federal lands, it is not anticipated that many collecting permits will ever be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, 6th Floor Broyhill, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Eriogonum ovalifolium* var. *williamsiae*;

(2) The location of any additional populations of *Eriogonum ovalifolium* var. *williamsiae* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Eriogonum ovalifolium* var. *williamsiae*.

The Service's final determination on the proposal to list *Eriogonum ovalifolium* var. *williamsiae* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Williams, Margaret. 1982. Status Report on *Erigonum ovalifolium* var. *williamsiae*, prepared under contract with the U.S. Fish and Wildlife Service.

Authors

The primary authors of this proposed rule are Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (208/334–1816 or FTS 554–1806) and Carol A. Wilson, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Polygonaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Polygonaceae—Buckwheat family:						
*	*	*	*	*		
Eriogonum ovalifolium var. *williamsiae*	Steamboat buckwheat	U.S.A. (NV)	E		NA	NA
*	*	*	*	*		

Dated: August 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21714, Filed 9-11-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Plan, Wayne National Forest, Revision of Notice of Intent To Prepare Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, a notice of intent to prepare an environmental impact statement for the proposed Land and Resource Management Plan for the Wayne National Forest in Ohio was published in the **Federal Register** Vol. 47, No. 25, p. 5445, Friday, February 5, 1982. The dates for release of the draft and final environmental impact statements are hereby revised.

The original dates for release of the draft and final environmental impact statements were March 1983 and October 1983. The new date for the draft environmental impact statement is 5/15/86. The new date for the final environmental impact statement is 12/15/86.

All other conditions of the original notice of intent remain the same.

Further information about the planning process can be obtained by writing the Forest Supervisor, Wayne-Hoosier National Forests, 3527 10th Street, Bedford, Indiana 47421.

James L. Hagemeier,

Director, Planning, Programming and Budgeting.

[FR Doc. 85-21869 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Little and Middle Pitman Creek Watershed, Kentucky; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little and Middle Pitman Creek Watershed, Taylor and Green Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606-233-2749.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This project concerns a plan for watershed protection and animal waste management. The planned action is to install conservation practices on 4,928 acres of cropland, 983 acres of grassland, and install six animal waste management systems. This planned action will reduce upland erosion, sedimentation, and downstream pollution.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The Finding of No Significant Impact has been prepared and sent to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Giessler.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 30, 1985.

Randall W. Giessler,

State Conservationist.

[FR Doc. 85-21874 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-16-M

Plateau Valley School Land Drainage RC&D Measure, Colorado; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Plateau Valley School Land Drainage RC&D Measure, Mesa County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, 2490 W. 26th Avenue, Denver, Colorado 80211, telephone (303) 837-4275.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the measure will not Boone, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this measure.

This land drainage measure concerns a plan to prevent subsurface water seepage that is damaging public school buildings and facilities. The planned works of improvement include installing approximately 1600 lf. of subsurface drainline around the buildings and facilities.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above

address. Basic data developed during the environmental evaluation are on file and may be reviewed by contracting Mr. Sheldon G. Boone.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: September 4, 1985.

Kenneth A. Pitney,

Assistant State Conservationist.

[FR Doc. 85-21865 Filed 9-11-85; 8:45 am]

BILLING CODE 3410-16-M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the Arctic Research Commission will meet on 19-20 September 1985. The meeting will be held in the Board Room, Bovard Administration Building, University of Southern California, University Park, Los Angeles starting at 9 A.M. Matters to be considered include 1. Chairman's items, 2. Approval of Report of Meetings held 25-28, June 1985, 3. Interagency Arctic Research Policy Committee Activities, 4. Mechanisms to Establish Links with the State of Alaska, 5. International Activities, 6. Reports to the President and Congress due 1986, 7. Arctic Research Policy Statement, 8. Other business, and 9. Next meeting.

The Commission will meet in Executive Session on 20 September from 1 to 5 P.M. Matters to be discussed in the Executive Session will include: (1) Nominations for a Scientific Committee, (2) Future Activities of the Commission, and (3) Commission budgetary matters.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743-0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 85-21862 Filed 9-11-85; 8:45 am]

BILLING CODE 7555-01-M

COMMISSION ON CIVIL RIGHTS

Maine 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 Maine Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on October 9, 1985, at the Holiday Inn, Western Avenue, Winthrop Room, Augusta, Maine. The purpose of the meeting is to begin the process of program planning for FY 1986, based on suggestions and proposals submitted for group discussion by committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Morgan, or Jacob Schlitt, Director of the New Englnd Regional Office at (617) 223-4671, (TDD 617/223-0344).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., September 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21755, Filed 9-11-85; 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 8:00 p.m. and adjourn at 10:00 p.m. on September 29, 1985, and convene at 9:00 a.m. and adjourn at 5:00 p.m. on September 30, 1985, at the Hotel Roanoke, 19 South Jefferson Street, Roanoke, Virginia. The purpose of the meeting is to continue planning a series of meetings in 1985-86 throughout Virginia to be advised by public officials and citizens concerning civil rights developments and enforcement in housing, voting, education, employment, and the administration of justice.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Benjamin Bostic, or John 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 Commission.

Dated at Washington, D.C., September 4, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21756, Filed 9-11-85; 8:45 am]

BILLING CODE 6335-01-M

Wyoming 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 meeting of the Wyoming Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m. on October 5, 1985, at the Downtown Motor Inn, I-25 and Center Street, Champagne Room, Casper, Wyoming. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Tolin, or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21757 Filed 9-11-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85-148. Article: Quartz Beam Splitter and Si-Detector.

Docket No.: 85-149. Article: DTGS Pyroelectric Detector.

Manufacturer: Bomen, Inc., Canada. Applicant: National Bureau of Standards. Intended use: See notice at 50 FR 19430. Advice submitted by: National Institutes of Health: July 3, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21776 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 85-156. Applicant: Forsyth Dental Center, Boston, MA 02115. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 21481. Instrument ordered: January 10, 1985.

Docket No.: 85-159. Applicant: Michigan State University, East Lansing, MI 48824. Instrument: Electron Microscope, Model H-800-3. Manufacturer: Hitachi, Japan. Intended use: See notice at 50 FR 21482. Instrument ordered: January 24, 1985.

Docket No.: 85-163. Applicant: University of California, Irvine, CA 92717. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: See notice at 50 FR 23171. Instrument ordered: Mar 13, 1985.

Docket No.: 85-165. Applicant: Curators of the University of Missouri, Columbia, MO 65211. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: February 27, 1985.

Docket No.: 85-169. Applicant: University of Texas System Cancer Center, Houston, TX 77030. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23171. Instrument ordered: January 24, 1985.

Docket No.: 85-171. Applicant: The Children's Memorial Hospital, Chicago, IL 60614. Instrument: Electron Microscope, Model JEM-1200EX and Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: January 10, 1985.

Docket No.: 85-173. Applicant: Auburn University, Auburn, AL 36849. Instrument: Electron Microscope, Model JEM-1200EX and Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: September 12, 1984.

Docket No.: 85-174. Applicant: University of Illinois, Urbana, IL 61801. Instrument: Electron Microscope, Model H-800-3 and Accessories. Manufacturer: Hitachi, Japan. Intended use: See notice at 50 FR 23753. Instrument ordered: January 17, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21774 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Center for Energy and Environment Research; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-154. Applicant: Center for Energy and Environment Research, San Juan, PR 00936. Instrument: Infrared Gas Analyzer for CO_2, Type 225, Mark 3. Manufacturer: Analytical Development Co., Ltd., United Kingdom. Intended use: See notice at 50 FR 21481.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides capabilities for both absolute [0-2500 p.p.m. carbon dioxide (CO_2) and differential (25-0-25, 50-0-50 p.p.m. CO_2) analysis, high stability in constant ambient (<1 percent per 24 hours) and temperature coefficient (0.1 percent °C) with high accuracy (1.0 percent of full-scale reading). The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21773 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Lamont-Doherty-Geological Observatory/Columbia University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 84-295. Applicant: Lamont-Doherty-Geological Observatory/Columbia University, Palisades, NY 10964. Instrument: Wireline-based borehole stress-measuring system. Manufacturer: Befeld Einmechanic, West Germany. Intended use: See notice at 49 FR 41079.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a signal lead-through facility that permits the operation of active sensors below the sealed-off interval in a bore hole. The Department of Interior-Geological Survey advises in its memorandum dated April 26, 1985 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21775 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

The Pennsylvania State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat.; 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-186. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Spectroscopic Ellipsometer, Model ESZG. Manufacturer: Sopra, France. Intended use: See notice at 50 FR 24553.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a broad range of wavelengths (230 to 800 nm) with the capability of measuring 256 points per spectrum. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21777 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Rensselaer Polytechnic Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-058. Applicant: Rensselaer Polytechnic Institute, Troy, NY 12180. Instrument: Focused Ion Beam Implanter. Manufacturer: VG Semicon, United Kingdom. Intended use: See notice at 50 FR 1262.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides precise direction and focusing control of the incident ion beam from a 100kV ion gun. The National Bureau of Standards advises in its memorandum dated March 22, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21778 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of California, San Diego; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-130. Applicant: University of California, San Diego, La Jolla, CA 92093. Instrument: Laser Doppler Flowmeter, Model Periflux. Manufacturer: Perimed, K.B., Sweden. Intended Use: See notice at 50 FR 15596.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) High accuracy by using inputs from two independent fiber-optic sensing lines and (2) a thermostatted probe holder. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21779 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials, Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-137. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne, IL 60439. Instrument: Electron Spectrometer. Manufacturer: Fom Institute for Atomic & Molecular Physics, The Netherlands. Intended use: See notice at 50 FR 18898.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high-energy transmission and resolution (15 milli (electron) volts typical for 0 to 10 electron volts), and a

large acceptance angle (2 π steradians) to permit high count rates. The National Bureau of Standards advises in its memorandum dated June 28, 1985 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21780 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of North Carolina; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scienfitic, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 80-00420A. Applicant: University of North Carolina, Chapel Hill, NC 27514. Instrument: Gas Chromatograph/Mass Spectrometer/Data System, Model MM70/70. Manufacturer: VG-Micromass, United Kingdom. Intended use: See notice at 47 FR 19572.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The Department of Commerce denied this application on May 3, 1982, (47 FR 19572), primarily on the ground that the only known domestic manufacturer of *comparable* instruments responded to the applicant's request for quotation with a completely responsive bid. The applicant appealed. On March 8, 1983, the United States Court of Appeals for the Federal Circuit (CAFC) remanded the decision (Appeal No. 82-26). The CAFC direced us "to allow the re-opening of the entire record for submission of any new facts and arguments. . . ." We have complied with this order. The foreign instrument is an integrated gas chromatograph/mass spectrometer/data system capable of mass assignment accuracy to 15 ppm (so that elemental composition can be assigned to sample molecules) and a minimum scan cycle time (mass 500-25-500) of 1.5 seconds. These features are pertinent to the intended uses, as the applicant specified a need for a system capable of mass assignment accuracy to .01 Dalton, which is the equivalent of accuracy to 15 ppm. The information on the reopened record is, in our judgment, insufficient to establish that the domestic manufacturer was both willing and able to make an instrument able to achieve the applicant's stated research purposes as well as the foreign instrument.

We conclude, therefore, that no domestic manufacturer could have provided an instrument scientifically equivalent to the foreign instrument for the applicant's intended purposes.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21781 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

The University of Rochester; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made purusant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85-101. Applicant: The University of Rochester, Rochester, NY 14642. Instrument: Micromanipulators, Model MO-103-L/MO-11 and Accessories. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended use: See notice at 50 FR 11233.

Comments: None received.

Decison: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides smooth movement by remote hydraulic control of a microelectrode in 2.0 micrometer increments along any of three axes. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capacity of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21782 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Washington et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specific time period. This is the case for each of the listed dockets.

Docket Number: 84-314. Applicant: University of Washington, Seattle, WA 98195. Instrument: 11.75 Tesla Superconducting Magnet. Date of Denial Without Prejudice to Resubmission: May 21, 1985.

Docket Number: 85-020. Applicant: Furman University, Greenville, SC 29613. Instrument: Excimer Laser, Model TE-861M-4 with Accessories. Date of Denial Without Prejudice to Resubmission: May 31, 1985.

Docket Number: 85-081. Applicant: University of Wyoming, Laramie, WY 82071. Instrument: CSIRO Portable Sonic Wool Fineness Tester, Model B. Date of Denial Without Prejudice to Resubmission: May 24, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21783 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Worcester Foundation for Experimental Biology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 85–124. Applicant: Worcester Foundation for Experimental Biology, Shrewsbury, MA 01545. Instrument: Nanosecond Fluorometer System, Model 2000. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: See notice at 50 FR 13844.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument operates in the nanosecond to millisecond range, with a pulsed light mode providing time-correlated single photon counting. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21784 Filed 9–11–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Alabama in Birmingham; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–109. Applicant: University of Alabama in Birmingham, Birmingham, AL 35294. Instrument: Two Electrophysiological Data Interfaces, Model EDI 64. Manufacturer: Institut de Genie Biomedical, Canada. Intended use: See notice at 50 FR 13059.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides 64 differential bipolar signal input channels which are electrically isolated and capable of programmable low-pass/high-pass filtering. The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21853 Filed 9–11–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Maryland; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related record can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–167. Applicant: University of Maryland, College Park, MD 20742. Instrument: Excimer Laser, Model EMG–150ET. Manufacturer: Lambda Physik GmbH, West Germany. Intended use: See notice at 50 FR 23171.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a tuning range <0.3 nm and a narrow bandwidth 0.003 nm at 248 nm and the capability of simultaneously oscillating on two excimer lines. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21854 Filed 9–11–85; 8:45 am]

Billing Code 3510-DS-M

National Aeronautics and Space Administration; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 82–270R. Applicant: National Aeronautics and Space Administration, NASA Resident Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109.

Instrument: Color Film Recorder. Original notice of this resubmitted application was published in the **Federal Register** of August 26, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high-resolution (16 384 by 16 384 pixels) color images by using a small pixel size (25 micrometers). The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–21855 Filed 9–11–85; 8:45 am]

BILLING CODE 3510-DS-M

Microelectronics Center of North Carolina; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational,

Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-114. Applicant: Microelectronics Center of North Carolina, Research Triangle Park, NC 27709. Instrument: Scanning Electron Microscope with Facilities/Auger Electron Spectroscopy, Model HB501A. Manufacturer: Vacuum Generators, United Kingdom. Intended use: See notice at 50 FR 13843.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as if is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a resolution of 0.204 nanometers at 100 keV with specimens mounted in a ±60° double axis tilting goniometer. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21856 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials, Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-183. Applicant: University of Chicago, Argonne, IL 60439. Instrument: Excimer Laser with Magnetic Switch Control, Model HE-420. Manufacturer: Lumonics, Inc., Canada. Intended use: See notice at 50 FR 24553.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a pulse duration of 12-16 nanoseconds at a maximum average power of 20W with a pulse rate of 60 pulses per second at a wavelength of 249 nanometers. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose.

We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Do. 85-21857 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Massachusetts Institute of Technology; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-153. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Mass Spectrometer, Model JMS-HX110HF with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 19431.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides extended mass range to 12 500 atomic mass units at 10 000 volts accelerating potential and high resolution up to 100 000 (10 percent valley definition). The National Institutes of Health advises in its memorandum dated July 3, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21858 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-069. Applicant: University of Wisconsin, Madison, WI 53706. Instrument: FT-NMR Spectrometer, Model AM-500. Manufacturer: Bruker, West Germany. Intended use: See notice at 50 FR 4995.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (January 26, 1984).

Reasons: The foreign instrument provides the highest magnetic field strength of 11.7 tesla, producing narrow line widths, high dispersion in spin coupling studies, and rapid acquisition times for unstable compounds. The National Bureau of Standards advises in its memorandum dated June 18, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into

account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to General Electric Magnetics, and received a quotation from Varian Associates for an instrument of lesser magnetic field strength, it is apparent that the domestic manufacturers were either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument. Accordingly, the Department of Commerce finds that no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21859 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Select Group will convene a public meeting, September 24–25, 1985, at the Oregon Department of Fish and Wildlife building in Portland, OR, to develop draft recommendations for managing the groundfish fisheries off Washington, Oregon, and California in 1986, and to review other items as directed by the Council. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: September 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21829 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Plan Development Teams will convene public meetings at the Council's Office, 1164 Bishop Street, Room 1405, Honolulu, HI, as follows:

Crustaceans Plan Development Team

Will convene on September 12, 1985, at 9 a.m., to review amendment #3 to the Spiny Lobster FMP that would lower the minimum size of spiny lobsters coupled with an access management system to better control fishing effort in the lobster fishery of the Northwestern Hawaiian Islands (NWHI).

Bottomfish Plan Development Team

Will convene also on October 24, 1985, at 8:30 a.m., to review a redraft of the Bottomfish Framework FMP and to discuss progress on the limited entry concept for the MWHI fishery.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: September 6, 1985.

Richard B. Roe,

Director Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21830 Filed 9-11-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-725,720
Membrane Process for Separation of Organic Acids from Kraft Black Liquors

SN 6-732,320
Apparatus to Improve the Operation of a Continuously Moving Harvester for Tree Crops

SN 6-757,396
A Quarantine System for Papaya

Department of Commerce

SN 6-751,118
Acoustic Scintillation Liquid Flow Measurement

SN 6-762,740
Humidity Sensing and Measurement Employing Halogenated Organic Polymer Membranes

Department of Health and Human Services

SN 6-237,496 (4,528,196)
Chelating Agents for the Treatment of Iron Overload

SN 6-330,959 (4,522,918)
Process for Producing Monoclonal Antibodies Reactive with Human Breast Cancer

SN 6-461,954 (4,527,550)
Helical Coil for Diathermy Apparatus

SN 6-475,215 (4,532,039)
Multi-Layer Coil Assembly Coaxially Mounted Around the Rotary Axis for Preparatory Countercurrent Chromatography

SN 6-601,314 (4,533,675) Carbamates of Colchicine for Treatment of Gout

SN 6-707,400
Monoclonal Antibodies Reactive with Human Beast Cancer

SN 6-724,033
Method and Apparatus for Sequential Fractionation

SN 6-748,207
Cold Plate for Laboratory Use

SN 6-759,677
Medical Applications of Functionalized Congeners of Adenosine Receptor Drugs

SN 6-769,074
Vaccine Against Rotavirus Diseases

Department of the Air Force

SN 6-329,557 (4,513,428)
Simultaneous Detection of Time Coincident Signals in an Adaptive Doppler Tracker
SN 6-418,947 (4,510,846)
Pnuematic Actuator Device
SN 6-504,353 (4,513,422)
Co2 Laser Stabilization and Switching
SN 6-525,755 (4,511,216)
High Power Laser Dump
SN 6-582,514 (4,511,105)
Compartmented, Filament Wound, One-Piece Aircraft Fuel Tanks
SN 6-591,715
Gas Generator Fuel Flow Throttle Control System
SN 6-617,668
Phase Lock Acqisition System
SN 6-630,148
Lightweight Cryogenic Tank with Positive Expulsion
SN 6-663,015
Technique of Assembling Structures Using Vapor Phase Soldering
SN 6-708,909
Multi-Row Connector with Ground Plane Board
SN 6-719,792
Apparatus for Locating Passive Intermodulation Interference Sources
SN 6-731,223
Interdigital Schottky Barrier Capacitor Apparatus
SN 6-746,617
Termination Load Carrying Device
SN 6-749,333
Submerged Ram Air Inlets for ECM Pods
SN 6-749,335
Captive Volume Device As A Safe Life Monitor
SN 6-749,368
Modulation Doped GaSa/AlGaAs Field Effect Transistor
SN 6-751,393
Guided Trephine Samples for Skeletal Bone Studies
SN 6-751,399
Heat Pipe Wick
SN 6-751,400
One-Step Loading Adapter
SN 6-752,767
Transient Test of Suspension Electronics for Gyroscope

Department of the Army

SN 6-542,635 (4,532,625)
Communications Network Status Information System
SN 6-657,438
Electrolytic Pressure Transduction System
SN 6-660,778
Dermal Substance Collection Device
SN 6-741,940
Control for Dot Matrix Printers Operating in Harsh Environments
SN 6-749,597
Cathode Including A Non Fluorinated Linear Chain Polymer As the Binder, Method of Making the Cathode, and Lithium Electrochemical Cell Countining the Cathode
SN 6-751,339
Routing Method in Computer Aided Customization of A Two Level Automated Universal Array
SN 6-758,919
Pulsed Digital Multiplex Laser Generator

Tennessee Valley Authority

SN 6-616,879
Production of Acid-Type Fertilizer Solutions.

[FR Doc. 85-21867 Filed 9-11-85; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 12, 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 June 24, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 26028) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is 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 action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1985:

Janitorial/Custodial for the following locations:

Federal Building, 212 3rd Avenue South, Minneapolis, Minnesota
Social Security Building, 1811 Chicago Avenue South, Minneapolis, Minnesota
Federal Building and U.S. Courthouse, 316 N. Robert Street, St. Paul Minnesota.

C.W. Fletcher,
Executive Director.

[FR Doc. 85-21923 Filed 9-11-85; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1985-86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits

AGENCY: Department of Education.

ACTION: Notice of availability of the 1985-86 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits.

SUMMARY: Institutions and borrowers participating in the National Defense and Direct Student Loan (NDSL) Programs and other interested persons are advised that they may obtain information regarding the *1985-86 National Defense and Direct Student Loan Program Directory of Designated Low-Income Schools for Teacher Cancellation Benefits (Directory).* Under each program, borrowers may receive cancellation for full-time teaching in a school having a high concentration of students from low-income families. The Secretary has designated the schools for the 1985-86 academic year and they are listed in the *Directory.*

DATE: The *Directory* is available on or before September 12, 1985.

ADDRESS: Information concerning specific schools listed in the *Directory* may be obtained from Ronald W. Allen, Campus-Based Programs Branch.

Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. [Room 4613, ROB-3] Washington, D.C. 20202, Telephone (202) 245-9640.

FOR FURTHER INFORMATION CONTACT: Directories are available in (1) each of the participating institutions of higher education, (2) each of the fifty-seven (57) State and Trust Territory Departments of Education, (3) each of the major billing services, and (4) each of the ten (10) regional offices of the U.S. Department of Education (see (Appendix to this notice for the addresses of the regional offices).

SUPPLEMENTARY INFORMATION: The procedures for selecting schools for cancellation benefits are described in the NDSL program regulations (34 CFR 674.53, 675.54). The Secretary has determined that for the 1985-86 academic year, full-time teaching in the schools set forth in the *Directory* qualifies for cancellation.

The Secretary is providing the *Directory* to each institution participating in the National Defense and Direct Student Loan Programs. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1985-86 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of past, current, and future *Directories*.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct Student Loan Cancellations)

Dated: September 6, 1985.

Kenneth Whitehead,

Acting Assistant Secretary for Postsecondary Education.

Appendix to Notice of Availability of 1985-86 National Defense and Direct Student Loan Programs Directory of Designated Low Income Schools for Teacher Cancellation Benefits

U.S. Department of Education Regional Offices

Mr. Thomas J. O'Hare, Deputy Regional Administrator, Region I: OSFA/ED—T&D Section, J.W. McCormick Post Office and Courthouse Building, 5 Post Office Square, Room 510, Boston, Massachusetts 02109, (617) 223-7205, FTS: 223-7205

Ms. Janet Finello, Training and Technical Assistance Specialist, Region II: OSFA/ED, 26 Federal Plaza, Room 3954, New York, New York 10278, (212) 264-4426, FTS: 264-4426

Mr. Harry Sweeney, Chief, Training and Technical Assistance Unit, Region III: OSFA/ED, P.O. Box 13716 (3535 Market Street), Philadelphia, Pennsylvania 19104, (215) 596-0247, FTS: 596-0247

Ms. Judith Brantley, Assistant Regional Administrator for Training and Dissemination, Region IV: OSFA/ED, 101 Marietta Tower, Suite 423, Atlanta, Georgia 30323, (404) 221-4171, FTS: 242-4171

Dr. Morris Osburn, Assistant Regional Administrator for Training and Dissemination, Region V: OSFA/ED, 300 South Wacker Drive, 12th Floor, Chicago, Illinois 60606, (312) 353-8103, FTS: 353-8103

Mr. Lyndon Lee, Assistant Regional Administrator for Training and Dissemination, Region VI: OSFA/ED, 1200 Main Tower Building, Room 310, Dallas, Texas 75202, (214) 767-3811, FTS: 729-3811

Mr. Jerry W. Craft, Chief, Technical Assistance and Training Branch, Region VII: OSFA/ED, 324 East 11th Street, 9th Floor, Kansas City, Missouri 64106, (816) 374-3136, FTS: 758-3136

Mr. Thomas F. Monahan, Chief, Training and Dissemination, Region VII: OSFA/ED, 1961 Stout Streets—3rd Floor, Denver, Colorado 80294, (303) 844-3676, FTS: 564-3676

Ms. Mary Ann Faris, Acting Assistant Regional Administrator for Training and Dissemination, Region IX: OSFA/ED, 50 United Nations Plaza, San Francisco, California 94102, (415) 566-0137, FTS: 566-0137

Mr. W. Phillip Rockefeller, Chief, Technical Assistance and Training Branch, Region X: OSFA/ED, Third and Broad Avenue, Mail Stop 102, 2901 Third Avenue, Seattle, Washington 98121, (206) 442-4027, FTS: 399-0493

[FR Doc. 85-21747 Filed 9-11-85; 8:45 am]

BILLING CODE 4000-01-M

National Graduate Fellows Program Fellowship Board; Meeting

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Graduate Follows Program Fellowship Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, section 10 (a)(2)).

DATE: September 26, 1985 at 10:00 a.m. through September 27, 1985 at 5:00 p.m.

ADDRESS: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joel D. West, Executive Director, National Graduate Fellows Program Fellowship Board, Office of Postsecondary Education, 7th and D Streets, SW., Washington, DC 20202 (202) 245-9274.

SUPPLEMENTARY INFORMATION: The National Graduate Fellows Program Fellowship Board is established under section 931 of the Higher Education Act of 1980, Title IX, Part C (20 U.S.C. 1134h-k). The Presidentially-appointed National Graduate Fellow Program Fellowship Board establishes program policies, oversees program operations, annually selects fields of study in which fellowships are to be awarded. The Fellowship Board determines the number of fellowships to be awarded in each designated field, and appoints panels to select fellows on the basis of demonstrated achievement and exceptional promise.

The meeting of the Fellowship Board will be open to the public. The agenda will include the determination of the applicant screening and review process and logistics, and the appointment of panelists for applicant review and selection.

Records shall be kept of all Board proceedings and shall be available for public inspection at the National Graduate Fellows Program, 7th and D Streets, SW., Room 4082, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal holidays.

Kenneth D. Whitehead,

Acting Assistant Secretary for Post Secondary Education.

[FR Doc. 85-22063 Filed 9-11-85; 11:25 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses

of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Switzerland to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing 96 irradiated fuel assemblies, containing 36,000 kilograms of uranium enriched to 0.87% in U-235 and 390 kilograms of plutonium from the Gosgen power station, 100 irradiated fuel assemblies, containing 30,936 kilograms of uranium enriched to 1.0% in U-235 and 290 kilograms of plutonium from the Beznau I and Beznau II power stations, and 64 irradiated fuel assemblies, containing 11,297 kilograms of uranium enriched to 0.93% in U-235 and 93 kilograms of plutonium from the Muhleberg power station. These subsequent arrangements are designated as RTD/EU(SD)-54, 55, and 56, respectively. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: September 6, 1985.

George J. Bradley, Jr.

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21883 Filed 9-11-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP84-441-007, et al.]

Natural Gas Certificate Filings; Tennessee Gas Pipeline Co. et al.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP84-441-007]

September 6, 1985.

Take notice that on September 3, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No CP84-441-007 a petition to amend the order issuing its certificate in Docket No. CP84-441-002 pursuant to section 7(c) of the Natural Gas Act by requesting a limited-term certificate authorizing the installation and operation of a portable compressor station near Milford, Pennsylvania, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant states that the Commission authorized Applicant in Docket No. CP84-441-002 (32 FERC ¶ 61,228) to install 7,000 hp of new compression at a new compressor station No. 325 in Wantage Township, Sussex County, New Jersey. The purpose of this new compression, together with other facility construction authorized in Docket No. CP84-441-002, is to allow Applicant to provide new firm transportation services beginning November 1, 1985. Applicant alleges that it has now been determined that the compression to be installed at station No. 325 will not be available on November 1, 1985, due to delays in compressor fabrication and in the receipt of an air quality permit from the New Jersey Department of Environmental Regulation required prior to installation.

Applicant seeks authorization to install and operate a 6,000 hp portable compressor near Milford, Pennsylvania, until such time as the permanent compression authorized at station No. 325 becomes available, at which time the portable compressor and appurtenant equipment will be removed. Applicant states that the portable 6,000 hp compressor is owned by Applicant and alleges that it is adequate to provide substitute compression for station No. 325. The proposed site for the portable compressor is adjacent to Applicant's Milford sales meter station (No. 2-0245-1, 2 authorized in Docket No. G-9448 in 1956) located on Applicant's system at milepost 954 + 65 in a remote area near Milford, Pennsylvania. Applicant states that every effort would be made to install the temporary compression within the confines of the existing meter station and right of way; however, additional area is available should it be necessary.

Comment date: September 18, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP85-819-000]

September 9, 1985.

Take notice that on August 23, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP85-819-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Libbey-Owens-Ford Company (LOF) 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 on file with the Commission and open to public inspection.

Columbia Gas requests authorization to transport up to 15 billion Btu equivalent of natural gas per day for LOF through October 31, 1985. Columbia Gas states that the gas to be transported would be purchased from LOF-Tipka-Bartlo Ltd. (Tipka-Bartlo) and Yankee Resources, Inc. (Yankee), and would be used as process gas and boiler fuel in LOF's Toledo, Ohio, plant.

It is indicated that LOF has made arrangements to purchase this gas from Yankee and Tipka-Bartlo. Palmer Energy Company, Inc., is acting as intermediary between LOF and Yankee. Columbia Gas states that it would receive the gas from Yankee and Tipka-Bartlo and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving LOF near Toledo, Ohio.

Columbia Gas states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from receipt points than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within COH's total daily entitlements (TDE). Columbia Gas states that it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the COH's TDE. Columbia Gas further states it

would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Gas states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities of gas transported.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP85-782-000]

September 9, 1985.

Take notice that on August 15, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-782-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorizatin to transport natural gas on behalf of Guardian Industries Corporation (Guardian) under the certificate issued in Docket No. CP83-508-000 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.

Equitable proposes to transport up to 2,500 Mcf of natural gas per day for Guardian. It is stated that the gas to be transported would be purchased from Kepco, Inc. (Kepco), and would be used as process gas at Guardian's plant in Floreffe, Pennsylvania. Equitable states that it would receive the gas from Kepco at an existing receipt point in Ritchie County, West Virginia, and would redeliver the gas at an existing interconnection with Guardian's plant. It is proposed that the term of the service would be until the earlier of 18 months from August 1, 1985, or the termination of authorization provided by Subpart F of Part 157 of the Regulations or the termination of the transportation agreement by the parties thereto.

It is indicated that Equitable would charge the currently applicable transportation rate forth in its Rate Schedule TS-1 which is currently 15.5 cents per Mcf with transportation shrinkage of 2 percent.

Equitable also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Equitable would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-784-000]

4. Northern Natural Gas Company, Divison of InterNorth, Inc.

September 9, 1985.

Take notice that on August 15, 1985, as supplemented on August 23, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-784-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct one delivery point and appurtenant facilities to accommodate natural gas deliveries to Michigan Power Company (Michigan Power) under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern requests authorization to construct and operate one large-volume delivery point to accommodate natural gas deliveries to K.I. Sawyer Air Force Base in Marquette County, Michigan, to be served by Michigan Power.

Northern states that the branchline facilities associated with this proposed delivery point would be constructed under Northern's blanket certificate issued in Docket No. CP82-401-000.

Northern estimates the peak day and annual volumes to be delivered to Michigan Power at the proposed delivery point in the fifth year of service and their end-use are as follows:

Delivery point	Quantity (Mcf)		End-use
	Peak day	Annual	
Firm volumes	2,507	294,422	Residential heating,
Interruptible volumes	1,092	193,939	Commercial heating

Northern states that the volumes to be delivered to Michigan Power at the proposed delivery point would be within the currently authorized firm entitlement which was authorized by Commission order issued on September 24, 1981, in Docket No. CP80-135, and would, therefore, have no impact on its peak day and annual deliveries. Northern further states that Michigan Power's contract demand would be realigned as follows:

Community	Contract demand (Mcf)		
	Existing authority	Proposed adjustments	Proposed authority
Baraga	966	0	966
Chassell	265	0	165
Hancock	1,272	(350)	922
Houghton	1,744	0	1,744
Ishpeming	3,084	(700)	2,384
L'Anse	1,204	(300)	904
Celotex Corp	1,300	0	1,300
Marquette	7,215	(957)	6,258
Negaunee	1,971	0	1,971
OntoNagon	1,153	0	1,153
Palmer	206	(100)	106
K.I. Sawyer AFB	0	2,507	2,507
Silver City	47	0	47
White Pine	373	0	373
White Pine Copper	2,986	0	2,986
Total	23,786	0	23,786

Northern indicates that the proposed facilities would be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1, and a letter agreement between Northern and Michigan Power dated July 31, 1985. Northern further indicates that the total estimated cost to construct the proposed delivery point would be $63,000. Northern states the associated branchline is estimated to cost $1,187,000, for a total project cost of $1,250,000. Northern further states that Michigan Power would not be required to make a contribution in aid of construction.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company, Divison of InterNorth, Inc.

[Docket No. CP85-815-000]

September 9, 1985.

Take notice that on August 22, 1985, Northern Natural Gas Company, Divison of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-815-000 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 delivery point and appurtenant facilities to accommodate natural gas deliveries to Minnegasco, Inc. (Minnegasco) under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is file with the Commission and open to public inspection.

Northern proposed to construct and operate one large-volume delivery point

on its 16-inch Aberdeen line in Minnehaha County, South Dakota, to accommodate natural gas deliveries to the community of Ellis, South Dakota, to be served by Minnegasco.

Northern states that the total estimated cost to construct the proposed facilities is $36,000. Northern states further that Minnegasco would not be required to make a contribution in aid of construction.

The estimated peak day and annual volumes to be sold through the proposed facilities in the fifth year of service, are stated to be 323 Mcf of gas and 38,900 Mcf of gas, respectively.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP85-812-000]
September 9, 1985.

Take notice that on August 22, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-812-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct interruptible sale of natural gas to Victor Ziegler (Ziegler) in Johnson County, Kansas, for use in two residences, one a private residence and the other a group home for youth, under the certificate issued in Docket No. CP82-479-001 pursuant to section 7(c) 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.

Applicant states that such sale would not significantly affect its overall gas supply or have any detrimental effect on existing customers.

The projected delivery of gas through this point is approximately 280 Mcf per year and 2 Mcf on a peak day. The estimated cost of these facilities is $2,500, which would be paid from available cash. Applicant states that the sales price to Ziegler would be under its Excess Rate Schedule F-2 which is currently $2.8593.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP85-791-000]
September 9, 1985.

Take notice that on August 19, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-791-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Clark Material Systems Technology Company (Clark) for use as boiler fuel and manufacturing processing under the certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 1,200 Mcf of natural gas per day on an interruptible basis for Clark for an initial term ending January 9, 1986, or extended through January 9, 1987. Panhandle indicates that the gas to be transported would be purchased from Walls Energy and Gas Company and that it would receive said volumes at an existing point of interconnection with Walls Energy and Gas Transmission, Inc. (Walls Energy), in Moore County, Texas. Panhandle states it would then transport and redeliver the gas, less 4 percent reduction for fuel, to the Freedom compressor station to be compressed by Michigan Gas Storage Company (Storage Company). Panhandle states Storage Company would transport the gas through its station and redeliver thermally equivalent quantities of natural gas to Panhandle at the outlet of said compressor station. Panhandle states it would then transport and redeliver such gas to the Battle Creek Gas Company (Battle Creek) at two existing points of interconnection in Calhoun County, Michigan, for Clark's account. It is further stated that Battle Creek would transport said gas to Clark for use in its Battle Creek, Michigan, plant.

Panhandle states it would construct and operate a measuring station and appurtenant facilities to serve as a point of receipt of gas from Walls Energy at a cost of $28,000. Panhandle further states that the facilities would be located in Moore County, Texas, and that Clark would reimburse Panhandle for this expense. Panhandle commenced this transportation July 9, 1985, under the automatic authority of Section 157.209.

Panhandle indicates that it would charge Clark 42 cents for each million Btu of natural gas transported plus 1.24 cent GRI provided the volumes are within Battle Creek's total daily entitlements (TDE). However, Panhandle states it would charge 87 cents for each million Btu of natural gas transported plus 1.24 cent GRI if the volumes are in excess of Battle Creek's TDE's. It is explained that the above rates would be collected in accordance with Panhandle's Rate Schedule OST.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Penn-York Energy Corporation, National Fuel Gas Supply Corporation

[Docket No. CP85-845-000]
September 9, 1985.

Take notice that on August 30, 1985, Penn-York Energy Corporation (Penn-York), 10 Lafayette Square, Buffalo, New York 14203, and National Fuel Gas Supply Corporation (National), 1100 State Street, Erie, Pennsylvania 16501, filed in Docket No. CP85-845-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Penn-York to provide Supplemental Withdrawal Option (SWOP) service to existing storage customers and authorizing National to provide Limited Term Exchange (LTEX) service to Penn-York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Penn-York proposes to provide SWOP service to its customers during the winter season from November 1, 1985, through March 31, 1986. Penn-York indicates that the service will enable existing Rate Schedule SS-1 customers, which now are entitled to withdraw at a maximum daily rate of 1/150th of Annual Storage Volume, to increase such daily rate to a level of up to 1/110th of Annual Storage Volume.

Penn-York proposes to charge its customers a rate of 61.69 cents per Mcf withdrawn at daily levels exceeding 1/150th of Annual Storage Volume. It is stated that there would be no minimum bill and no service agreement, and the service would be rendered under new Rate Schedule SWOP.

National proposes to provide LTEX service during the period November 1, 1985, through October 31, 1986. It is stated that LTEX service is required in order to enable Penn-York to meet its

customers' requirements under Penn-York's Rate Schedules SS–1 and SWOP. It is further stated that National would advance up to 6,000,000 Mcf of gas to Penn-York at a daily rate of up to 140,000 Mcf and would accept returned volumes at a daily rate of up to 50,000 Mcf with all advanced volumes to be returned by October 31, 1986. National proposes to charge Penn-York on a monthly basis a rate of 61.69 cents per Mcf for the maximum number of Mcf of advanced volume outstanding at any one time during the term of the service.

Penn-York and National propose to terminate SWOP and LTEX services on March 31, 1986, or as soon prior thereto as all advanced gas has been returned to National.

Comment date: September 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP85–794–000]

September 9, 1985.

Take notice that on August 19, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85–794–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Texas Gas to (1) sell natural gas to The Cincinnati Gas & Electric Company (CG&E) under Texas Gas' Rate Schedule CD–4 at an initial contract demand of 50,000 Mcf per day, (2) deliver the proposed volumes at four delivery points, and (3) reduce the contract demand applicable to Columbia Gas Transmission Corporation (Columbia) from 290,708 Mcf per day to 243,828 Mcf per day. Texas Gas also requests permission to abandon the sales service presently being rendered by Texas Gas to CG&E under Texas Gas' Rate Schedule SG–4. Texas Gas' proposals are more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to sell to CG&E an initial contract demand of 50,000 Mcf per day under Texas Gas' Rate Schedule CD–4.[1] Texas Gas states that the delivery points for the new service to be rendered to CG&E would be at the Harrison and Dry Fork Road Station in Ohio, the delivery points through which Texas Gas presently serves CG&E under Texas Gas' Rate Schedule SG–4, and at the Butler and Venice Stations in Ohio, delivery points at which Texas Gas physically delivers gas to CG&E for its account and the account of others. Texas Gas states that the proposed service would not require Texas Gas to construct additional facilities. It is further stated that the capacity at the proposed delivery points is sufficient to handle the proposed sales volumes. Texas Gas states that because the new sales service to CG&E would subsume within it the 3,120 Mcf per day service presently rendered by Texas Gas to CG&E under Texas Gas' Rates Schedule SG–4, Texas Gas seeks authorization to abandon such service to CG&E. Texas Gas requests that the new sales service to CG&E be made effective as of November 1, 1985.

Texas Gas further requests authorization to reduce the contract demand applicable to Columbia from 290,708 Mcf per day to 243,828 Mcf per day in order to offset the proposed contract demand for CG&E. Texas Gas states that Columbia currently is an existing jurisdictional customer of Texas Gas purchasing natural gas pursuant to Texas Gas' Rate Schedule CDL–4. Texas Gas states that the contract demand reduction proposed for Columbia is supported by Columbia's recent historical and projected purchasing patterns from Texas Gas. Texas Gas states that the proposed contract demand reduction would still make available for purchase volumes of natural gas in excess of the annual purchases made by Columbia from Texas Gas since 1982.

Texas Gas asserts that the proposed new service to CG&E is justified by the public convenience and necessity in that it offers CG&E increased purchasing flexibility and supply reliability without the need for constructing new facilities. Texas Gas further states that the proposed service would permit CG&E to secure an additional source of firm supply and thus better assure, through competition, that its purchases are priced at marketable levels. Texas Gas concludes that its existing facilities and available gas supply would allow Texas Gas to render the proposed new service without detriment to its other jurisdictional customers.

Comment date: September 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP85–801–000]

September 9, 1985

Take notice that on August 20, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–801–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of direct sale natural gas for Intercity Management Corporation (Intercity) for use in Intercity's gas lift operation in Dewitt County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a June 1, 1985, industrial gas sales contract between United and Intercity, United proposes to transport up to 100 Mcf of industrial gas per day. United states that it would deliver the gas to Intercity at the outlet side of United's existing measurement facilities in W.C. Brown Survey, A–96, near the Town of Wessatche, Dewitt County, Texas. United indicates that for the proposed service it would charge Intercity the rate in United's Rate Schedule No. 85–87.

Comment date: September 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

[1] It is explained that all volumes are stated at 14.73 psia. Texas Gas states that pursuant to its filing in Docket No. RP85–141–000, Texas Gas has proposed an energy-based tariff to become effective on November 1, 1985, and that the contract demand for CG&E, under the proposed tariff, would become 50,885 million Btu.

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of inervention 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. 85-21851 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-48-000]

Conoco Inc.; Petition for Waiver

September 9, 1985.

Take notice that on August 12, 1985, Conoco Inc. (Conoco) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Order 399-B, 50 FR 30141 (July 24, 1985). Conoco seeks waiver of Btu refund obligations attributable to amounts paid to the Minerals Management Service of the U.S. Department of the Interior (MMS) as royalty interests under Federal Outer Continental Shelf leases.

Conoco states that it will be irreparably injured unless the Commission: (1) Waives any Btu measurement refund obligation of Conoco Inc. attributable to payments made to the MMS before November 9, 1981 with respect to royalty interests under certain Federal OCS leases; and (2) further determines that its waiver of these Btu measurement refunds shall remain in full force and effect until the final resolution of related matters involved in appeals pending before the United States Department of Interior Board of Land Appeals.

Conoco requests that the Commission shorten the period for making responses or filing interventions.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21847 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-648-000]

Kerr-McGee Corp.; Application for a Blanket Certificate of Public Convenience and Necessity and for Approval of Abandonment and Pre-Granted Abandonment of Certain Sales and Transportation of Services

September 9, 1985.

Take Notice that on September 4, 1985, Kerr-McGee Corporation (Kerr-McGee), pursuant to sections 4 and 7 of the Natural Gas Act, 15, U.S.C. 717-171z (1982) (NGA), and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), hereby applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas interstate commerce by Kerr-McGee and the producers from which Kerr-McGee purchases natural gas, (2) authorizing sales for resale of natural gas in interstate commerce by producers through Kerr-McGee acting as its agent, (3) authorizing blanket partial abandonment and pre-granted abandonment of certain sales as described herein, (4) authorizing transportation, where if necessary, under section 7(c) of the NGA for interstate pipelines, (5) authorizing pre-granted abandonment of such transportation by interstate pipelines, and (6) authorizing transportation; by intrastate and Hinshaw pipelines as set forth herein, all to be effective on or before November 1, 1985, as more fully described in the Application which is on file with the Commission and open for public inspection.

Applicant states that the certificate and abandonment authority sought herein, if granted, will enable Kerr-McGee to purchase from various producers, and resell, natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by Section 109 of the Natural Gas Policy Act (NGPA), to act as agent in sales by producers for resale of natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by section 109 of the NGPA, and to have such gas, as well as gas which is no longer within the Commission's NGA authority, transported in interstate commerce to all customers who have the ability to buy gas on the open market.

Kerr-McGee is requesting the authority described herein only to the extent that such authority is not provided for in any final rule issued by the Commission in its Notice of Proposed Rulemaking, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM85-1-000 (May 30, 1985) (NOPR), in the event a final rule in the NOPR is not issued by November 1, 1985, and/or in the event any such rule is stayed or not in effect after its issuance.

Kerr-McGee, on behalf of itself, producers, and pipelines, are requesting authority, to be effective no later than November 1, 1985, (1) to make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the Section 109 price; (2) to temporarily abandon sales for resale of NGA gas for which the maximum lawful price is higher than the Section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate, intrastate and Hinshaw pipelines, and local distribution companies, to producers for resale either by Kerr-McGee or by such producers through Kerr-McGee acting as its agent, (3) to abandon (pre-granted abandonment) any sale for resale in interstate commerce authorized pursuant to the blanket certificate issued herein, (4) to have any such gas, as well as natural gas which is no longer subject to the Commission's NGA authority, transported in interstate commerce, on a self-implementing basis, by any transporter to any purchaser, and (5) to abandon (pre-granted abandonment) such transportation.

Such authority, if granted, will enable Kerr-McGee to purchase NGA gas for which the maximum lawful price is higher than the Section 109 price (hereinafter referred to as NGA gas) from producers willing to sell to Kerr-McGee for resale on the spot market.

Such authority will also enable Kerr-McGee to act as agent for various producers in sales of NGA gas on the

spot market. Further, pipelines will be authorized to transport both NGA gas and gas which is no longer subject to the Commission's authority, sold by Kerr-McGee and producers on the spot market.

It is asserted that the authority sought by Kerr-McGee on behalf of itself, producers and pipelines, is similar to that recently granted to other marketers of natural gas. The Commission's finding in those cases that such authority will, in particular, aid small independent producers that usually do not participate in the spot market, is equally applicable here. Kerr-McGee can ease the administrative burden of such activities on small producers, effect the release of surplus gas where necessary, find purchasers for that gas, and arrange for transportation, on behalf of these producers. Kerr-McGee can provide the necessary marketing functions that many producers are not staffed to handle.

Kerr-McGee is willing to subject itself to the Commission's NGA jurisdiction to the extent, and only to the extent, of its participation in these jurisdictional transactions, in the same manner and on the same basis that the Commission's jurisdiction attached to certain marketers as referenced in the Application. Kerr-McGee requests that the Commission clarify and declare that Kerr-McGee will be subject to the Commission's NGA jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before September 19, 1985 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Anyone who wants to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided, it will be unnecessary for Applicant to appear or to be represented at the hearing, unless Applicant is otherwise advised.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21848 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-642-000]

Reliance Pipeline Co.; Application for a Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

September 9, 1985.

Take Notice that on August 30, 1985, Reliance Pipeline Company of Oneok Plaza, Suite 701, 100 West Fifth Street, Tulsa, Oklahoma 74103, filed an Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization. By its Application, Applicant seeks authorization to commence a special marketing program termed the Reliance Special Marketing Program ("RSMP"). Applicant proposes to conduct this program in a manner similar to those SMPs authorized by the Commission on September 26, 1984 and December 21, 1984 in Docket Nos. CI83-269, *et al.* The authority sought herein would authorize the limited-term abandonment of the sale of gas by participating producers or other suppliers to existing purchasers, and the resale of that gas by RSMP to eligible RSMP purchasers, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would authorize interstate pipelines, distributors and Hinshaw pipelines to transport RSMP volumes pursuant to section 7(c) of the Natural Gas Act and would authorize the transportation of RSMP volumes pursuant to section 311(a) of the the Natural Gas Policy Act.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before September 19, 1985 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Anyone who wants to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided, it will be unnecessary for Applicant to appear or to be represented at the hearing, unless Applicant is otherwise advised.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21850 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-195-000]

Southern Natural Gas Co.; Changes in FERC Gas Tariff

September 6, 1985.

Take notice that Southern Natural Gas Company (Southern) on August 30, 1985, tendered for filing certain proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective October 1, 1985. The proposed changes reflect the addition of an annual minimum commodity bill under Southern's OCD and OCDL Rate Schedules applicable to Southern's partial requirements customers. Southern states that its proposed minimum bill provision is consistent with the Commission's Order No. 380 and is designed to recover part of the commodity fixed costs which would otherwise not be recovered by Southern as a result of lost sales.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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 September 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. 85-21849 Filed 9-11-85; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Conrad-Shelby 230-KV Transmission Line Project, Montana; Environmental Impact Statement Scoping Meetings

AGENCY: Western Area Power Administration, Energy.

ACTION: Notice of Scoping Meetings for the Project Environmental Impact Statement.

SUMMARY: In the July 18, 1985, **Federal Register** (Volume 50, page 29259), the Western Area Power Administration (Western) announced its intention to prepare an Environmental Impact Statement (EIS) addressing a proposed 230-kV electric transmission line between Conrad and Shelby, Montana, in Pondera and Toole Counties.

Public scoping meetings for the EIS will be held on September 25 and 26, 1985. The specific time and location for each meeting is as follows:

September 25, 1985, 7:00 p.m.

Conrad Community Center, 106 South Delaware, Conrad, Montana

September 26, 1985, 7:00 p.m.

Hospitality Room, Marias River Electric Cooperative, 910 Roosevelt Highway, Shelby, Montana

In addition to the public scoping meetings, Western will meet with county commissioners and planning board members, and with agencies of the State of Montana.

The purpose of the scoping meetings is to inform the public and public officials of the proposed project and receive their concerns and identify potential issues that may develop. The public is invited to participate in the scoping process by attending the meetings or providing their written comments to the address listed below. Western will use the information received to delineate and weigh the topics to be covered in the EIS. The draft EIS is scheduled to be available to the public by August 1986 and the final EIS by February 1987.

FOR FURTHER INFORMATION CONTACT: Acting Assistant Area Manager for Engineering, Billings, Area Office, Western Area Power Administration, Department of Energy, P.O. Box EGY, Billings, Montana 59101, (406) 657-6042.

Issued in Golden, Colorado, August 28, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-21884 Filed 9-11-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 85-226; 35096]

Cattle Country Broadcasting; Hearing Designation Order and Notice of Apparent Liability

In re Applications: MM Docket No. 85-127, Charles C. Babbs and Nellie L. Babbs d/b/a/ Cattle Country Broadcasting, BRH-830201ZY, For Renewal of License of Station KTTL (FM) Dodge City, Kansas and Community Service Broadcasting, Incorporated, Dodge City, Kansas, BPH-830502AY, For Construction Permit for a New FM Station.

Adopted: April 26, 1985.
Released: August 14, 1985.

By the Commission: Chairman Fowler concurring in part, dissenting in part and issuing a statement; Commissioner Rivera issuing a separate statement; Commissioner Patrick concurring in the result and issuing a statement at a later date.

1. The Commission has before it (1) the above-captioned timely filed application for renewal of license for Station KTTL(FM), Dodge City, Kansas, filed by Charles C. and Nellie L. Babbs d/b/a Cattle Country Broadcasting; (2) petitions to deny KTTL's renewal application filed by Dodge City Citizens for Better Broadcasting (Citizens) and the National Black Media Coalition (NBMC);[1] (3) informal objections to KTTL's renewal application filed by the Anti-Defamation League of B'nai B'rith (ADL), the Jewish Community Relations Bureau of Kansas City, Missouri, the Jewish War Veterans of the U.S.A., and Robert T. Stephan, Attorney General of the State of Kansas; (4) an opposition to the petitions to deny, informal objections, a response to a Commission inquiry, and supplemental pleadings and information filed by KTTL;[2] (5) replies to KTTL's opposition, and supplemental pleadings and information, filed by Citizens, ADL and Attorney General Stephan; and (6) a timely filed application for a construction permit for a new FM broadcast station in Dodge City, Kansas, filed by Community Service Broadcasting, Inc. (CSBI) which is mutually-exclusive with the KTTL renewal application.[3]

I. Background

2. We consider this case against the background of unusually widespread publicity and political interest; the case has been the subject of many national and local news accounts, and, in fact, Mrs. Babbs was called to testify on the matter before the House Subcommittee on Telecommunications, Consumer Protection and Finance. We have been very conscious of the need to maintain impartiality against this highly charged background. We asked our staff to undergo a thorough and searching examination of the materials to insure that each of the allegations was fully explored and that all applicable procedural and legal requirements were met. Our findings here are the product of this process. The allegations raised by the petitioners and informal objectors fall into three categories: (1) Major program content issues; (2) other alleged violations of the Communications Act or Commission rules and policies; and (3) pending legal proceedings and collateral matters. The programming content issues (which make up the bulk of the allegations) arise as a result of the licensee's broadcast of two series of programs totalling 264 hours [4] of airtime

[1] Citizens' petition to deny is patently defective since it is not supported by affidavits of persons with personal knowledge of the facts contained therein as required by section 309(d)(1) of the Communications Act of 1934, as amended, 37 U.S.C. 309(d)(1), and § 73.3584(a) of the Commission's rules, 47 CFR 73.3584(a). It will, however, be considered as an informal objection pursuant to § 73.3587 of the Rules, 47 CFR 73.3587.

[2] Initially, Mr. and Mrs. Babbs did not avail themselves of their rights under § 73.3584(b) of the rules, 47 CFR 73.3584(b) to file an opposition to the petitions to deny. In view of the serious nature of the allegations raised in the petitions, the Commission, by letter dated June 20, 1983, formally advised Mr. and Mrs. Babbs of their right to file an opposition and requested that they inform the Commission of their intention to file an opposition pleading. By the same letter the Babbs were apprised of the informal objections which had been filed against their renewal application and, finally, they were directed to submit for the Commission's review a copy of the programs/issues list which all licensees are required by § 73.3526(a)(10) of the Rules, 47 CFR 73.3526(a)(10), to maintain. The licensee's response was submitted in two parts, filed on July 5 and July 7, 1983, respectively.

[3] With two minor exceptions, CSBI's application is complete. First, CSBI has not responded to Section II, Paragraph 9 of FCC Form 301 which concerns the applicant's ownership structure. Second, Section II, Paragraph 10 of the same form asks a related question whith respect to stock pleadged as security. A negative response requires a full explanation. Although the applicant answered "no", the required explanation was not provided. Accordingly, by this *Hearing Designation Order* CSBI will be ordered to submit to the Administrative Law Judge an amendment correcting these minor deficiencies in its application.

[4] KTTL's license term ended on June 1, 1983. In addition to the 264 hours of programming during the term, ADL and Citizens notified the Commission that the identical programs [hereinafter referred to as the "Gale/Wickstrom programs"] were also aired from July to September 1983. On December 1, 1983, Charles C. Babbs informed the Commission that he had obtained a default judgment against his wife, Nellie L. Babbs, and had taken possession and total responsibility for the operation of the station; that the "offensive tapes" had been removed from the air; that the station's "normal" programming, including news and weather reports, had been returned to the air; and that, therefore, there was no longer any reason to deny KTTL's license renewal application. Although these comments reflect Mr. Babbs' concern about KTTL's programming, we do

Continued

during the license term which, for various reasons, the petitioners found to be offensive. The first series of programs "National Identity Broadcast" featured the Reverend William P. Gale from Mariposa, California, and was aired for one hour nightly at 10:00 p.m. from June to August 1982. According to petitioners, the Gale programs attacked our orderly system of government, urged listeners to ignore law enforcement authorities, and attacked the U.S. monetary system. In addition, the programs were said to include crude and discriminatory comments aimed at racial and religious minority groups, and repeatedly distorted biblical theology, urging that "Jews" and "niggers" are responsible for our current state of domestic and foreign affairs. (Citizens Petition, p. 4. The second program series, "Blow the Trumpet Broadcast," featured the Reverend James Wickstrom from Tigerton, Wisconsin, and was aired for one hour nightly at 9:00 p.m. from October 1982 to March 1983. The Wickstrom programs were of the same type and character as the Gale programs. (Citizens Petition, p.5). According to Citizens, these programs contained the most crude, derogotary, defamatory and incendiary rhetoric, all apparently aimed at cultivating an unhealthy disregard for our governmental system while espounsing open deprecation of and even overt violence directed toward racial and religious minorities within the community. *Id.*

II. Program Content Issues

(A) Clear and Present Danger

3. Citizens and ADL argue that KTTL's license renewal application should be denied. According to petitioners, the Gale/Wickstrom programs fall outside the protection of the First Amendment because they pose a clear and present danger to the maintenance of law and order in the State of Kansas since they advocate the overthrow of our government and constitute a deliberate incitement to riot and imminent lawless action. (Citizens Petition, p. 4; Attorney General Informal Objection, p. 9; ADL Informal Objection, p. 3). The petitioners argue that the inflammatory programming presented by KTTL raises substantial and material questions of fact concerning the Babbs' qualifications to remain Commission licensees. Accordingly, they conclude that grant of KTTL's renewal application would not serve the public interest.

4. At the outset we note that both the First Amendment and section 326 of the Communications Act prohibit us from censoring broadcast material or interfering with the licensee's discretion in selecting and broadcasting particular programming. It is well settled that the Commission cannot use its regulatory power to rule material off the air merely because the material may be offensive to many members of the broadcaster's audience. *See, Turner Broadcasting Corp.*, 87 FCC 2d 476, 481 (1981); *Thaddeus L. Kowalski*, 46 FCC 2d 124 (1974), *aff'd sub. nom. Polish-American Congress v. FCC*, 520 F.2d 1248 (7th Cir. 1975), *cert. denied*, 424 U.S. 927 (1976); *Anti-Defamation League v. FCC*, 403 F.2d 169 (D.C. Cir. 1968), *cert. denied*, 394 U.S. 930 (1969). Indeed, we have long eschewed any role as a national arbiter of what is good programming. *See, In the Matter of Deregulation of Radio*, 84 FCC 2d 968, 978 (1981), *aff'd in part, remanded in part, sub. nom. Office of Communications of the United Church of Christ, et al. v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). Nonetheless, while the Commission cannot insist that licensees abandon program material solely because it is offensive to the broadcaster's audience, if the programming constitutes *a violation of law*, the Commission may consider such conduct when determining whether to renew or take sanctions against the offending licensee. *Sonderling Broadcasting Corp.*, 41 FCC 2d 777, 784 (1973); *FCC v. ABC*, 347 U.S. 284, n.7 (1954); *see also, Violation by Applicants of Laws of U.S.*, 42 FCC 2d 399 (1951). We do not have the necessary information and expertise to determine whether there has been a violation of Kansas state law. If there has been a violation of state law, we would expect it to be litigated before the state authorities, not the FCC. Of course, we would take into account any final judgments of state law violations in our proceedings. Since this information is uniquely within the ken of the Attorney General of Kansas, we invite him to participate as a party to this proceeding. Accordingly, in paragraph 43, below, we have made him a party and expect him to apprise the Administrative Law Judge of all final adjudications involving the Babbs.

5. This Commission's regulatory power with respect to analysis of *"clear and present danger"* allegations is also circumscribed. As a national, administrative body, our review is removed both in time and proximity from the events precipitating these complaints. As noted below, the Supreme Court case law on this issue is specific in that it requires judgment on not only the *content* of the speech, but also the *context* in which it is heard. We believe that separate and searching study of these two crucial matters is most appropriately performed by the local authorities under the auspices of applicable state and federal law. We are, therefore, disposed to give significant notice and deference to the factual judgments made by them in these cases. Notwithstanding these concerns we have reviewed extensively the evidence brought forward by the petitioners and objectors and do not find sufficient evidence to satisfy the heavy burden of demonstrating that this programming was outside the protections of the First Amendment or otherwise constituted a violation of law. While we can appreciate the fact that the programming was highly offensive to petitioners, we do not have evidence that the programming amounted to more than "advocacy of illegal action at some indefinite future time," *see, Hess v. Indiana*, 414 U.S. 105 (1973). Without demonstrating that speech is directed toward inciting or producing imminent lawless action and is likely to incite or produce such action, the government may not "prosecute advocacy of the use of force or of law violation." *See Brandenberg v. Ohio*, 395 U.S. 444, 447 (1969). In view of the fact that the Supreme Court has made it abundantly clear that "abstract . . . teaching of the moral propriety or even moral necessity for a resort to force and violence," constitutes protected speech, *Noto v. United States*, 367 U.S. 290 (1961), we do not believe that the facts presented here warrant designation of this issue.[5]

6. Having concluded that the programming in question fails to breach the "clear and present danger" test, we believe this case falls squarely within the precedent established in *Anti-Defamation League of B'nai B'rith*, 4 FCC 2d 190 (1966), which also involved the broadcasting of programming that was highly offensive to many. There, the Commission restated the applicable principles which had evolved from those applied in the earlier administration of the Federal Radio Act and the Communications Act:

> It is the judgment of the Commission, as it has been the judgment of those who drafted our Constitution and of the overwhelming majority of our legislators and judges over the years, that the public interest is best served by permitting the expression of any

not believe that they reflect an admission by him of wrongdoing.

[5] We note that in his informal objection, Kansas Attorney General Stephan asserts that the programs did constitute an incitement to riot. His objection, however, contains no detailed analysis upon which to base a finding that a violation has occurred.

views that do not involve "a clear and present danger of serious substantive evil that rises far above public convenience, annoyance, or unrest." *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949); *Chaplinsky v. New Hampshire*, 315 U.S. 568; *Ashton v. Kentucky*, [384 U.S. 195 (1966)]. This most assuredly does not mean that those who uphold this principle approve of the opinions that are expressed under its protection. On the contrary, this principle insures that the most diverse and opposing opinions will be expressed, many of which may be even highly offensive to those officials who thus protect the rights of others to free speech. If there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable or congenial.

4 FCC 2d at 191–192.

(B) Fairness Doctrine

7. We also find that petitioners have not satisfied their obligation to present substantial and material facts sufficient to justify designation of a fairness issue in this license renewal proceeding. We begin here by reasserting the Commission's steadfast position that fairness complaints most appropriately are considered outside the license renewal context. This procedure underwent extensive review in Docket No. 19260, which culminated in the *Fairness Report*, 48 FCC 2d 1 (1974). There, the Commission rejected proposals to consider routinely fairness complaints in renewal proceedings, rather than act on such complaints throughout the license term, saying that such reviews would not advance the public's interests in receiving timely information on public issues. *Id.*, at 18. In addition, the Commission cited overriding practical and equitable reasons for adhering to the complaint process, saying "this procedure aids the broadcaster by helping to head off practices which (if left uncorrected) place his license in jeopardy," and that "we do not believe that it would be possible to make an overall assessment of licensee performance at renewal time." *Id. See also, Fairness Reconsideration*, 58 FCC 2d 691, 695 (1976). We think the facts of this case, involving as they do the airing of programs highlighting ideas and points of view that are very offensive to some members of the audience, underline the wisdom of complaint rather than renewal hearing treatment of fairness issues. Essentially, we have before us the unilateral objections of the petitioners on these issues without the customary record that woud be created following our standard complaint procedure. Thus, the petitioners face the burden not only of demonstrating that the fairness doctrine has been violated under the usual standards applied in our complaint process, but also that if proven these violations would reach the substantial and material tests for designation in a renewal hearing under *California Public Broadcasting Forum v. FCC* (KQED), Nos. 82–1235, 83–2105, 83–2105 (D.C. Cir., January 11, 1985), and *Stone v. FCC*, 466 F.2d 316, 323 (D.C. Cir. 1972). To avoid this somewhat anomalous procedural situation in the future, we have instructed the Mass Media Bureau to sever from all future petitions to deny allegations of fairness violations that have not alrady been subject to routine complaint processing and refer them to the Fairness and Political Programming Branch for traditional treatment. This will enable us to avoid reviews of fairness allegations in the renewal context until they have been fully considered in the complaint context, and, where appropriate, the licensee has had a subsequent opportunity to correct any fairness shortcomings. *See National Citizens Commission for Broadcasting v. FCC*, 567 F.2d 1095 (1976), and *NBC v. FCC*, 516 F.2d 1101 (1974), at note 57. Although we find that petitioners here do not make out a sufficient case on this record to justify a hearing issue, we remind complaining parties that this does not preclude or otherwise foreclose their ability to file traditional fairness complaints on these and related issues.

8. Against this background, we review the substance of the fairness requirement and the complainant's allegations. The fairness doctrine requires that a licensee who presents programming on one side of a controversial issue of public importance afford a reasonable opportunity in its overall programming for the presentation of contrasting viewpoints. Each licensee has the responsibility to select the particular news item to be reported or the particular local, state, national or international issues of public importance to be considered. *See Editorializing by Broadcast Licensees*, 13 FCC 1246, 1247 (1949), *Fairness Report*, 48 FCC 2d 1, 10 (1974). This requirement is content neutral and does not prohibit or mandate the broadcast of programming on any particular issue.

9. The licensee has very broad discretion in the manner in which its fairness responsibilities are discharged. The licensee in the first instance is responsible for determining which issues are controversial issues of public importance within its community. If appropriately challenged, it must inform the Commission of the programs which it broadcast to address those issues. In addition, the licensee determines how best to present contrasting viewpoints on issues of public importance, including the content, format, spokesperson, duration and scheduling of programs espousing the contrasting viewpoints.

10. When viewing fairness doctrine complaints the Commission will consider the licensee's programming overall, rather than some finite amount of programming. In the absence of a showing that the licensee acted unreasonably or in bad faith the Commission will not substitute its judgment for that of the licensee. *Fairness Report*, 48 FCC 2d at 10. In view of this standard, complainants raising fairness allegations bear a particularly heavy procedural burden. They must provide specific, detailed information to demonstrate that the licensee has not complied with the fairness doctrine. In fact, until the complainant establishes a *prima facie* case that a licensee has violated the fairness doctrine, the Commission will not even direct an inquiry on the matter to the licensee. *See, e.g., Allen C. Phelps*, 21 FCC 2d 12 (1969); *Fairness Report, supra*, 48 FCC 2d at 8.

11. Initially, we note that the offensiveness of programming cannot be the basis of a fairness doctrine violation, and we cannot proscribe programming solely because it is offensive. Indeed, the Commission has held that "the public interest is best served by permitting the expression of any views that do not involve a 'clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest'. "[T]his principle ensures that the most diverse and opposing opinions will be expressed, many of which may be even highly offensive to those officials who thus protect the rights of others to free speech." *Anti-Defamation League of B'nai B'rith*, at 191–192. (citations omitted). *See also Turner Broadcasting Corp.*, 87 FCC 2d 476, 481 (1981).

12. Petitioners seeking to establish a fairness violation must first satisfy the Commission's well-established requirements for making out a *prima facie* case. The requirement that fairness complaints contain detailed and specific information sufficient to make out a *prima facie* case against the licensee, has, in fact, been recognized by the courts as specifically "designed to weed out those complaints that would burden broadcasters without sufficient likelihood that a countervailing benefit will be gained." [6] This procedural

[6] *American Security Council Education Foundation v. FCC*, 607 F.2d 438, 452, 453 (1979), *cert. denied*, 444 U.S. 1013 (1980). *See Democratic National Committee v. FCC*, 717 F.2d 1471, 1475 (1983).

burden is a necessary part of our effort to maintain the delicate constitutional balance associated with the fairness doctrine. *Columbia Broadcasting System v. Democratic National Committee*, 412 U.S. 94, 102 (1973); *American Security Council Education Foundation v. FCC*, 607 F.2d at 445.

13. We have carefully reviewed the record before us, including illustrative transcripts and several hours of tapes of the Gale/Wickstrom programs.[7] We find that petitioners have failed to meet their burden to make a *prima facie* case for a fairness violation. Accordingly, for the reasons discussed below, we will not designate a fairness doctrine issue in this proceeding or prescribe some other fairness remedy.

14. A *prima facie* case for a fairness violation consists of several elements. The complainant must: (1) Identify the issues broadcast with specificity; (2) demonstrate by objectively quantifiable information that the issues were controversial; (3) demonstrate that the issues identified were of public importance; (4) demonstrate that the broadcasts addressed the issues identified by petitioners; (5) demonstrate that the programs meaningfully discussed the identified issues of public importance; and (6) demonstrate that in its overall programming the licensee failed to present contrasting viewpoints sufficient to meet its fairness obligations.

(1) Identification of the Issues

15. The Commission has long emphasized that an essential part of the complainant's evidentiary burden in establishing a *prima facie* case is to set out a particular, well-defined issue as the subject of its complaint. In *Fairness Reconsideration*, the Commission noted

> This requirement is needed so that complainants, licensees and the Commission will have a clearer understanding of the positions of the parties. This is particulary true because once the burden of specificity has been placed upon the complainant, our attention and that of the licensee is then directed to the issue as framed by the complainant. We do not intend to be placed in the position of specifying the alleged controversial issue of public importance in a complaint. It is not proper function of the administering agency to frame the complaints coming before it and it is incumbent upon the complaining party to bring before us a *prima facie* complaint.

58 FCC 2d at 696.

[7] The broadcast tapes on which the petitioners relied were submitted to the Commission as part of a supplementary pleading filed on November 21, 1983, by Citizens.

16. The controversial issues of public importance were framed by petitioners as follows: (a) The immigration of minority groups and the impact of this immigration on the economy; (b) the cause of the economic recession and distress; and (c) the adequacy of the criminal justice system to punish offenders. (Citizens Reply, p. 10). In our view, petitioners have identified the issues of concern to them with sufficient specificity to facilitate our review of their complaint. Accordingly, we find that they have met this aspect of their evidentiary burden. However, as discussed below, petitioners have failed to establish that these issues were controversial, that the programs in question directly addressed these issues, that there was a meaningful discussion of the issues identified by the petitioners or that in its overall programming the licensee failed to provide fair and balanced coverage of the issues.

(2) Controversial Issues of Public Importance

17. The second and third elements of a fairness *prima facie* case require a demonstration that the issues identified are both controversial and of public importance. Failure to show either is fatal to the complaint. *See Fairness Report*, 48 FCC 2d at 11–12; *Healey v. FCC*, 460 F.2d 917, 922–23 (D.C. Cir. 1972). The measure of controversiality is "whether the issue is the subject of vigorous debate with substantial elements of the community in opposition to one another." [8] The principal test of "public importance" is "the impact that the issue is likely to have on the community at large." [9] Mere community interest does not constitute controversiality. By limiting the application of the fairness doctrine to issues that satisfy both the "controversiality" and "public importance" tests, the Commission has sought to restrict the potential chilling effect of the doctrine on broadcast journalism. In other words, newsworthiness is not sufficient, and application of the doctrine to every "newsworthy" dispute:

> would so inhibit television and radio as to destroy a good part of their public usefulness. It would make what has already been criticized as a bland product disseminated by an uncourageous media even more innocuous, and it would in every way inhibit that "robust public debate" that the fairness doctrine was borne to enhance.

Healey v. FCC, supra at 923.

18. Looking at each of the purported issues in detail, we find that the supporting material either fails to demonstrate that the issue was a subject of controversy in the community, or fails to address the issues identified by petitioners. [10] Petitioners submitted the most supporting material for issues related to the "cause of the economic recession and distress." However, it is clear that neither controversiality nor public importance can be proved just by showing that an issue has received broadcast or news coverage. *See, Healey v. F.C.C.*, 460 F.2d 917, 922 (D.C. Cir. 1972). The petitioners, for example, submit the issues/programs lists of other stations in the Dodge City area and newspaper articles from various papers to support the proposition that the cause of the recession was a controversial issue at that time in the community. The program lists from these stations demonstrate that economic issues in general received considerable coverage by other broadcast media. However, they do not evidence that there was a specific controversy on these matters.[11] For example, the 1983, 1982, and 1980 issues list for KGNO in Dodge City have "Economic Problems" listed as the number one issue treated by the station in its issue responsive programming for each of those years. However, the programs listed by the station contain examples of a great variety of economic issues, including property taxes, state and local sales taxes, minimum wage laws, energy costs, state, and local spending patterns, balancing the national budget, problems or persons on fixed incomes, congressional pay increases, local tourism, causes and effects of inflation, federal income tax

[8] *Fairness Report, supra*, 48 FCC 2d at 12.

[9] Although public importance may be shown by objectively quantifiable information such as the degree of media coverage the issue has received and the degree of attention the issue has received from government officials and other community leaders, the principal test is a subjective evaluation by broadcasters of the impact that the issue is likely to have on the community at large. *See Fairness Report*, 48 FCC 2d at 11–12.

[10] The showing necessary to demonstrate an issue's controversiality is more objective than the showing necessary with respect to the issue's public importance. Specifically, a controversiality showing should include information concerning the degree of attention paid to an issue by government officials, community leaders, and the media at the time the subject material was broadcast; any controversy and opposition of a substantial nature concerning programs broadcast by a licensee (even where such "controversy and opposition" arises subsequent to the broadcast of the programming in question); or any other objective information which shows that the issue is the subject of vigorous debate with substantial elements of the community in opposition to one another. *See Fairness Report*, 48 FCC 2d at 12.

[11] There are many community problems which might properly be listed as a station's issue responsive programming, and yet fail to be controversial in that community.

cuts, and the federal budget. The newspaper articles dealing with economic problems similarly focus on various matters including home foreclosures, farm and ranch expenses, declining land prices, and the adequacy of the budget of the Dodge City policy department. Also several of these articles deal with the economic distress of the farm population in the area. In sum, what we have here is a compendium of diffuse programs and articles discussing various and sundry economic problems which may relate to aspects of the economic recession, but which do not show that there was any controversy in Dodge City about the causes of the recession. None of the programs or articles reveal a controversy over the causes of or solutions to the problems that could be presumed to be the subject of vigorous debate among susbtantial elements of the community in opposition to one another. See *Fairness Report*, at 12. To the contrary, the articles evidence a rather remarkable agreement on the causes of problems, such as the economic farm problem, and no discussion of solutions that would be fairly characterized as controversial.[12]

19. Petitioners have similarly failed to demonstrate that "the impact of immigration on the economy" was an issue of controversy in Dodge City. Looking at the issues/programs lists of other stations, we find that none of the stations listed an issue related to the econmic impact of immigration. Three of the problems/issues lists, specifically the 1982 lists from KGNO and KDCK, and the 1980 list from KDCK, and four of the newspaper articles from the *Dodge City Dodge Globe*, focus on the racial tensions in the community resulting from a significant influx of Vietnamese into the Dodge City area. However, programs on racial tensions do not support petitioners' claim that the impact of immigration on the economy was a controversial issue in Dodge City. Racial tension may have many causes, including economics, but here the issue framed is not matched by the evidence submitted.

20. The remaining issue is the adequacy of the criminal justice system to punish offenders. Here again petitioners have failed to show that there was controversy in Dodge City about this issue. The proffered materials include a great deal of information about crime prevention generally and discussion of specific crimes, as we would expect would be found in many communities in the United States. For example, the 1980 KGNO list includes "problems related to streets and traffic" and "drug and alcohol abuse." The 1982 KDCK list includes "legalization of marijuana" and "rape and the lack of punishment for the rapist." Similarly, the KEDD list for May 1981 to May 1982 includes "buying a gun," "alcohol and drug abuse," and "crime." These programs address issues such as the prevalence of crime in the community, and self help measures such as self defense, drug rehabilitation and neighborhood watch programs. Several of the marijuana and alcohol abuse programs focused on whether or not certain practices should be made legal. These programs reflect a common concern about crime and crime prevention in the community, but they do not address or question the adequacy of the criminal justice system nor do they show that this was a matter of controversy in Dodge City.

21. Petitioners also submitted four separate articles from the Dodge City Globe which discussed local law enforcement. Three of these comprised a three part series on the Ford County and Dodge City municipal police departments, entitled the "State of Law Enforcement," "Citizens Want More Police Officers Hired," and "Coffin Feels Department Adequately Budgeted, Staffed." The fourth article deals with problems at a local jail. These articles do demonstrate a community wide interest and some controversy about whether local police forces are adequately staffed and financed. However, that is not the controversial issue of public importance framed by petitioners. The issue framed by petitioners involved the general adequacy of the criminal justice system to punish offenders. While the newspaper articles before us focus on the need to beef up local law enforcement capabilities, they do not address the adequacy of either the local or federal criminal justice system to punish offenders.[13] Thus, here again petitioners have failed to carry their burden.

22. In sum, we have reviewed this supporting material and conclude that petitioners have not shown that the specific issues identified—the cause of the economic recession and distress, the impact of this minority group immigration on the economy, and the adequacy of the criminal justice system,—were, in fact, subjects of controversy in Dodge City during the relevant time periods. Indeed, most of the newspaper articles submitted by petitioners do not reflect any community dispute or disagreement whatsoever regarding the issues identified by petitioners. Moreover, as we have noted in the past, news interest *per se* does not automatically translate into a *prima facie* showing that an issue is necessarily controversial. *See, Healey v. FCC, supra*, 460 F.2d at 922 (1972).

23. Inasmuch as Petitioners have failed to show the existence of public debate or dispute on the issues identified by them, or any other indication of the controversiality in the community with respect to the three identified issues, they have failed to make out a *prima facie* case for a fairness violation.[14] Accordingly, we will not designate a specific issue concerning the licensee's compliance with the fairness doctrine. In addition to its fatal deficiencies with respect to the controversiality requirement, petitioners' *prima facie* showing is, in our view, deficient in other areas as well.[15]

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[12] For example, to support their economic recession issue, petitioners submitted the following articles from the *Dodge City Globe*: "Farmers on the Ropes" (commentary on economic problems facing farmers); "Farmers Cope with Tight Money Situations" (escalating costs of farming); and, "Value of Farmland Declines Sharply" (effect of recession on farmers). These articles indicate that people were justifiably concerned about the recession but they do not indicate any controversy about the causes of the recession. There are no articles which indicate that the issue was controversial—that different groups in Dodge City have taken opposing views on the matter. An article perhaps reporting that local business groups and the Dodge City Council were at odds concerning what they believe to be the cause of the recession, or an article describing how a councilman and a member of the business community engaged in a heated debate on the issue at a recent council meeting might, in fact, be objective indicia of the issue's controversiality.

[13] For an issue like adequacy of the criminal justice system to punish offenders, we would expect to see, for example, evidence that there was controversy in Dodge City about the penalties for certain crimes. We are aware that in some areas penalties for crimes such as carrying a weapon, drunk driving and rape have become subjects of concern, and may or may not be subjects of controversy.

[14] In view of these deficiencies in petitioner's *prima facie* case we need not address whether the issues framed by petitioners were, in fact, issues of public importance in the Dodge City Community.

[15] For example, another essential element in establishing a *prima facie* violation of the fairness doctrine is evidence that a licensee has *failed to provide fair and balanced coverage* of a particular controversial issue in its overall programming. *See, Fairness Report, supra*, 48 FCC 2d at 19. In this regard, they allege only that Mrs. Babbs broadcast only 10 minutes of "rebuttal time" to the Gale/Wickstrom programs. They do not allege (and based on the record before us, we are unable to conclude) that, even if Mrs. Babbs had a fairness obligation here, *the licensee failed to present sufficient contrasting viewpoints in its overall programming*. Accordingly, petitioners' fairness showing is deficient with respect to this aspect of its *prima facie* case as well.

(3) Relationship of Broadcasts to Issues Specified

24. It is incumbent upon petitioners to demonstrate that the programs about which they complain address directly, and have a clear relationship to, the fairness issues specified. *National Committee for Responsive Philanthropy v. FCC, supra,* 652 F.2d at 191. Having carefully reviewed the Gale/Wickstrom programs, we conclude that they do not have any clear relationship to the fairness issues identified by petitioners.

25. Petitioners point to many statements which they believe raise fairness obligations. Examples include statements that: "[W]e've got a bunch of empty skulls in Washington, D.C.—they are gonna get filled or busted; the law—is that you citizens a posse will hang an official who violates the law . . . take him to the most populated intersection of the township and at noon, hang him by neck." It is clear to us that these and other similar statements cited by petitioners bear no relationship to the fairness issues identified by petitioners.

26. Nor can we find that statements such as "[t]here is no lawful authority for judges and the courts to direct the law enforcement activities of any county sheriff" (Reply Pet. at 15) bear any nexus to the identified issue of the adequacy of the criminal justice system to punish offenders. We do not see what identified controversial issue of public importance was addressed by statements that Thomas Jefferson warned that the judicial branch would usurp the power of the other branches or that we should have a revolution every twenty years. Similarly, without more, we cannot accept the argument that telling listeners to stay out of courts because they are controlled by Jews addresses any of the issues identified by petitioners.

(4) Meaningful Discussion

27. Having found that petitioners failed to establish a clear nexus between the programs relied upon and the issues identified in the complaint, we are also unable to find that these programs meet the more exacting standard that the programs contain obvious and meaningful discussions of the fairness issues specified. See, *Children—Before Dogs,* 37 FCC2d 647 (1972), *Environmental Defense Fund,* 90 FCC 2d 648 (1982), and *American Security Council Educational Foundation,* 607 F2d 438, 450 (D.C. Cir. 1979). Much of the material objected to by petitioners consists of incoherent monologues interspersed with occasional tirades, which include isolated and fleeting offensive remarks. Even if some of the statements made arguably did touch upon some of the issues identified by petitioners, there was no meaningful discussion of the issues, which would raise a fairness obligation.

(C) *Non-Entertainment Issue-Oriented Programming*

28. Petitioners allege that the licensees have failed to present programming which was responsive to community needs. They assert that the Gale/Wickstrom programs represented KTTL's only issue-oriented programming between June 1982 and December 1983, and, rather programs reflect only the licensee's own narrow political philosophies. (Citizens Petition, p.2). The evidence before us does not support this argument. Without including any of the Gale/Wickstrom programs, KTTL's "Program List for 1982–83" shows at least 20–25 minutes of daily news, public affairs and other editorial matter that presumably includes significant amounts of issue-oriented programming. While petitioners focused on the offending Gale/Wickstrom programs, they failed to address the substantive programming questions, they failed to address the substantive programming questions that are relevant in determining whether a station has met its general issue responsive program responsibility. Finally, petitioners do not allege that the licensee's non-entertainment programming decisions were unreasonable or made in bad faith.

29. In recent years the Commission has broadened the discretion vested in licensees to select programming to fulfill their responsibility to operate in the public interest. *E.G., Deregulation of Radio,* 84 FCC 2d 968 (1981). There are no longer any non-entertainment programming percentage guidelines for commercial radio licensees, although licensees have a general obligation to address those issues that they believe are of importance to the community. The thrust of the radio deregulation orders has been to increase the scope of programming discretion vested in our radio licensees based on the proposition that they are in the best position to determine which issues are of greatest importance and of most interest to their listeners. In so doing, the Commission eliminated program related requirements involving detailed program logs, formal ascertainment procedures, and quantitative guidelines for nonentertainment and commercial programming, and instituted a simplified program/issues list reporting requirement. As adopted and later modified in the *Second Report and Order,* FCC 1984, (FCC 84–67, adopted March 1, 1984), that list must contain a description of at least five to ten issues to which the station gave particular attention and a correspoonding list of examples of programming utilized to address each issue (together with the time, date and duration of such exemplary programs). During the 1982–1983 period, for which we have such a list for KTTL, the Commission also required a brief narrative description of how the station determined each issue to be one facing its community. Although we continue to give licensees considerable flexibility in their determinations on how best to formulate and format these lists, our review of the issues/programs lists submitted by KTTL in this proceeding gives us some pause. In particular, we are concerned that although we have a list of issues warranting program coverage by the station and a program list for the same period, the correlation betwen these two lists is obscure and thus not in compliance with our intent when we promulgated and revised our non-statutory programming requirements. *See Deregulation of Radio, supra,* paragraphs 71 and 72; and *Second Report and Order, supra,* paragraphs 18–30. Nevertheless, KTTL's program list does purport to show programs that addressed community issues, and the representations concerning these programs are uncontested. Accordingly, the sole licensee failing related to issue-oriented programming that is clearly supported by the present record is that KTTL apparently did not comply with its responsibilities to compile and file adequate programs/issues lists under § 73.3526(a)(10). The information has been presented in such a way that we are unable, without straining, to establish the relationship between KTTL's list of issues warranting program coverage and its list of programs broadcast for the same period. We thus find that the licensee failed to comply with § 73.3526(a)(10) of the rules and we will require the licensee to file with the Administrative Law Judge a programs/issues list that complies with the rules within 30 days of the release of this *Designation Order* so that the record will be complete. Should the licensee demonstrate that issue-oriented programming was presented in response to significant community issues as reasonably identified by the licensee, that, standing alone, could resolve this issue. In addition, however, we direct the Administrative Law Judge to offer the parties participating on this issue an opportunity to seek addition of a programming issue on the basis of a well-pleaded petition to enlarge issues at that time. The burden will be on the

licensee to present adequate programs/issues lists demonstrating compliance with the reporting requirements of § 73.3526(a)(10). If the licensee meets this burden, then further inquiry would be warranted only if one of the other parties meets the standard burden of establishing a *prima facie* case that an additional programming issue is warranted. If the licensee fails to meet this burden, the Administrative Law Judge will determine whether there is nevertheless sufficient evidence in the record to find that KTTL met its responsibility as defined in the Commission's *Radio Deregulation* order to present programs designed to meet issues of importance to its community. If the Administrative Law Judge is unable to make such a finding, he will specify an issue to determine whether KTTL has staisfied its duty to air issue responsive programming.

III. Violations of the Communications Act and Commission Rules

(A) Sponsorship Identification

30. Petitioners allege that Mr. and Mrs. Babbs have violated section 317 of the Communications Act, as amended, and § 73.1212 of the Commission's Rules, 47 CFR 73.1212, by failing to comply with the Commission's requirements that program sponsorship be fully disclosed on the air. (Citizens Petition, p. 2, *et seq.*) According to petitioners, despite the fact that the Gale/Wickstrom programs contain no sponsorship identification announcements, Mrs. Babbs repeatedly admitted that KTTL received sponsorship funds from individuals and unidentified groups to support the broadcast of the programs. (Citizens Petition, p. 5). To support this allegation petitioners rely on Mrs. Babbs' statement during an interview on an ABC *Nightline* broadcast of May 18, 1983, when, in response to a question as to whether *she received payment* for the broadcast of the programs, Mrs. Babbs said:

> . . . (payment) was made in the form of contributions from various people within the area, and that there were contributions made from out of state.

31. Mrs. Babbs' statement on *Nightline* seems to reflect no more than that solicitations were made on KTTL for funds to support the churches with which the Reverends Gale and Wickstrom are associated. Mrs. Babbs' *Nightline* comments seem to address these solicitations and, without more, do not amount to an admission that she violated the Commission's sponsorship identification rules. We have carefully reviewed the tapes furnished by petitioners for any evidence to support their allegations that Mrs. Babbs was paid to broadcast the Gale/Wickstrom programs and have found no evidence to support that view. The tapes reveal efforts by the Reverends Gale and Wickstrom to raise funds for their churches, but there is no evidence that either minister or any other person paid the licensee to air the programs. Thus, in the absence of other evidence to support a conclusion that a violation has occurred, we will not designate an issue. *See, Stone v. FCC*, 466 F.2d 316 (D.C. Cir. 1972), *California Public Broadcasting Forum v. FCC (KQED), supra.*

(B) Supervision and Control

32. Petitioners allege that Mr. and Mrs. Babbs failed to exercise adequate supervision and control over the station's operations and, in effect, abdicated responsiblity for the station's programming to the Reverends Gale and Wickstrom. To support these allegations petitioners again rely on comments made by Mrs. Babbs during her May 18, 1983 interview on *Nightline*, when she said:

> . . . of course, if these two ministers are not allowed airtime, I could have been possibly found liable.

(Citizen Reply, Exhibit 2). What Mrs. Babbs intended is unclear. In any case, her comments do not constitute an admission that she abdicated authority over KTTL to those who had purchased airtime on the station. On the contrary, at most, Mrs. Babbs' remarks demonstrate a concern with the possibility of administrative or judicial review of program decisions. They are not sufficient evidence that the station materially violated the "supervision and control" provisions, particularly in a manner that would rise to the requisite level at issue here. Since the statutorily required support for petitioners' allegations is lacking, no substantial and material question of fact has been raised with respect to this matter.

IV. Pending Legal Proceedings and Collateral Matters

(A) Legal Proceedings

33. Petitioners allege that certain legal proceedings pending against the licensee (including suits for copyright infringement, defamation, civil warrants for arrest for contempt of court, garnishment of wages for failure to pay state personal property taxes) demonstrate that Mr. and Mrs. Babbs are not qualified to remain Commission licensees. At the time of this Designation Order, our informal investigation of the status of these and other related actions indicates that several cases have changed considerably and in ways that would likely affect our findings here. We note that we have not been sufficiently apprised of the details of each of these proceedings to make a determination on the facts before us whether any of these cases has a sufficient nexus to the licensee's status as a Commission licensee to be relevant to our traditional charcter determinations. We also note that by *Memorandum Opinion and Order To Show Cause*, FCC 84-555, released November 29, 1984, the Commission instituted revocation proceedings against Mr. and Mrs. Babbs as the principals of Dodge City Mobilephone, the licensee of KU0578 in the DPLMRS Service. One of the issues specified against the licensee was a character issue based on allegations that Dodge City Mobilephone violated § 22.13(f)(2) of the Commission's Rules when it continued to operate station KU0578 in violation of Kansas state law subsequent to the revocation of its certificate of public convenience and its corporate charter. By *Order*, issued February 2, 1985, Administrative Law Judge, Edward J. Kuhlmann terminated the proceeding when the licensee relinquished the license obviating the need to resolve the character allegation designated. Since these unresolved character allegations may well be relevant to our determination of the instant matter, we will consider these matters as a basic issue in this hearing and instruct the Administrative Law Judge to gather the necessary information to make an initial determination with respect to the licensee's character qualifications and to determine whether the licensee's failure to comply with § 22.13(f)(2) should result in the imposition of a forefeiture. *See*, paragraph 38, *infra*. We are also by this Order making the Attorney General of the State of Kansas a party to this proceeding. Since the information about the status of outstanding state and local litigation is most easily available to him, we would expect the Kansas Attorney General to submit a comprehensive list with respect to all these pending and adjudicated Kansas cases as well as other cases of which he may be aware, and to keep the ALJ apprised of all relevant developments. We are not hereby assuming that any of these cases are within the appropriate scope of our character determination; instead we remind the ALJ that the burden of going forward with the evidence on this remains always with petitioners who must demonstrate that the cases are both relevant and probative of the

licensee's character qualifications to remain a licensee.

(B) Public File Requirements

34. In his informal objection Kansas Attorney General Stephan alleges that the licensee has failed to maintain a public file that is reasonably accessible to the public. In our opinion no issue should be designated against the licensee with respect to this matter. To support the allegation that the public was denied access to the station's public files, Attorney General Stephan relies on the affidavit of Ford County Deputy Sheriff Dean Bush who was denied access to the station. (Attorney General Informal Objection, p. 6). In his affidavit, Deputy Sheriff Bush states that he was attemption to gain admittance to KTTL to serve official arrest warrants issued for Mrs. Babbs. Thus, Deputy Sheriff Bush's request for access apparently was used as a pretext for him to carry out his official functions. Although the sheriff may have been entitled to see the station's files, regardless of his true purpose, the station's refusal to permit him access under these unusual circumstances does not provide sufficient evidence to demonstrate that the Babbses failed to maintain a reasonably accessible public file. This conclusion is butteressed by the fact that on October 20, 1983 KTTL was subjected to a surprise inspection by the Commission's Kansas City Field Office, at which time Commission staff was admitted to the station immediately and without question, and KTTL's public file was examined and found to be complete. Thus, the apparently isolated refusal to admit the deputy sheriff for service of process does not, in our view, require designation for hearing.

V. Ordering Clauses

35. Accordingly, it is ordered, that the petitions to deny, filed by Dodge City Citizens for Better Broadcasting and the National Black Media Coalition are denied in part and granted in prat as specified herein.

36. It is further ordered, that the informal objections filed by the Anti-Defamation League of B'nai B'rith, the Jewish Community Relations Bureau of Kansas City, Missouri, the Jewish War Veterans of the U.S.A. and Robert T. Stephan, Attorney General of the State of Kansas are denied in part and granted in part as specified herein.

37. It is further ordered, that the licensee shall file with the Presiding Judge within 30 days of the release of this Order, an amendment to its pending renewal application which demonstrates its compliance with § 73.3526(a)(10) of the Commission's Rules, as set forth in paragraph 29, *infra*.

38. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned renewal and construction permit applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. With respect to Cattle Country Broadcasting:

(a) To determine what effect, if any, the licensee's failure to fulfill its responsibilities under § 73.3526(a)(10), as described herein, should have upon its qualifications; and

(b) To determine whether, in light of the facts adduced pursuant to the review of relevant cases considered as instructed in paragraph 33 above, the licensee possesses the basic character qualifications to remain a Commission licensee.

2. In the event that it is determined that Cattle Country Broadcasting possesses the requisite qualifications to remain a Commission licensee, to determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

39. It is further ordered, that this document constitutes a Notice of Apparent Liability to the licensee for forfeiture for violation of § 22.13(f)(2) of the Commission's Rules.

40. It is further ordered, that Dodge City Citizens for Better Broadcasting is made a party to this proceeding with respect to issue 1(a) and 1(b) only.

41. It is further ordered, that the Attorney General of the State of Kansas is made a party to this proceeding with respect to issue 1(b) only.

42. It is further ordered, that within 30 days of the release date of this order, Community Service Broadcasters, Inc. shall submit an amendment to the presiding Administrative Law Judge responsive to section II, paragraphs 9 and 10 of FCC Form 301, as set forth in paragraph 1, note 3 of this Order.

43. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants 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 hearing and to present evidence on the issues specified in this Order.

44. It is further ordered, that the applicants 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.

45. It is further ordered, that the Secretary of the Commission, shall send, by Certified Mail—Return Receipt Requested, a copy of this Hearing Designation Order to each of the parties to this proceeding.

Federal Communications Commission.[18]

William J. Tricarico,

Secretary.

Statement of Chairman Mark S. Fowler Concurring in Part and Dissenting in Part

Re: Renewal of License of Station KTTL(FM) Dodge City, Kansas

This is a hard case. It involves a confusing, sometimes incoherent record. And when the record becomes clear, the vile language of some of the Gale and Wickstrom broadcasts becomes its most conspicuous feature, casting a dreadful light on the entire proceeding. Reading the transcript and the viewpoints of these broadcasts, I, too, am appalled.

To say that much of it is racist and anti-Semitic is simply to acknowledge what its authors intended us to conclude. Its attractiveness and appeal to those individuals or groups who would commit violence, and who have done violence, only adds to the offense and the scorn which our sensibilities bring to this case. But, while this is speech that makes some angry, it is not speech that incited anyone to violence.

It is in such situations, when public rebuke is greatest, that the First Amendment becomes so important. The language before us is protected speech, protected advocacy. It does not amount to unprotected incitement of violent or illegal conduct, for it posed no clear and present danger. As such, it cannot be condemned. Designating an issue because of this speech, either directly or through the use of a seemingly unrelated speech issue, is to me the wrong way for the Commission to proceed. Having found that the speech is protected, we should focus on the rest of this case as we would any other hearing designation matter, making sure that each of the allegations is thoroughly explored and

[18] See attached Statements of Commissioners Mark S. Fowler, Chairman, and Henry M. Rivera.

applicable procedures and case law given all due consideration.

The courts and this agency have addressed the issue of offensive political speech. It may not be an easy task, but it is nothing new. The weight of all modern judgment, starting with Justice Holmes [1] and continuing through cases here at the FCC—the *Anti-Defamation League* [2] and *Stoner* [3] cases, to name but two—is the same. Protected speech may not be punished.

In the 1949 case, *Terminiello v. Chicago* [4], the U.S. Supreme Court was faced with a race-baiting speech that attracted an angry, turbulent crowd. In reversing the speaker's breach of the peace conviction, Justice William O. Douglas wrote for the court, "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." [5]

So I must resist any effort to designate an issue that is content-related unless the facts before us provide a compelling reason to do so. Were we to do so in this case, the protection of the First Amendment, which rightfully belongs in broadcasting and to broadcasters, would be undone.

In particular, as to the fairness doctrine, I have reviewed the transcripts of the broadcasts to determine whether a prima facie case has been made out as to those issues that petitioners assert were raised by these broadcasts. At times the broadcasts are highly offensive, but their contents do not constitute meaningful discussions of the three issues on which the petitioners' fairness doctrine complaint focuses. Attached as an Appendix to this statement are those quotations from the Gale and Wickstrom broadcasts that come closest to addressing the issues as stated by petitioners and which nevertheless demonstrate a general incoherency to these talks.

On another programming matter, I question the need for further reporting by the licensee as to its satisfaction of the non-statutory programming requirement set forth in *Deregulation of Radio*, 84 F.C.C.2d 968 (1981). I am satisfied the licensee fulfilled its programming obligations under that order and that the Commission can make this finding based on the programming information in the record. The information provided the Commission, though clearly not exemplary, provides a basis for the Commission to determine that the licensee was not unreasonable as to the sufficiency of its issue-responsive programming. More than that is not required of a licensee. Nevertheless, I concur with the majority's decision as the least obtrusive solution to the majority's desire to explore further the programming issue.

There is a relatively new scheme for programming under the *Radio Deregulation* order. Licensees have significant flexibility in determining the issues facing their communities and the programming with which they address those issues. We provided no concrete guidance for complying with the requirements. It is uncharacteristic for this Commission to so obtrusively apply this requirement, particularly where the goals of the *Radio Deregulation* order—provision of programming responsive to the community—have been met. In my view, the Commission's action on this issue can be viewed as a transparent punishment of the licensee for protected conduct.

As to the character issue, I cannot abide by the designation of a basic character qualification issue to the extent that the designation is based on the state court's judgment against the licensee garnishing wages for failure to pay state personal property taxes. I, therefore, dissent to that finding. However, I would designate an issue where the activity in question violates our rules or calls into question the truthfulness of the licensee's representations to the Commission. Here, I am convinced that the licensee did violate the Commission's rules prohibiting operation of DPLMRS facilities without a state certification, and a character issue designation is justified on that ground.

But there are no grounds for throwing sundry alleged missteps the licensee may have made in unrelated instances into the apothecary jar of character just because the jar is open by the DPLMRS matter. The majority is putting this licensee under too powerful and magnifying glass, turning the lights on brighter than necessary for no other apparent purpose than to ensure that the licensee is examined by the Commission on some non-content basis.

Other issues relevent to the licensee's character may arise that require a hearing, and we have asked the Kansas Attorney General to apprise us of any adjudications. At that point they may form the basis for a claim under the designated character issue; now they are premature.

They may be immaterial as well. Even under the strictest reading of the character qualification, some breach of fiduciary duty or fraud (as when a licensee withheld payroll payments and did not forward the monies to the IRS)[6] is necessary for a character designation. Were there a clearly set forth allegation of misrepresentation or fraud in this case, the issues might be relevant. But we know of none. Therefore, I find no basis to designate a character issue because of the licensee's state tax violations.

I do not buy this statement want to express any view on the comparative analysis that the administrative law judge will have to perform in this case. That we leave to a later date. However, the comparative hearing must be conducted with the knowledge that the Commission has found that the speech in question is protected under the Constitution.

Appendix

Issue 1: The immigration of minority groups and the impact of this immigration on the economy.

—Excerpt from "Fed-Up American"

Now the Jew bankers who control the United Nations. . . . Mexicans are now coming across the American-Mexican border in armed, small bands looting, stealing, and abusing American citizens especially American-born, Mexican Chicanos. The Border Patrol and other government agencies have stated that they have orders to do nothing because it may create and international incident. It's time to load those weapons fellow Americans and take care of the problem just as our founding fathers did in bringing forth this Christian republic and after we clean up our southwestern border,-let's just keep walking to the nearest state capital and Washington, D.C. and clean up the rest. . . .

—Excerpt from "Fed-Up American

Trouble is still building at the American-Mexican Border as small armed bands of Mexicans are now coming into American territory using force to loot, steal, and pilfer from the American people. Only to then return across into Mexico with the their loot. Americans are being told that if they resist they will be shot or seriously harmed. Even the American-born Chicanos are leaving the area in fear of their lives and no help is being given or

[1] Schenck v. United States, 249 U.S. 47 (1919).

[2] Anti-Defamation League of B'nai B'rith v. FCC, 403 F.2d 169 (D.C. Cir.), *cert. denied*, 394 U.S. 930 (1968).

[3] Complaint by Atlanta NAACP, 36 F.C.C.2d 635 (1972).

[4] 337 U.S. 1 (1949).

[5] *Id* at 4.

[6] See, e.g., Country Broadcasting Co., 71 F.C.C.2d 1222 (Rev. Bd. 1979).

offered by the American government in fear of an international incident. . . .

—Excerpt from "Blow Your Trumpet"

Information received from military intelligence is that the Mexicans are now sending "sappers" or master demolitionists into the United States across the Mexican Border trained by Cuban and Soviet cadre where they now admit that there's 30,000 Cuban soldiers in Mexico. Their objective is to penetrate through the United States into the Mississippi River Basin. They are there to try and procure work. Their main objective is to buy a boat of large size and fully load that boat with demolitions, supplies, and/or particles to make a huge bomb, and at the right minute, they are to blow or damage as many bridges across the Mississippi as they can damage to cut the country in half. This is being done at this time with the subversion of the Communist/Mexican government who President Reagan said he doesn't want to do anything about the border problem because it may create an international incident. The internation incident is already underway. They are to be joined in process by Vietcong Vietnames who also have been told their targets and what they shall destroy and it is these V.C. who are going to the gun shops across America buying carbines, mini 14s, AR-15s, shotguns. They are also buying these German-made units HK-91s, 308, 30 shots semi-automatics, they are loading up for the war to catch the American Anglo-Saxon Caucasian, God's son and daughter, flat on their back because Yahwey said in Paragraph 19 of Chapter 2 of Jeremiah, "your own wickedness will correct you, and your backsliding of my law and away from me shall reprove you. . . ."

Issue 2: The cause of the economic recession and distress.

—Excerpt from "Fed-Up American"

It also means that the international Jew bankers and financiers are jumping for joy and the green buck in seeing the American industrial sector being destroyed. The Jews in America have no loyalty to the United States as a nation, only to their pocketbook and Israeli. This is why the stock market has been rising due to the fact of foreign investments by Jews in America. Surely, you haven't thought that the United States was coming back industrially, have you fed-up American? The money that President Reagan is asking Congress for at this time, is to give the Jew-controlled International Monetary Fund the financial support for those foreign countries that the United States is importing from at this time. There is only one catch, fed-up American, the foreign countries that accept that American taxpayers' money must not send goods into the United States in return for the money, but obtain most of their imports from Communist nations. How is that for getting the short end of the rope, fed-up American, and Reagan doesn't just want $8.5 billion for this task but an overall $45 billion. It's time to clean house, fed-up American. By the way, last week, one IRS agent shot to death, Buffalo, New York; two bankers who foreclosed on private, personal property shot to death in Minnesota. For the week, chalk up three for the good guys, none for the bad guys. . . .

—Excerpt from later portion of the same program:

You see the poor people of the country and the needy people are in the hands of these wicked Jews. Look at all these government programs. Supposedly for the poor, not just the poor of your race, but the Blacks are in their hands.

—Excerpt from "Blow Your Trumpet"

You wonder why you're losing your farms and ranches and businesses out there? Because your minister has lied to you concerning the illegality of the Federal Reserve Corporation and a bunch of international communist Jews that has stripped your wealth and your land from you. It's not all political. It comes right back to the pulpit because the ministers and the teachers of God's laws are to teach his sheep so they are not plundered and led astray by the wolves.

Issue 3: The adequacy of the criminal justice system to punish offenders.

—Excerpt from "Fed-Up American"

Look at the murder and crime that's going on in the United States of America. Look at how many white people are being killed by these beasts, get the FBI records of it and find out. It's not safe to walk the streets of your capital today in Washington, D.C. It's not safe to walk the streets of the cities of your land and the beasts are shedding the blood of the saints.

—Excerpt from "National Indentity Broadcast"

So that all judges when you hear this are evil; well its really not true. It's the system that they work in that is evil. All judges and all lawyers are not evil no more than all law enforcement officers and all policemen are evil just because there might be a rotten apple or because they might have to work in an evil system, an unjust system and not know it.

Statement of Commissioner Henry M. Rivera

Re: Dodge City, Kansas License Comparative Renewal Proceeding

Few recorded FCC decisions involve a more reprehensible series of broadcasts than those aired by KTTL. By any contemporary standard, the programs by Wickstrom and Gale were bigoted, crude and offensive. For close to a year, KTTL subjected Dodge City residents to a regular dose of these racist, anti-semitic and socially destructive messages, with no apparent regard for the differing views held by most of its listeners. I am personally dismayed that Dodge City residents were subjected to these broadcasts, whose purpose was to arouse base instincts that are antithetical to the credo and values of this nation.

For these reasons, I am distressed that the Commission finds itself in the position of having to deny the fairness doctrine complaints lodged against KTTL. I know the people of Dodge City who heard these broadcasts will find it hard to understand how KTTL has escaped any duty to air programming presenting another view of minorities, Jews and our system of government. The reason is simply that the complaints before us have failed to meet the exacting requirements of the fairness doctrine. This does not mean KTTL did not violate the fairness doctrine (in fact, it may well have) but simply that petitioners failed to state their case properly. And, under the law, the petitioners must do that. We bureaucrats cannot make petitioners' case for them. No matter how offensive these radio broadcasts are, I agree that the FCC must stay its hand unless a legally sufficient fairness doctrine violation is shown. The imperative of self-restraint imposed on us by First Amendment considerations requires it. Perhaps the parties will find a way to replead their fairness doctrine complaint in the KTTL comparative renewal hearing we order today.

Although there are no issues at this stage of the proceeding that specifically address the Gale and Wickstrom broadcasts, this agency *is* questioning whether Cattle Country Broadcasting should keep its license. For one thing, the numerous adverse state judgments against the station's owners cast doubt on whether it has the requisite character to remain a broadcast licensee. Likewise, there is a serious question about whether KTTL met its duty to air programming responsive to the needs of Dodge City residents during the 1980-1983 license term—whether or not we consider the Gale/Wickstrom broadcasts. Based on the evidence submitted by KTTL, it is impossible to find that the station addressed the needs and problems of Dodge City. This

bedrock duty is one that must be satisfied by every broadcaster, even under the terms of our 1980 *Deregulation of Radio*. Finally, the Commission will not be examining KTTL's qualifications to continue being a licensee in isolation, but will be comparing KTTL's qualifications to those of Community Service Broadcasting, Inc., the competing applicant for this frequency, who has no blemishes on its qualifications.

All this considered, KTTL will face a steep uphill battle in trying to prove that renewal of its license woud serve the public interest. Among the many things illustrated by this case is Congress' wisdom in providing us with a licensing scheme that requires regulatory safeguards to protect the public against broadcasters who completely submerge the public interest to their own private interest. Fortunately, we still have that Congressionally mandated scheme and the accompanying regulatory safeguards.

[FR Doc. 85-21751 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-244 et al.]

Page-A-Call et al.; Hearing Designation Order; Correction

Released: September 6, 1985.

In re applications of Gary G. Harvey d/b/a Page-A-Call (Assignee), Poka-Lambro Rural Telephone Cooperative, Inc. (Assignor), for the partial assignment of the authorization for Station KNKB357 on frequency 158.10 MHz in the Public Land Mobile Service at Lubbock, Texas, CC Docket No. 85-244, File No. 24763-CD-P/L-84, Gary G. Harvey d/b/a Page-A-Call, for a Construction Permit for new two-way facilities to operate on frequencies 454.375 MHz, 454.425 MHz, 454.575 MHz and 454.600 MHz at Amarillo, Texas and on frequencies 454.400 MHz, 454.450 MHz, 454.625 MHz and 454.650 MHz at Lubbock, Texas in the Public Land Mobile Service; File No. 20980-CD-P/L-8-85 and Poka-Lambro Rural Telephone Cooperative, Inc., for extension of construction permit, File No. 22687-CD-MP-01-85.

1. In the *Order Designating Applications For Hearing*, Mimeo 6376, released August 16, 1985, published at page 33634 of the issue for Tuesday, August 20, 1985, line 6, paragraph 11, should refer to **Issue E** not Issue F

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-21753 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

Mifflin County Communications Limited Partnership and Mifflin County Media Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Mifflin County Communications Limited Partnership	Lewistown, Pennsylvania	BPH-831028AY	85-275
B. Mifflin County Media	do	BPH-840105AI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Comparative	A, B
2. Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-21752 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-274 et al.]

Westside Communications of Tampa, Inc., and Leesburg Communications and Answering Service, Inc.; Memorandum Opinion and Order Designating Applications for Hearing

Adopted August 26, 1985.
Released September 5, 1985.

In re applications of Westside Communications of Tampa, Inc.[1] for a construction permit for additional one-way facilities for Station KJU814 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Ocala, Florida, CC Docket No. 85-274, File No. 23437-CD-P-1-82; and Leesburg Communications & Answering Service, Inc., for a construction permit for additional one-way facilities for Station KWU497 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Ocala, Florida, File No. 24109-CD-P-1-82.

By the Common Carrier Bureau.

1. Presently pending are the captioned applications of Westside Communications of Tampa, Inc. (Westside) and Leesburg Communications & Answering Service, Inc. (Leesburg). Westside filed a Petition to Dismiss the Leesburg application, and responsive pleadings were filed. Leesburg filed an informal request for dismissal or denial of Westside's application, to which Westside replied. Finally, Westside filed a Petition for Designation of Hearing, and responsive pleadings were filed.

Background

2. Westside currently operates Station KJU814 on frequency 152.24 MHz at Gainesville and Melrose, Florida. Leesburg currently operates Station KWU497 on frequency 152.24 MHz at Leesburg, Florida. Westside's captioned application to construct additional one-way facilities to operate on frequency 152.24 MHz at Ocala, Florida was filed on May 11, 1982 and appeared on Public Notice on May 26, 1982.[2] Leesburg's

[1] Westside is the successor in interest to Radio Telephone Company of Gainesville, Inc. pursuant to Commission approval in File No. 22770-CD-AL-84. An amendment was filed on January 15, 1985 to show the substitution of Westside as the applicant in this proceeding. By letter filed July 3, 1985, Westside clarified the amendment and formally requested exemption from the cut-off requirements of § 22.31 of the Commission's rules.

[2] On December 16, 1983, a minor amendment was filed which changed the proposed antenna location.

captioned application to construct additional one-way facilities to operate on frequency 152.24 MHz at Ocala, Florida was filed on July 15, 1982 and appeared on Public Notice on August 4, 1982.[3] Finally, by Public Notice, Report No. 139, issued September 29, 1982, the Commission gave notice that the Westside and Leesburg applications were electrically mutually exclusive.

3. By Lottery Notice, Mimeo 4696, dated May 28, 1985, the Westside and Leesburg applications were again identified as being mutually exclusive and were scheduled for disposition by lottery (PMS–14–12) to be held on June 28, 1985. On June 12, 1985, Westside filed a Petition for Designation of Hearing pursuant to §§ 22.31, 22.32, and 22.33 of the Commission's Rules. The applications were withdrawn from the scheduled lottery. Leesburg opposed Westside's petition, and Westside replied.

Discussion

4. In support of its petition, Westside notes that its proposed 152.24 MHz facility at Ocala, Florida is located within 40 miles of its existing transmitter on 152.24 MHz at Gainesville, Florida. Accordingly, Westside argues that it has demonstrated that its proposal qualifies for a comparative consideration request under § 22.33(c)(2). Westside also argues that the public interest would be served by using a comparative hearing procedure. In its opposition, Leesburg argues that Westside's petition is untimely since it was not filed within 30 days of the January 20, 1985 effective date of the § 22.33 rule changes adopted in *Random Selection or Lotteries*, FCC 84–596, released December 4, 1984, 49 FR 49466. Leesburg further argues that Westside's petition is substantively defective because Westside's application does not demonstrate "demand by its existing subscribers for the expanded service" as required by § 22.33(c)(1). Finally, Leesburg argues that Westside has failed to make the reuired "substantial showing" to justify its request for comparative hearing.

5. After careful consideration, we find the arguments of Leesburg to be without merit. Leesburg notes that the September 29, 1982 Public Notice regarding mutual exclusivity and cites *Alltel Mobile Communications of Arkansas, Inc.*, Mimeo No. 2733, released February 22, 1985, as authority for its argument that Westside's petition was untimely since it was not filed within 30 days of the effective date of the rule changes. *Alltel*, however, does not support Leesburg's argument. Rather, *Alltel* established the proposition that a public notice of mutual exclusivity issued prior to the January 20, 1985 effective date of the rule changes does not start the 30 day filing period for comparative hearing requests. *Alltel, supra*, at footnote 4. Since Westside's petition was filed within 30 days of the May 28, 1985 Lottery Notice, we find the petition to be timely filed. We want to emphasize, however, that commencing on January 20, 1985 the 30-day filing period for comparative hearing requests begins to run following the first public notice of mutual exclusivity either by an "informative" public notice or by a Lottery Notice.

6. We also reject Leesburg's argument that Westside's petition is substantively defective for failure to comply with § 22.33(c)(1). The Westside application was filed in May 1982, and relied upon a total of 31 held orders to demonstrate public need for its proposed additional transmitter. In addition, the application states "this proposed transmitting location will allow existing paging customers in Palatka, Melrose and Gainesville to extend to the Ocala area." Westside's application appears to be in compliance with the public need standards in effect when the application was filed, and we do not believe that we can hold properly filed applications to rigid standards adopted some two years later. Under such circumstances, we believe that Westside should "have the option of demonstrating [its] specific frequency requirements and the unmet business needs of [its] customers in a comparative hearing." *Random Selection, supra.*

7. Finally, Leesburg is simply incorrect in asserting that Westside is required to make a "substantial showing" to justify its request for a comparative hearing. The "substantial showing" requirement is applicable only to a paging applicant seeking to increase the capacity of its system by the addition of channels in the same frequency band. Westside is not required to make a "substantial showing" respecting its proposal to increase the geographic coverage of its system by the addition of a new transmitter location operating on the same frequency.

8. Based on the above, we find that Westside has demonstrated that its proposal qualifies for a comparative consideration request under § 22.33(c)(1) and that a comparative hearing would serve the public interest. Westside's petition will be granted.

9. Westside's Petition to Dismiss argues that the Leesburg application, as filed, would cause harmful electrical interference to Westside's existing operation of KJU814 at Gainesville and Melrose in violation of 47 CFR 22.100(a). Westside submitted an engineering analysis demonstrating that: (1) The interference contour of the original Leesburg proposal penetrates the 43 dBu reliable service contours of both of Westside's existing transmitters; and (2) that the interference contours of Westside's existing transmitters engulf practically the entire 43 dBu reliable service contour originally proposed by Leesburg. Westside also argues that the spacing between the proposed Leesburg transmitter at Ocala and the two existing Westside transmitters is considerable less than the Commission requires under "existing standards for stations of this power." Westside requests that the Leesburg application be dismissed, and that, "because of the seriousness of the interference and the close proximity of the proposal to existing facilities" the Commission should not permit any amendment of Leesburg's application.

10. The Leesburg application was filed prior to the expiration of the "cutoff" date, 47 CFR 22.31(b), for the Westside Ocala application. The Leesburg application as filed, however, would have caused harmful electrical interference within the 43 dBu reliable service contours of Westside's existing Gainvesville and Melrose operations. Accordingly, the Leesburg application was not "in a condition acceptable for filing," 47 CFR 22.31(b), as of the cutoff date of July 26, 1982, and Leesburg's defective application should have been returned to Leesburg pursuant to 47 CFR 22.20. Since the Leesburg application was not returned, the threshold question presented is whether Leesburg's post-cutoff amendment which cures the defect[4] in its application may be considered and entitle Leesburg to comparative consideration.

11. Initially, Westside's request that Leesburg not be permitted to amend its application must be denied. Leesburg's October 18, 1982 amendment reduced the effective radiated power of the proposed facilities, a minor amendment under 47 CFR 22.23, and was submitted as a matter of right since the Leesburg application had not been designated for

[3] On October 18, 1982, Leesburg filed a minor amendment reducing the effective radiated power of its proposed facility.

[4] Leesburg's October 18, 1982 amendment includes an interference study which demonstrates that the interference contour of Leesburg's amended proposal would no longer penetrate the 43 dBu reliable service contours of Westside's existing transmitters. Thus, the Leesburg amendment would cure the patent defect in its application.

hearing or comparative evaluation. Furthermore, Common Carrier Bureau precedent suggests that, under the cirumstances presented, Leesburg's amended application should be retained on file and be given comparative consideration. In *Moore's Service*, 86 F.C.C. 2d 787 (1981), at 795–796, the Common Carrier Bureau addressed the issue of curative post-cutoff amendments as follows:

> A more difficult issue is raised where the Commission has not returned a defective mutually exclusive application and the applicant submits a post cutoff amendment that cures the defect. A literal reading of the cutoff rule suggests that the application, should be returned because it was in a condition unacceptable for filing on the cutoff date. However, we believe that, as a matter of policy, a properly filed amendment should be included in our evaluation of a pending application. Our prescreening procedures were designed to reject unacceptable applications. Where a defect is overlooked at prescreening and cured before processing, neither our prescreening nor our processing functions will be seriously affected by our consideration of the application as amended. Accordingly, a defective mutually exclusive application that has not been returned and that is cured by a post cutoff amendment will be retained on file and be given comparative consideration. (footnotes omitted).[5]

Since the Leesburg amendment was properly filed, and since the amendment cured the application's defect, the *Moore's* case indicates that the amended Leesburg application should be retained on file and be given comparative consideration.

12. The remaining arguments presented by Westside are without merit. Westside's first argument respecting interference from the Leesburg proposal with Westside's existing operations has been mooted by the Leesburg amendment.[6] Westside's argument respecting lack of proper spacing is rejected. The Commission's mileage separation standards are not mandatory requirements, but rather merely guidelines. *Telephone Communications, Inc.*, 56 FCC 2d 710, 712 (1975). Westside's argument respecting excessive interference within Leesburg's proposed reliable service area must also be rejected. The Leesburg amendment includes an interference study which demonstrates that the amended Leesburg application would provide interference-free service to some 91 percent of the proposed reliable service area. An applicant can accept interference of a limited nature in areas that the applicant does not consider essential to the proposed operations. *Orange County Radio-Telephone Service*, 24 FCC 33, 38 (1957). Accordingly, the interference area of Leesburg's proposal is not sufficient to justify dismissal of Leesburg's application.

13. In its Informal Objection, Leesburg argues that the Westside January 15, 1985 amendment showing the substitution of Westside as the applicant herein may have been a major amendment rendering the Westside application newly-filed and cut-off from comparative consideration with Leesburg's application. Leesburg argues that if Westside's amendment failed to request exemption from the cut-off requirements of § 22.31 or if a requested exemption is not justified under applicable Commission precedent, then the Westside application is cut-off and must be dismissed.

14. Westside has formally requested exemption from the cut-off requirements of § 22.31 with respect to its January 15, 1985 amendment. *See* footnote 1. Review of the assignment application in File No. 22770–CD–AL–84 discloses that Westside purchased a number of RCC licenses and other assets from Radio Telephone Company of Gainesville, Inc. "as a going concern." Thus, we conclude that the purchase was for an independent, legitimate business purpose and not primarily for acquiring pending applications. *See Airsignal International, Inc.*, 81 FCC 2d 472, 475 (1980). We will grant Westside's exemption request, and we will treat Westside's January 15, 1985 amendment as minor pursuant to § 22.23(g)(3) of the commission's rules.

15. In light of the above, we find that both the Petition to Dismiss filed by Westside and the Informal Objection filed by Leesburg have no merit, and they will be denied. We further find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Westside and Leesburg to use frequency 152.24 MHz in the same geographical area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest.

16. Accordingly, it is ordered, That the Petition to Dismiss filed by Westside Communications of Tampa, Inc. and the Informal Objection filed by Leesburg Communications & Answering Service, Inc. are denied.

17. It is further ordered, That the Petition for Designation of Hearing filed by Westside Communications of Tampa, Inc. is granted.

18. It is further ordered, That the applications of Westside Communications of Tampa, Inc. and Leesburg Communications & Answering Service, Inc., File Nos. 23437–CD–P–1–82 and 24109–CD–P–1–82, are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the propsective interference-free area within 43 dBu contours,[7] based upon the standards set forth in § 22.504(a) of the Commission's Rules [8] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

19. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

20. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

21. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the Commission's Rules within 20 days of the release date hereof a written notice stating an intention to appear for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

22. This order is issued under § 0.291 of the Commission's rules and is

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[5] In *Industrial Communications*, 53 RR 2d 38, 41–43 (1983), *aff'd mem. sub nom* Williams v. FCC, No. 83–1233 (D.C. Cir. Nov. 30, 1983) the Commission held that the *Moore's* case is a correct interpretation of DPLMRS rules.

[6] *See* footnote 4.

[7] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6404, equation 8.

[8] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits).

effective on its release date. Applications for review may be filed under § 1.115 of the rules within 30 days of the date of public notice of this order. *See* § 1.4(b)(2).

23. The Secretary shall cause a copy of this order to be published in the Federal Register.

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-21754 Filed 9-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Centennial Savings and Loan Association, Guerneville, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Centennial Savings and Loan Association, Guerneville, California, on August 20, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21885 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

Heights Savings Association, Houston, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Heights Savings Association, Houston, Texas on September 6, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21770 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

Presidio Savings and Loan Association, Porterville, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Presidio Savings and Loan Association, Porterville, California, on August 28, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21771 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

Westside Federal Savings and Loan Association, Seattle, WA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the National Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Westside Federal Savings and Loan Association, Seattle, Washington on August 30, 1985.

Dated: September 9, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-21772 Filed 9-11-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 6, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the Federal Register.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve Sytem, Washington, D.C. 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Extention Without Revision of the Following Reports

1. Report title: Applications for and to Cancel Federal Reserve Bank Stock—National Bank, Nonmember Bank, Member Bank

Agency form number: FR 2030, 2030a, 2056, 2086a, and 2086b.

OMB Docket number: 7100-0042

Frequency: Event-generated

Reporters: National, State Member, and nonmember banks

Small businesses are affected.

General Description of report:

This information collection is mandatory [12 U.S.C. 222, 35, 287, & 321] and is not given confidential treatment.

These Federal Reserve Bank Stock application forms are required to be

submitted to the Federal Reserve System by any National Bank, State Member Bank or nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank Stock holdings, or cancel such stock.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21760 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

September 6, 1985.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collecton(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Reserach and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for OMB Approval To Extend With Revision

1. Report title: Annual Report of Trust Assets

Agency form number: FFIEC 001

OMB Docket number: 7100-0031

Frequency: Annual

Reporters: State member banks and trust company subsidiaries of bank holding companies not otherwise supervised by a federal banking agency.

Small businesses are affected.

General description of report:

This information collection is mandatory 12 U.S.C. 248(a) and 1844(a) and is not given confidential treatment.

This interagency report on fiduciary asset totals and activities. It is used to monitor changes in the volume and character of discretionary trust activity, the volume of nondiscretionary trust activity, and the resources needs for supervisory purposes. The data are also used for statistical and analytical purposes. The report is collected from state member banks that have been granted trust powers and from trust company subsidiaries of bank holding companies not otherwise supervised by a federal banking agency.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21761 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

Howard Bancorp 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 October 4, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Howard Bancorp*, Burlington, Vermont; to acquire 100 percent of the voting shares of The Woodstock National Bank, Woodstock, Vermont.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Macon Banctrust, Inc.*, Lafayette, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Macon Bank & Trust Company, Lafayette, Tennessee.

2. *Macon Capital Corporation*, Prattville, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Alabama Exchange Bank, Tuskegee, Alabama.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dover Bancshares, Inc.*, Dover, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Dover, Dover, Arkansas.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *North Shore Financial Corporation*, Duluth, Minnesota; to become a bank holding company by acquiring 94.25 percent of the voting shares of North Shore Bank of Commerce, Duluth, Minnesota.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *San Mateo County National Bancorp*, Redwood City, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Mateo County National Bank, Redwood City, California (in organization).

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21758 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

Louisiana Bancshares, 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 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 October 2, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to engage *de novo* through Premier Securities Corporation, Baton Rouge, Louisiana, in securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21759 Filed 9-11-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research Scientist Development and Research Scientist Award Grant Programs

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Issuance of revised program announcement for research scientist development and research scientist awards, MH-85-07.

SUMMARY: The Alcohol, Drug Abuse, and Mental Health Administration announces the availability of a revised program announcement for Research Scientist Development and Research Scientist Awards. These awards foster the development of outstanding scientists and enable them to expand their potential for making important contributions to the fields of alcoholism, drug abuse, or mental health research. Awards are made to institutions on behalf of specific outstanding individuals. They are also intended to assist recipient institutions in maintaining and expanding existing research programs or establishing new ones for studies concerning alcohol, drug abuse, or mental health. Support may be requested for up to 5 years.

Receipt and review dates of applications: Applications will be accepted according to the usual Public Health Service schedule and procedures.

For further information or a copy of the announcement, contact: Ellen Simon Strover, Ph.D., Acting Chief, RSDA/RSA Program, Division of Extramural Research Programs, NIMH, Parklawn Building Room 10-104, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443-4337.

Donald Ian Macdonald, M.D.,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-21871 Filed 9-11-85; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

Meeting of Subcommittee on Primate Research Centers of the Animal Resources Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Subcommittee on Primate Research Centers, Animal Resources Review Committee, Division of Research Resources, on October 28, 1985, at 9:00 a.m., National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on October 28, from approximately 1:00 p.m. to adjournment, for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 28 from 9:00 a.m. to approximately 12:00 p.m. for the review, discussion, and evaluation of individual grant applications submitted to the Laboratory Animal Sciences Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496-5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Primate Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21797 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and certain of its subcommittees on September 23, 1985, 8:30 a.m. to adjournment, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA. 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Further information, times and meeting locations of the subcommittees may be obtained by contacting Mr. Raymond Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616,

Bethesda Maryland, 20205, (301) 496-6045. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496-6917.

Date: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21798 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Cancer Education Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, National Institutes of Health, November 8, 1985, Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on November 8, from 8:30 a.m. to 10:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 8 from approximately 10:00 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Education Review Committee, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7721) will furnish substantive program information.

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-21799 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Advisory Board and Board Subcommittees; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, October 7-9, 1985, National Cancer Institute, Building 31C, Conference Room 6, 6th floor, National Institutes of Health, Bethesda, Maryland 20892. Meetings of Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethedsa, Maryland 20205 (301/496-5708) will provide summaries of the meetings and rosters of Board members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5147) will furnish substantive program information.

Name of Committee: *National Cancer Advisory Board*
Dates of Meeting: October 7-9, 1985
Place of Meeting: Building 31C, Conference Room 6, 6th floor, National Institutes of Health
Open: October 7, 8:30 a.m.—recess October 9, 8:30 a.m.—adjournment
Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Subcommittee Reports and New Business
Closed session: October 8, 8:30 a.m.—recess
Closure reason: To review grant applications

Name of Committee: *Subcommittee on Cancer Control for the Year 2000*
Date of Meeting: September 27, 1985
Place of Meeting: O'Hare Hilton Hotel, Chicago, Illinois
Open: September 27, 10:00 a.m.—adjournment
Agenda: To discuss smokeless tobacco and quackery in cancer treatment

Name of Committee: *Subcommittee on Organ Systems*
Date of Meeting: October 6, 1985
Place of Meeting: Building 31, C Wing, Conference Room 8, Sixth Floor, National Institutes of Health
Open: October 6, 6:45 p.m.—adjournment
Agenda: A discussion on the progress of the organ systems program

Name of Committee: *Subcommittee on Innovations in Surgical Oncology*
Date of Meeting: October 6, 1985
Place of Meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health
Open: October 6, 8:00 p.m.—adjournment
Agenda: A progress report on the surgical oncology program

Name of Committee: *Subcommittee on Planning and Budget*
Date of Meeting: October 7, 1985
Place of Meeting: Building 31, A Wing, Conference Room 11A10, 11th Floor, National Institutes of Health
Open: October 7, 7:30 p.m.—adjournment
Agenda: To discuss update of FY 86 Budget and the FY 87 Bypass Budget

Name of Committee: *Subcommittee on Special Actions for Grants*
Date of Meeting: October 8, 1985
Place of Meeting: Building 31, C Wing, Conference Room 6, 6th Floor, National Institutes of Health
Closed: October 8, 8:30 a.m.—adjournment
Closure reason: To review grant applications

Name of committee: *Subcommittee for the Review of Contracts and Budget of the Office of the Director*
Date of meeting: October 8, 1985
Place of meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health
Open: October 8, Immediately following the closed session of the National Cancer Advisory Board meeting.
Agenda: A concept review of the Office of the Director contracts and budget

(Catalog of Federal Domestic Assistance Program Numbers: 13.392, project grants in cancer construction. 13.393, project grants in cancer cause and prevention. 13.394, project grants in cancer detection and diagnosis. 13.395, project grants in cancer treatment. 13.396, project grants in cancer biology. 13.397, project grants in cancer centers support. 13.398 project grants in cancer

research manpower, 13.399, project grants in cancer control.)

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-21801 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Cancer Research Manpower Review Committee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, October 31, and November 1, 1985, which was published in the **Federal Register** on August 16, (50 FR 33109).

The committee was to have met in Building 31, Conference Room 8, National Institutes of Health; however, it has been changed to the Holiday Inn/Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-21802 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee; Meeting

Pursuant to P.L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, October 31-November 1, 1985, Building 31, Conference Room 3, A-Wing, National Institutes of Health, Bethesda, Maryland 20892. The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Thursday, October 31, and from 8:30 a.m. to adjournment on Friday, November 1, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Public Inquiry and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. G. C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C-12, Federal Building, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21803 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Advisory Council and Research Subcommittee and Manpower Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 17-18, 1985, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Manpower Subcommittee of the above Council will meet on October 16, 1985, at 1:00 p.m. and 8:00 p.m. respectively, in Building 31, Conference Room 9.

The Council meeting will be open to the public on October 17 from 9:00 a.m. to approximately 3:00 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 3:00 p.m. on October 17 to adjournment on October 18 for the review, discussion, and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Manpower Subcommittee of the above Council on October 16 will be closed in their entirety for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiries Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Samuel H. Joseloff, Executive Secretary of the Council, Westwood Building, Room 7A-15, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7548, will furnish substantive program information.

Dated: September 3, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21804 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, September 27, 1985. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, Building 31, Conference Room 8, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR, NHLBI, NIH, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-21805 Filed 9-11-85; 8:45 am]

BILLING CODE 4140-01-M

Clinical Applications and Prevention Advisory Committee; Amended Notice of Meeting

Notice is hereby given of a change in the conference room for the Clinical Applications and Prevention Advisory Committee, National Heart, Lung, and Blood Institute, which was published in the **Federal Register** on July 29, 1985 (50 FR 30763).

The meeting will now be held in Building 31, 9000 Rockville Pike, Bethesda, Maryland on October 2, 1985 in Conference Room 2 (A Wing) from 9:00 a.m. to recess and on October 3, 1985 in Conference Room 3 (A Wing) from 8:30 a.m. to adjournment. The entire meeting will be open to the public. The Committee will discuss new initiatives, program policies and issues. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20892, phone (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 85–21806 Filed 9–11–85; 8:45 am]

BILLING CODE 4140–01–M

National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and Its Subcommittees; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on September 18 and 19, 1985, at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to the public September 18 from 8:30 a.m. to 12:00 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Meeting of the full Council and its subcommittees will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The following subcommittees will be closed to the public on September 18, 1985, from 1:00 p.m. to adjournment: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on September 19 from 8:30 a.m. to approximately 12:00 p.m.

The full Council meeting will then be open for the reports of the Division Directors on September 19 from approximately 1:00 p.m. to adjournment at 3:30 p.m.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Acting Executive Secretary, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 637, Bethesda, Maryland 20205, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.846–849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 3, 1985.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 85–21807 Filed 9–11–85; 8:45 am]

BILLING CODE 4140–01–M

4140–01

Public Health Service

National Toxicology Program, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting on September 27, 1985, of the National Toxicology Program (NTP) Board of Scientific Counselors, Reproductive and Developmenal Toxicology Program Review Subcommittee. The meeting will be held in the Auditorium of the Robert A. Taft Laboratories, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

The meeting begins at 9:00 a.m. and will be open to the public. The primary agenda topic is a review of the research and testing activities of the NTP Reproductive and Developmental Toxicology Program, which includes efforts of the staff at the National Institute of Environmental Health Sciences, the National Center for Toxicological Research and the National Institute for Occupational Safety and Health.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919-541-3971), FTS (629–3971), will furnish the final agenda. The roster of Subcommittee members and other program information will be available prior to and at the meeting, and summary minutes will be available subsequent to the meeting.

Dated: September 9, 1985.

David P. Rall, M.D. Ph.D.,

Director, National Toxicology Program.

[FR Doc. 85–21898 Filed 9–11–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Capital Memorial Advisory Committee; Reestablishment

This notice is published in accordance with the provisions of section 7(a) of the Office of Management and Budget Circular A63 (revised). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92–463), the Secretary of the Interior has determined that reestablishment of the National Capital Memorial Advisory Committee is necessary and in the public interest. The purpose of the committee is to advise the Secretary of the Interior on broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region.

The General Services Administration concurred in the reestablishment of this committee on September 3, 1985.

Further information regarding this committee may be obtained from Janie

L. Spiers, Advisory Boards and Commissions, National Park Service, Department of the Interior, Washington, DC 20013–7127 (202–343–2012)

The certification of establishment is published below.

Certification

I hereby certify that renewal of the National Capital Memorial Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by law.

Dated: September 6, 1985.

Donald Paul Hodel,

Secretary of the Interior.

Charter

National Capital Memorial Advisory Committee

1. The official designation of the committee is the National Capital Memorial Advisory Committee.

2. The purposes of the Committee are as follows:

Prepare and recommend to the Secretary broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials, and statues.

Examine each memorial proposal for adequacy and appropriateness, and make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region.

Serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

In view of the fact that the vast majority of Federal lands within the National Capital Region which may be deemed suitable for memorialization are under the jurisdiction of the National Park Service, this Committee will render advice and assistance in connection with the performance of duties imposed on the Department of the Interior by law, and it is in the public interest to obtain the advice of this committee.

3. In view of the goals and purposes of the Committee, it will be expected to continue beyond the foreseeable future. However, its continuation will be subject to biennial review and renewal as required by section 14 of Pub. L. 92–463.

4. The Committee reports to the Secretary of the Interior, Washington, DC.

5. Support for the Committee is provided by the National Park Service, Department of the Interior.

6. The duties of the Committee are solely advisory and are as stated in paragraph 2 above.

The estimated annual operating cost of this Committee is $2,000 which will require approximately 1/4 person-year of staff support.

8. The Committee meets approximately two times a year.

9. The Committee will terminate 2 years from the date this charter is filed, unless, prior to that date, renewal action is taken as set forth in paragraph three above.

10. In order to effectuate its purposes, the committee will be composed of seven ex officio members as follows:

Director, National Park Service
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Chairman, National Capital Planning Commission
Mayor of the District of Columbia
Commissioner, Public Buildings Service

Each of the foregoing ex officio members may designate an alternate to attend meetings and vote in his place. The Director of the National Park Service, or his designee, shall serve as Chairman.

11. Establishment of this Committee is authorized by Pub. L. 91–383.

Dated: September 6, 1985.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 85–21748 Filed 9–11–85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[U-50756]

Utah; Intent To Prepare a Planning Amendment for the Mountain Valley Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: In accordance with 43 CFR 1610.2(c) and 40 CFR 1501.7, notice is hereby given that the Richfield District proposes to prepare a Planning Amendment to the Mountain Valley Management Framework Plan for specific public lands located in Sevier County, Utah.

SUMMARY: The amendment is being prepared in response to a State Quantity Grant Selection Application U–50756 filed by the State of Utah for the public lands described below:

Salt Lake Base & Meridian

T. 21 S., R. 1E.,

Sec. 30, Lots 3 and 4, W½SW¼NE¼, SE¼NW¼, E½SW¼, N½NW¼SE¼, SW¼NW¼SE¼.

The above land aggregates 247.16 acres more or less.

The general issues involved are the existing Mountain Valley Management Framework Plan is silent as to disposal or retention of the lands involved in the subject application and there is a potential for loss of grazing use and reduction of allocated preference if the selected lands are transferred to the State of Utah.

An environmental assessment will be prepared for the application utilizing input received from the public. This assessment will address any resource values and conflicts and will include a determination of the proposed actions consistency with the policies and programs of the Bureau of Land Management as well as the policies and programs of local, state and other federal agencies. A decision statement will then be issued by the Utah State Director specifying whether the plan will be amended to accommodate the State Quantity Grant Selection.

The environmental assessment will be prepared utilizing input and information received from the disciplines of realty, geology, wildlife, forestry, watershed, recreation, and cultural resources.

Those wishing to comment on the proposal or obtain additional information should contact J. Roderick Lister, Area Manager, Sevier River Resource Area, 180 North 100 East, Suite F, Richfield, Utah 84701 (telephone 801–896–8228) within 30 days of printing of this notice in the **Federal Register** for timely input concerning the proposal.

SUPPLEMENTARY INFORMATION: The existing Management Framework Plan is available for review at the Sevier River Resource Area Office. The office address is given above.

Donald L. Pendleton,

District Manager.

September 3, 1985.

[FR Doc. 85–21872 Filed 9–11–85; 8:45 am]

BILLING CODE 4310-DQ-M

Land Use Plans; Willow Creek, Susanville District, CA.

AGENCY: Bureua of Land Management, Interior.

ACTION: Intent to amend Willow Creek Land Use Decision, Eagle Lake Resource Area, Susanville District Office California.

SUMMARY: The Eagle Lake Resource Area is recommending a change in season of use for livestock in various allotments in the Willow Creek Planning Unit. The adjustment in season of use will respond to yearly fluctuations in precipitation and forage production.

DATES: Comments are being accepted from the public until 30 days after publication of this notice in the **Federal Register.**

ADDRESS: Comments shuld be sent to: District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130.

FOR FURTHER INFORMATION CONTACT: Mark T. Morse, Area Manager, Eagle Lake Resource Area, 2545 Riverside Drive, Susanville, CA 96130, (916) 257-5381.

Dated: September 5, 1985.

Ben F. Collins,

Acting District Manager.

[FR Doc. 85-21863 Filed 9-11-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 15806 et al.]

Sale of Public Lands; Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action, Sale of Public Lands in Lassen County, California (CA 15806 et al.).

SUMMARY: This document amends various proposed patent reservations and terms in a Notice of Realty Action for a land sale published in the **Federal Register** on July 11, 1985 (50 FR 28285-28286). In that notice, on 50 FR 28286, it was stated that Parcel 1 (CA 15806), Parcel 2 (CA 15807), and Parcel 5 (CA 17107) would be subject to rights-of-way for highway purposes granted to the State of California under the Act of August 27, 1958. The right-of-way numbers were S-5035 (Parcels 1 and 2), and S-4473 (Parcels 2 and 5).

The above-described highway rights-of-way are Federal Aid Highways, granted under the Act of August 27, 1958. They will therefore be reserved as patent reservations to the United States, and not as third party rights. The Notice in 50 FR 28285-28286 is hereby amended to delete rights-of-way S-5035 and S-4473 from "Sale Terms and Conditions, Part B, Rights of Third Parties", and add those rights-of-way to "Sale Terms and Conditions, Part A, Reservations to the United States."

The patents for Parcel 1 (CA 15806) and Parcel 2 (CA 15807) will each contain a reservation to the United States of a right-of-way for highway purposes granted to the State of California, number S-5035, under the Act of August 27, 1958. The patents for Parcel 2 (CA-15807) and Parcel 5 (CA 17107) will each contain a reservation to the United States of a right-of-way for highway purposes granted to the State of California, number S-4473, under the Act of August 27, 1958.

In addition, the patent for Parcel 7 (CA 17109) will contain a reservation to the United States for a road right-of-way over and across a 30 foot strip of land measured parallel and adjacent to the north boundary of the S½ of Section 23, T.31N., R.15E., M.D.M., for public access and use of the people of the United States generally, under Section 208 of the Act of October 21, 1976 (43 U.S.C. 1718).

FOR FURTHER INFORMATION CONTACT: Peter Humm, Susanville District Office, 705 Hall St., Susanville, CA 96130. (Telephone 916-257-5381).

Ben F. Collins,

Acting District Manager.

September 4, 1985.

[FR Doc. 85-21864 Filed 9-11-85; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Development Operations Coordination Document; Union Texas Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6663, Block 109, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 4, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 5, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-21873 Filed 9-11-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-224 (Final)]

Cold-Rolled Carbon Steel Plates and Sheets From Austria

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On August 19, 1985, the U.S. Department of Commerce published notice in the **Federal Register** of its final determination of sales of cold-rolled

carbon steel plates and sheets from Austria at not less than fair value and subsequent termination of the case. Accordingly, pursuant to § 207.20(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.20(b)), the antidumping investigation concerning cold-rolled carbon steel plates and sheets from Austria (investigation No. 731-TA-224 (Final)) is terminated.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-523-1369), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Authority

This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: September 9, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21795 Filed 9-11-85; 8:45 am]

BILLING CODE 7020-02-M

[332-213]

The Competitive Position of U.S. and European Community Pork in the U.S. and Third Country Markets

AGENCY: International Trade Commission.

ACTION: Time and place of public hearing.

SUMMARY: Notice is hereby given that the public hearing in this matter will be held beginning on Friday, September 27, 1985, in Des Moines, Iowa, at the Savery Hotel and Spa, 4th and Locust Streets, at 10:00 a.m.

Notice of the investigation and hearing was published in the **Federal Register** of June 19, 1985 (50 FR 25475).

Issued: September 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-21796 Filed 9-11-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30695]

Burlington Northern Railroad Co.; Merger Exemption; Burlington Northern (Oregon-Washington) Inc.; Exemption

The Burlington Northern Railroad Company (BN) and Burlington Northern (Oregon-Washington) Inc. (BNOW) filed a notice of exemption for BNOW to merge into BN.

BNOW is a wholly-owned subsidiary of BN. Consummation of the merger will promote corporate simplification and eliminate the expense and burden associated with maintenance of BNOW as a separate corporate entity. Under the merger plan, BNOW will be dissolved as a separate corporate entity, and all of its assets and liabilities will be vested in BN. No reduction of transportation facilities are contemplated and no obligations of BNOW will be impaired.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn* Eastern District, 360 I.C.C. 60 (179).

Decided: August 20, 1985.

By the Commission, Herber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-21819 Filed 9-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30709]

Canonie Atlantic Co. And Canonie, Inc.; Exemption From 49 United States Code 10901, 11301, and 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts: (1) Canonie Atlantic Co. (CA) (a) from 49 U.S.C. 10901 for its acquisition and operation of 96 miles of railroad between Norfolk, VA and Pocomoke City, MD including 26 miles of rail car float between Little Creek and Cape Charles, VA, and (b) from 49 U.S.C. 11301 for assumption of obligations; and (2) its parent, Canonie, Inc., from 49 U.S.C. 11343 to control the railroad acquired by CA, subject to employee protective conditions.

DATES: This exemption is effective on September 11, 1985. Petitions to reopen must be filed by October 2, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30709 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael B. Barr, 2000 Pennsylvania Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 12, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred in the result. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-21886 Filed 9-11-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; United States v. United States Steel Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 5, 1985, a proposed first consent decree amendment in *United States* v. *United States Steel Corporation*, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree amendment resolves a judicial enforcement action brought by the United States against United States Steel which alleged violations of a previously entered Consent Decree under the Clean Water Act pertaining to the Company's facility in Lorain, Ohio. The original consent decree in this action required U.S. Steel to expend $4,000,000 over a four year period on a dust suppression program at its Lorain, Ohio facility. When it became

clear that U.S. Steel would not be spending the total $4,000,000, the United States brought an enforcement action against the defendant Corporation. The proposed consent decree amendment requires the defendant to pay $200,000 and complete seven environmentally beneficial projects including a dredging operation in the Black River whereby 50,000 cubic yards of bottom sediment will be removed.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States v. United States Steel Corporation*, D.J. Ref. 90-5-1-1-987A.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114

EPA

Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check payable to Treasurer of the United States in the amount of $1.90.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-21868 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A ORDER NO. 3-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Attorney General, publishes a system of records entitled "General Files System of the Office of the Attorney General (JUSTICE/OAG-001)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue NW., Washington, DC 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 23, 1985.

W. Lawrence Wallace,

Acting Assistant Attorney General for Administration.

JUSTICE/OAG-001

SYSTEM NAME:

General Files System of the Office of the Attorney General.

SYSTEM LOCATION:

Office of the Attorney General, United States Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official Federal investigations, policy decisions, and administrative matters of such significance that the Attorney General maintains information indexed to the name of that individual including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echleon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda or reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the Attorney General's responsibilities (28 CFR 0.5) and are limited to those which are of such significance that the Attorney General has investigative, policy, law enforcement, or administrative interest. An index to these records is described under the caption "Retrievability."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policy decisionmaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local or foreign, which require information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Attorney General is authorized to appear when (a) the Office of the Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Attorney General in his or her official capacity, or (c) any employee of the Office of the Attorney

General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Attorney General determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders and on index cards. As of May 1982, the index record is also stored on magnetic disks.

RETRIEVABILITY:

Records created before 1975 are indexed and retrieved manually by subject title. Records created since 1975 are indexed and retrieved manually by subject title, individual's name, the Department component which created the record, and by name of the Attorney General under whose administration the records were created. As of May 1982 records may also be retrieved through a computerized indexing system.

SAFEGUARDS:

Records are maintained in locked cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults stored in a locked room. The computer is also maintained in a locked room. The computer has a key lock and may be accessed only by persons with a Top Secret clearance by use of a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant to the Attorney General, Office of the Attorney General, United States Department of Justice, 10th and Constitution Avenue NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES:

Make all requests for access to records from this system in writing to the system manager and clearly mark both the letter and the envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include individuals, State, local and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.** These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) or (k)(5).

[FR Doc. 85-21841 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 4-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Deputy Attorney General, publishes a system of records entitled "General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG-013)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/DAG-013

SYSTEM NAME:

General Files System of the Office of the Deputy Attorney General.

SYSTEM LOCATION:

Office of the Deputy Attorney General, United States Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official Federal investigations, policy decisions, and administrative matters of such significance that the Deputy Attorney General maintains information indexed to the name of that individual, including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echelon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda and reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the Deputy Attorney General's responsibilities (28 CFR 0.15) and are limited to those which are of such significance that the Deputy Attorney General has investigative, policy, law enforcement, or administrative interest. An index to these records is described under the caption "Retrievability."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that

release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policy decisionmaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which require information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Deputy Attorney General is authorized to appear when (a) the Office of the Deputy Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Deputy Attorney General in his or her official capacity, or (c) any employee of the Office of the Deputy Attorney General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Deputy Attorney General determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Deputy Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders and on index cards. As of April, 1982, the index record is also stored on magnetic disks.

RETRIEVABILITY:

Deputy Attorney General records created prior to 1973 were incorporated into Attorney General files, and are retrievable from the index to the General Files System of the Office of the Attorney General. Records created by the Office of the Deputy Attorney General since 1973 are indexed and retrived manually by use of the subject title, individual's name, or Department component which created the record. As of April 1982, records may also be retrieved through a computerized logging system.

SAFEGUARDS:

Records are maintained in locked cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults stored in a locked room. The computer is also maintained in a locked room. The computer has a key lock and may be accessed only by persons with a Top Secret clearance by use of a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy Attorney General, Office of the Deputy Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES

Make all requests for access to records from this system in writing to the system manager, and clearly mark both the letter and envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include individuals, State, local and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name and which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 552(j)(2), (k)(1), (k)(2) or (k)(5).

[FR Doc. 85-21842 Filed 9-11-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 5-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Associate Attorney General, publishes a system of records entitled "General Files System of the Office of the Associate Attorney General (JUSTICE/AAG-001)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the

Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/AAG-001

SYSTEM NAME:

General Files System of the Office of the Associate Attorney General.

SYSTEM LOCATION:

Office of the Associate Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW, Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official federal investigations, policy decisions and administrative matters of such significance that the Associate Attorney General maintains information indexed to the name of that individual including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echelon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda and reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the Associate Attorney General's responsibilities (28 CFR 0.10) and are limited to those which are of such significance that the Associate Attorney General has investigative, policy, law enforcement, or administrative interest. An index record containing the subject title and/or individual's name is also maintained in the form of a paper logging system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the informaton for investigative or policymaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which requires information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Associate Attorney General, is authorized to appear when (a) the Office of the Associate Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Associate Attorney General in his or her official capacity, or (c) any employee of the Office of the Associate Attorney General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Associate Attorney General determines that litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Associate Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders. An index record containing the subject title and/or individual's name is also maintained in the form of a paper logging system.

RETRIEVABILITY:

By subject title or individual's name.

SAFEGUARDS:

Records are maintained in locked cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults stored in a locked room.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Associate Attorney General, Office of the Associate Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES:

Make requests for access to records from this system in writing to the system manager, and clearly mark both the letter and envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Source of information contained in this system include individuals, State, local and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and

(H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 522a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.** These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 522a(j)(2), (k)(1), (k)(2), or (k)(5).

[FR Doc. 85-21843 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 6-85]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of the Associate Attorney General, publishes a new system of records entitled "Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002)."

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue, NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/AAG-002

SYSTEM NAME:

Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General.

SYSTEM LOCATION:

Office of the Associate Attorney General, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who are the subjects of official Federal investigations of the drug task force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of case initiation and indictment records, and monthly reporting and sentencing forms regarding potential or actual targets of investigation of the drug task force.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301 and 21 U.S.C. 841.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policymaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which require information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of the Associate Attorney General is authorized to appear when (a) the Office of the Associate Attorney General, or any subdivision thereof, or (b) any employee of the Office of the Associate Attorney General in his or her official capacity, or (c) any employee of the Office of the Associate Attorney General in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of the Associate Attorney General determines that litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of the Associate Attorney General to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

All records are stored in paper folders. All records, with the exception of indictment forms, are stored also on magnetic disks.

RETRIEVABILITY:

Records are generally retrieved by case number. Records may be retrieved by individual name or name of criminal organization.

SAFEGUARDS:

Paper folders are stored in a combination safe which is inside a locked room. This room is part of a locked suite of offices. The magnetic disks and computer are located in the same room; the computer has a key lock. Only those persons with a Top Secret clearance may actually access the computer by using a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Drug Enforcement Task Force, Office of the Associate Attorney General, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted form subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

None.

CONTESTING RECORD PROCEDURES:

None.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include Federal, State, and local government agencies as appropriate, informants, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 85-21844 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 7-85]

Privacy Act of 1974; of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of Legal Policy, publishes a system of records entitled "General Files System of the Office of Legal Policy (JUSTICE/OLP-003)."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit written comments on this system. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 7317, 10th and Constitution Avenue, NW., Washington, D.C. 20530 by November 12, 1985.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: May 24, 1985.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/OLP-003

SYSTEM NAME:

General Files System of the Office of Legal Policy.

SYSTEM LOCATION:

Office of the Assistant Attorney General, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official Federal investigations, policy decisions, and administrative matters of such significance that the Assistant Attorney General maintains information indexed to the name of that individual, including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echelon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda and reports, or other records on a given subject or individual. Records vary in number and kind according to the breath of the Assistant Attorney General's responsibilities (28 CFR 0.23). Records include those of such significance that the Assistant Attorney General has policy or administrative interest, and those which cover investigative or law enforcement cases for which the Assistant Attorney General is asked to provide an analysis and establish future policy direction. A computerized index record containing the subject title and/or individual's name is also maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policymaking purposes or to provide constituent assistance.

These records may be disclosed to members of the judicial branch of the Federal Government in response to a specific request where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local, or foreign, which requires information relevant to a civil or criminal investigation.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed to officials and employees of the White House or any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

These records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the eligibility or suitability of an individual for a license or permit.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of Legal Policy is authorized to appear when (a) the Office of Legal Policy, or any subdivision thereof, or (b) any employee of the Office of Legal Policy in his or her official capacity, or (c) any employee of the Office of Legal Policy in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Office of Legal Policy determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of Legal Policy to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders and on index cards. As of August 1982

the index record is also stored on magnetic disks.

RETRIEVABILITY:

Records may be retrieved by subject title or individual's name.

SAFEGUARDS:

Records are maintained in cabinets stored in a locked room or, in the case of those records that are classified, in safes or vaults. The computer is also maintained in a locked room. The computer has a key lock and may be accessed only by persons with a Top Secret clearance by use of a code.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Information and Privacy, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

RECORD ACCESS PROCEDURES:

Make requests for access to records from this system in writing to the system manager, and clearly mark both the letter and the envelope "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include individuals, local, State and foreign government agencies as appropriate, the executive and legislative branches of the Federal Government, and interested third parties.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to official Federal investigations and law enforcement matters. Those files indexed under an individual's name and which concern policy formulation or administrative matters are not being exempted pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) or (k)(5).

[FR Doc. 85-21845 Filed 9-11-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-58]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by September 23, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Michael Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: STS Request for Flight Assignment.
OMB Number: 2700-0040.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 20.
Annual Burden Hours: 10.
Abstract-Need/Uses: The STS Form 100 details the users Shuttle launch request.
This information includes: Payload Title, Principal Contact, Requested Launch Date, Payload Weight and Length, and Orbital Requirement.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

August 28, 1985.

[FR Doc. 85-21745 Filed 9-11-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-59]

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATE AND TIME: October 1, 1985, 8:30 a.m.-5:30 p.m.

October 2, 1985, 8:30 a.m.—1:30 p.m.

ADDRESS: Xerox Training Center, Room Nos. as noted in the agenda below, Leesburg, Virginia 22075.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202-453-1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Artur Mager and is composed of 32 members. The committee operates both through a

number of informal subcommittees and as a whole. The agenda which follows includes all committee and subcommittee sessions. Each of the sessions will be open to the public up to the seating capacity of the room (approximately 20 persons including committee members and other participants).

Type of Meeting:

Open.

Agenda:

Full Committee—Room 3464:

October 1, 1985.

8:30 a.m.—Opening Remarks.
8:45 a.m.—Briefing on the Role and Planning of the Office Commercial Programs.
10:30 a.m.—Subcommittee Deliberations:
Communications Subcommittee—Room 4483:
10:30 a.m.—Review of NASA Progress in Formulation an Agency-Wide Communications Plan.
2:30 p.m.—Review of NASA Base Research and Development (R&D) Program in Advanced Technologies for Satellites Communications.
5:30 p.m.—Adjourn.
Microgravity Subcommittee—Room 4479:
10:30 a.m.—Formulate report to Dr. Edelson on Program Future Directions.
3 p.m.—Review Report of Commercialization Task Force and Formulate Recommendations on Advisory Structure for Microgravity Science and Applications.
5:30 p.m.—Adjourn.
Remote Sensing Subcommittee—Room 3464:
10:30 a.m.—Formulation of Recommendations to NASA on the Relationship of Center for Commercialization and Remote Sensing Applications R&D.
1 p.m.—Review and Formulation of Recommendations to NASA on the Revised NASA/NOAA Basic Agreement.
3 p.m.—Layout Process to Advise NASA on Remote Sensing R&D in Support of Operational Land Remote Sensing.
4:30 p.m.—Status of Draft National Plan on Remote Sensing R&D (Required by the Landsat Commercialization Act).
5:30 p.m.—Adjourn.
Information Systems Subcommittee—Room 4477:
10:30 a.m.—Formulation of Recommendations to Office of Space Science and Applications (OSSA) on Space Station Data Management Issues.
—Briefings by Dr. Michael Wiskerchen (Stanford University) and Mr. Dane Dixon NASA Johnson Space Center (JSC).
2 p.m.—Briefing by Mr. Villasenor on the Advance Communications Technology Satellite (ACTS) Experiment in Data Dissemination to Distributed Terminals.
3 p.m.—Formulate Process for SAAC Participation in Developing the Information Systems Program Plan.
5:30 p.m.—Adjourn.

October 2, 1985

8:30 a.m.—Wrap-up Session for all Subcommittees to Prepare a Report to the Full Committee and Plan Agenda for the January Meeting at the Jet Propulsion Laboratory (JPL).
10:15 a.m.—Adjourn to Region the Full Committee.
10:30 a.m.—Full Committee Reconvenes.
1:30 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

September 6, 1985.

[FR Doc. 85-21746 Filed 9-11-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506:

1. Date: October 3-4, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review archaeology applications submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

2. Date: October 10-11, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review archaeology applications submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

3. Date: October 4, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review literature applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.

4. Date: October 11, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review History applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.

5. Date: October 17-18, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review American Studies applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.

6. Date: October 24-25, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review visual and performing arts applications submitted to the Access category, Reference Materials Programs, Division of Research Programs, for projects beginning after April 1, 1986.

7. Date: October 24-25, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications submitted for the Humanities Project in Libraries, Division of General Programs, for projects beginning after March 1, 1986.

8. Date: October 28, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2
Program: This meeting will review History applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-21809 Filed 9-11-85; 8:45 am]

BILLING CODE 7536-01-M

PANAMA CANAL COMMISSION

Collection of Information Submitted to OMB for Review

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Panama Canal Commission (PCC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) an SF-83, "Request for OMB Review," for approval to extend the expiration date of a currently approved collection of information designated "Procurement Related Forms."

ADDRESS: Comments may be sent to Carlos Tellez, Information Desk Officer for the Panama Canal Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the information collection request of related information, contact Barbara Fuller, telephone (202) 634-6441.

SUPPLEMENTARY INFORMATION: This document gives notice the the PCC has submitted to OMB a request for approval of the PCC procurement-related forms. The forms will be issued to contractors and potential contractors. The information which is requested on the forms and clauses is derived from, is in compliance with and conforms to, the Federal Acquisition Regulations (48 CFR Ch. 1). Also, the information requested is necessary to establish certain U.S. contractors as designated PCC contractors so that they may receive specified benefits pursuant to Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977. The information on the forms will be used to evaluate competitive and noncompetitive price offers, proposals and bids. On the basis of such evaluations, purchase orders and contracts will be awarded for the purpose of obtaining supplies, materials, equipment and services necessary for the operation and maintenance of the Panama Canal.

On September 15, 1982, OMB approved this information collection proposal submitted by the Panama Canal Commission and assigned it the control number 3207-0007 and an expiration date of September 30, 1985. It is proposed to continue using this information collection without any change in the substance or in the method of collection.

Dated: September 9, 1985.

Fernando Manfredo, Jr.,

Deputy Administrator, Senior Official for Information Resources Management.

[FR Doc. 85-21785 Filed 9-11-85; 8:45 am]

BILLING CODE 3640-04-M

POSTAL RATE COMMISSION

[Order No. 630; Docket No. A85-25]

Grady, Oklahoma 73545 (Mr. & Mrs. A. C. Dyer); Order Accepting Appeal and Establishing Procedural Schedule

Issued September 6, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket No. A85-25
Name of affected post office: Grady, Oklahoma 73545
Name(s) of petitioner(s): Mr. & Mrs. A. C. Dyer
Type of determination: Closing
Date of filing of appeal papers: August 29, 1985
Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule inthe **Federal Register.**

(B) The record in this appeal shall be filed by September 13, 1985.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

August 29, 1985—Filing of Petition.
September 6, 1985—Notice and Order of Filing of Appeal.
September 23, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
October 3, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
October 23, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
November 7, 1985—(1) Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)].
November 14, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see 39* CFR 3001.116].
December 27, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-21866 Filed 9-11-85; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Papperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) Collection title: Railroad Service and Compensation Reports.

(2) Form(s) submitted: BA–3a, BA–4, BA–5.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: Monthly, Quarterly, Annually.

(5) Respondents: Businesses or other for-profit, Small businesses or organization.

(6) Annual responses: 527.

(7) Annual reporting hours: 47,353.

(8) Collection description: Under the Railroad Unemployment Insurance and Railroad Retirement Acts, employers are required to report service and compensation for each employee to update Board records for payment of benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85–21870 Filed 9–11–85; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 29, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No.: 1545–0049
Form No.: IRS Forms 990–BL, Schedule A (Form 990–BL), and 6069
Type of Review: Extension
Title: 990–BL, Information and Initial Excise Tax Return for Black Lung Trusts and Certain Related Persons. Schedule A, Computation of Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons. 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under section 4953 and Computation of section 192 Deduction

OMB No.: 1545–0644
Form No.: IRS Form 6781
Type of Review: Revision
Title: Gains and Losses From Section 1256 Contracts and Straddles

OMB No.: 1545–0908
Form No.: IRS Forms 8282 and 8283
Type of Review: Revision
Title: Donee Information Return and Noncash Charitable Contributions

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Comptroller of the Currency

OMB No.: New
Form No.: None
Type of Review: New
Title: Attorney Supplement to Application

OMB No.: New
Form No.: CC–NRP–1 (Revised)
Type of Review: New
Title: National Recruitment Program—Application for Employment

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB No.: 1515–0105
Form No.: None
Type of Review: Extension
Title: Declaration of Foreign Shipper that Articles were sent from U.S. for Scientific or Educational Purposes

OMB No.: 1515–0110
Form No.: None
Type of Review: Extension
Title: Declaration by Person Who Processed Goods Abroad

Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Carole Hutchinson,

Departmental Reports Management Office.

[FR Doc. 85–21852 Filed 9–11–85; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 4, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0108
Form Number: IRS Form 1096
Type of Review: Revision
Type: Annual Summary and Transmittal of U.S. Information Returns

OMB Number: 1545–0120
Form Number: IRS Form 1099–G
Type of Review: Revision
Title: Statement for Recipients of Certain Government Payments

OMB Number: 1545–0130
Form Number: IRS Form 1120S
Type of Review: Revision
Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses, and Shareholder's Share of Income, Credits, Deductions, etc.—1985

OMB Number: 1545–0790
Form Number: IRS Form 8082
Type of Review: Extension
Title: Notice of Inconsistent Treatment or Return (Administrative Adjustment Request (AAR))

OMB Number: 1545–0803
Form Number: IRS Form 5074
Type of Review: Revision
Title: Allocation of Individual Income Tax to Guam or Northern Mariana Islands

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and

Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Comptroller of the Currency

OMB Number: 1557–0127
Form Number: FFIEC 001 and FFIEC 006
Type of Review: Revision
Title: Annual Report of Trust Assets/ Special Report-Trust Department Activities/Interagency Survey of Corporate Foreign Fiduciary Activities
Clearance Officer: Eric Thompson, Comptroller of the Currency 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: 1515–0109
Form Number: None
Type of Review: Extension
Title: Proof of Use for Rates of Duty Dependent on Actual Use
Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue NW., Washington, D.C. 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Financial Management Service

OMB Number: 1510–0004
Form Number: TFS Form 285A
Type of Review: Extension
Title: Quarterly Schedule of Excess Risks
Clearance Officer: Douglas Lewis (202) 287–4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street NW., Washington, D.C. 20228
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 2053.

Joseph F. Maty,
Departmental Reports, Management Office.
[FR Doc. 85–21808 Filed 9–11–85; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on September 26 and 27, 1985. The session on September 26 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW, Washington, DC 20006, and the session on September 27 will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The session on September 26 will convene at 6 p.m. and the session on September 27 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contract Kathy Eller, Secretary, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–5156) prior to September 24, 1985.

Dated: September 6, 1985.

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 85–21827 Filed 9–11–85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 177
Thursday, September 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

September 11, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 18, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone & Telegraph Company (CC Docket No. 85-26). Summary: The Commission will consider whether to adopt an Order to remove the structural separation requirements for AT&T's provision of customer premises equipment and replace them with certain nonstructural safeguards.

Common Carrier—2—Title: AT&T PRO America Optional Calling Plan. Summary: The Commission will resolve issues relating to its investigation of the proposed PRO America Tariff.

Mass Media—1—Title: Amendment of Part 76 of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984. Summary: The Commission will consider rule changes to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: September 11, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-21952 Filed 9-10-85; 3:28 pm]

BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b) notice is hereby given that at 5:25 p.m. on Friday, September 6, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits made in Bank of Clifton, Clifton, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Friday, September 6, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21970 Filed 9-10-85; 4:00 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 9, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, or a memorandum regarding the purchase of additional office space in the Ecker Square Condominium Office Building, San Francisco, California.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 10, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21971 Filed 9-10-85; 4:00 pm]

BILLING CODE 6714-01-M

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 17, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, September 19, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985-24—John R. Bolton, National Football League
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–21924 Filed 9–10–85; 2:29 pm]

BILLING CODE 6715-01-M

5

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, September 16, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) To discuss whether or not to promulgate a Trade Regulation Rule for the Hearing Aid Industry.

(2) Consideration of proposed Rulemaking to amend the Retail Food Advertising & Marketing Practices Rule, 16 CFR Part 424.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–21921 Filed 9–10–85; 1:37 pm]

BILLING CODE 6750-01-M

6

LEGAL SERVICES CORPORATION

The Legal Services Corporation Board of Directors met in executive session Wednesday, September 4, 1985, to discuss personnel, personal, litigation and investigatory matters as announced in the **Federal Register** of August 27, 1985. The Board being unable to complete all business on that date, the meeting was continued and completed Friday, September 6, 1985 at 12:00 p.m. Continuation was announced to the public in attendance at the public meeting of the Board September 6, 1985.

Dated: September 10, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–21946 Filed 9–10–85; 3:07 pm]

BILLING CODE 6820-35-M

Federal Register

Thursday
September 12, 1985

Part II

Department of Transportation

Research and Special Programs Administration

City of New York; Hazardous Materials Transportation; Non-Preemption Determination No. NPD-1; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. NPDA-2]

City of New York; Hazardous Materials Transportation; Non-Preemption Determination No. NPD-1

Applicant: City of New York (Application docketed as NPDA-2).

Local Law Affected: Section 175.111(l)(4) of the New York City Health Code.

Applicable Federal Requirements: The Hazardous Materials Transportation Act (49 U.S.C. 1801-1811) and the Hazardous Materials Regulations (49 CFR Parts 171-179).

Mode Affected: Highway.

Ruling: The City's petition for a waiver of statutory preemption of section 175.111(l)(4) of the City Health Code pursuant to section 112(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1811(b)) is hereby denied.

Issue Date: September 9, 1985.

Summary: This non-preemption determination is an administrative ruling by the Department of Transportation on a request from the City of New York that statutory preemption of the City's ban on the transportation of spent nuclear fuel be waived, thereby enabling the City to resume enforcement of its currently preempted ban. This ruling was applied for and is issued pursuant to the procedures set forth at 49 CFR 107.215-107.225.

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590. [Tel. 202/755-4972.]

SUPPLEMENTARY INFORMATION:

I. Introduction

This is the first time that the Department has issued a non-preemption determination, i.e., an administrative ruling under the authority of section 112(b) of the Hazardous Materials Transportation (HMTA) (49 U.S.C. 1811(b)). The following discussion of general authority, therefore, represents not only the basis for this determination, but also the policy which will apply in future non-preemption determinations.

II. General Authority and Preemption Under the HMTA

The HMTA authorizes the Secretary of Transportation to promulgate substantive regulations governing the safe transportation of hazardous (including radioactive) materials in commerce. Regulations issued under this authority are referred to collectively as the Hazardous Materials Regulations (HMR) and are codified at 49 CFR Parts 171-179. The Department's promulgation of regulations under the HMTA is performed in accordance with the purposes and objectives underlying Congressional enactment of that Act. The stated purpose of the HMTA is "to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." (49 U.S.C. 1801).

While the immediate effect of the HMTA was to consolidate and expand the Department's pre-existing authority to promulgate and enforce safety regulations governing the transportation of hazardous materials in commerce, this broad Federal authority was not meant to be exclusive. Had Congress intended the Federal regulations to preclude all state and local regulations, it would not have included the qualified preemption provisions in section 112 of the HMTA (49 U.S.C. 1811).

Section 112(a) of the HMTA (49 U.S.C. 1811(a)) preempts" . . . any requirement of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA] or regulations issued under the [HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transporation so as to preclude *any* state or local action. The HMTA preempts only those state and local requirements that are "inconsistent." The legislative history of this provision indicates that Congress intended it "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation"(S. Rep. 1192, September 30, 1974, p. 37). Absent Federal occupation of the field, states and (to the extent allowed under state law) local governments may take certain measures in the exercise of their innate police powers to safeguard the health, safety and welfare of their citizens. Section 112(a) of the HMTA requires only that such state or local action not be inconsistent with the HMTA or the regulations issued thereunder. While the HMTA does not totally preclude state and local action in this area, it is the Department's opinion that Congress intended, to the extent possible, to make such state and local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible state and local activity. The nature, necessity and number of hazardous materials shipments make national uniformity of safety standards essential.

There are three ways in which a state or local transportation requirement may be found to be inconsistent with, and thus preempted by, the HMTA: (1) A court of competent jurisdiction may rule on the question; (2) the enacting jurisdiction may concede inconsistency; or (3) the Department may issue an administrative ruling on the question. The first two methods are self-explanatory. The third requires some discussion.

To help implement the preemption language of the HMTA, the Department established a process for the inssuance of inconsistency rulings. At the time that these procedures were adopted, the Department observed that "[t]he determination as to whether a state or local requirement is consistent or inconsistent with the Federal statute or Federal regulations is traditionally judicial in nature" (41 FR 38167, September 9, 1976). Despite this judicial tradition, there are two principal reasons for providing an administrative forum for such a determination. First, an inconsistency ruling provides an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or local government. Second, if a state or local requirement is found to be inconsistent, such a finding provides the basis for application to the Secretary of Transportation for a waiver of preemption pursuant to section 112(b) of the HMTA.

Given the judicial character of the inconsistency ruling proceeding, the Department incorporated into its procedural regulations case law criteria for determining the existence of conflicts. (See e.g. *Hines v. Davidowitz*, 312 U.S. 52 (1941).) To date, the Department has issued sixteen inconsistency ruling. The policies articulated in these rulings have served to define the parameters of Federal, state and local regulation of hazardous materials transportation safety. A detailed discussion of these issues can be found in the general preamble to the nine inconsistency rulings which were published together on November 27, 1984 (IR-7 through 15, 49 FR 46632, 46633-46634).

Congressional consideration of the question of preemption, however, was not limited to establishing the criteria for preemption. Section 112(b) of the

HMTA (49 U.S.C. 1811(b)) provides for Departmental waiver of preemption in certain circumstances. Congress recognized that safety regulations of national applicability might not always meet unique local conditions. The legislative history contains explicit language on this issue. Following immediately upon that stated intent to preclude a multiplicity of varying and possibly conflicting regulations is the following language:

> However, the Committee is aware that certain exceptional circumstances may necessitate immediate action to secure more stringent regulations. For the purpose of meeting such emergency situations, the Committee has provided that any State or political subdivision may request, and the Secretary may grant, approval of regulations which vary from Federal regulations, provided that they are equivalent or more stringent and place no burden on interstate commence. (S. Rep. 1192, 93rd Cong., 2nd Sess., 37–38 (1974))

It is clear from the language used by the Senate Commerce Committee in reporting out what was to become section 112(b) of the HMTA that the remedy of non-preemption was not meant to apply to every situation where a state or local requirement was preempted by the HMTA. The availability of a waiver of preemption was devised specifically for "exceptional circumstances [which] may necessitate immediate action to secure more stringent regulations." There is no indication that Congress considered the statutory preemption of a state or local requirement to be *per se* "emergency situation".

To understand the nature of those exceptional circumstances for which a waiver of preemption may be granted, it is necessary to consider the primary Congressional objective in enacting the HMTA:" . . . to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." (49 U.S.C. 1801) This language was discussed by the Second Circuit Court of Appeals in the case of *City of New York v. U.S. Dept. of Transportation*, 715 F2d 732, 740 (1983). The court found that the reference to "adequate" protection indicated that Congress expected the Secretary to exercise discretion in determining the appropriate level safety. The court also found that the structure of the HMTA's preemption provisions provided evidence that Congress did not intend the Federal regulations to maximize safety on a jurisdiction-by-jurisdiction basis. Statutory preemption under section 112(a) of the HMTA is not absolute, but is limited to those state and local rules which are "inconsistent." And the scope of this limited preemption is further ameliorated by the provision in section 112(b) for a non-preemption procedure so that when "certain exceptional circumstances" warrant it, the Department can limit the preemptive effect of its regulations.

Thus, by enactment of the HMTA, Congress created the basis for a Federal regulatory program of national applicability with sufficient preemptive force to preclude the unrestrained growth of varying, conflicting regulations, yet with sufficient flexibility to give recognition to certain state and local rules which differ from the Federal standards. Under section 112(a) automatic recognition is conferred upon state and local rules which differ from the Federal standards so long as those differences are not "inconsistent." Under section 112(b) discretionary recognition is available for inconsistent state and local regulations when circumstances are such that the dual Congressional objectives of adequate safety and regulatory consistency cannot both be satisfied. Under such "exceptional circumstances," Congress expressed its intent, by enactment of section 112(b), that the need to provide an adequate level of safety outweigh the need for nationwide uniformity of regulations.

The mere existence of such exceptional circumstances, however, is not a basis for granting a waiver of preemption. On the contrary, it is a threshold consideration. The legislative history is clear that it was "(f)or the purpose of meeting such emergency situations" that the Congress enacted section 112(b). To satisfy the threshold showing of exceptional circumstances a petitioner must present an objective demonstration that a Federal regulation, which provides an adequate level of safety on a nationwide basis, fails to provide an adequate level of safety in a given locale because of physical conditions which are unique to that locale. When local application of a Federal rule will not provide the level of safety which was the Department's objective in adopting the rule, then the objectives of the HMTA are not impeded, rather they are positively accomplished, by enforcement of a site-specific, albeit inconsistent, rule which does provide an adequate level of safety without unreasonably burdening commerce. Before the questions of comparative safety and commercial burden can be reached, however, the petitioner must make the threshold showing of physical conditions which are unique to that locale. Absent such a showing, there is no basis for finding that the petitioner's circumstances constitute the type of "emergency situation" for which Congress created the remedy available under section 112(b) of the HMTA. (Some have argued that non-preemption should be available as a remedy in those cases where unique local conditions enable a jurisdiction, without prejudice to others, to adopt an inconsistent rule which affords a given locale with a level of safety higher than that achievable under the national rule. While the Department is willing to concede the theoretical possibility of such circumstances, they are not before us in this proceeding and, thus, the question need not be considered at this time.)

After the threshold showing of exceptional circumstances have been satisfied, a petitioner must address the criteria set forth in section 112(b) of the HMTA:

(1) That the preempted state or local requirement affords an equal or greater level of protection to the public as compared with the Federal standards; and

(2) That it does not unreasonably burden commerce.

When addressing the comparative safety of an inconsistent state or local rule, careful consideration must be given to ensuring that the full impact of that inconsistent rule has been assessed. The petitioner must present an objective analysis of the safety impacts on all jurisdictions that would be affected by the inconsistent rule, not merely the safety impacts on the enacting jurisdiction. The Department has consistently relied on case law in holding that a state or local government may not resolve a safety problem by effectively exporting it to another jurisdiction. (See e.g. *Kassell v. Consolidated Freightways*, 450 U.S. 662 (1981).)

Finally, regardless of the safety benefits which may be attributed to an inconsistent rule, non-preemption under the HMTA requires that the inconsistent rule impose no unreasonable burden on commerce. In the procedural regulations governing issuance of non-preemption determinations (49 CFR 107.215–107.225), the Department has adopted case law criteria for determining whether an inconsistent state or local requirement imposes an unreasonable burden on commerce. (See e.g. *South Carolina State Highway Department v. Barnwell*, 303 U.S. 177 (1938); *Southern Pacific v. Arizona*, 325 U.S. 761 (1945); *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959).) These criteria, as set forth at 49 CFR 107.221(b), are:

(1) The extent to which increased costs and impairment of efficiency result from the State or political subdivision requirement.

(2) Whether the State or political subdivision requirement has a rational basis.

(3) Whether the State or political subdivision requirement achieves its stated purpose.

(4) Whether there is a need for uniformity with regard to the subject concerned and if so, whether the State or political subdivision requirement competes or conflicts with those of other States and political subdivisions.

In summary, section 112(b) of the HMTA establishes two criteria which must be satisfied before the Department may waive statutory preemption of an inconsistent state or local rule on hazardous materials transportation. But the legislative history of section 112(b) provides explicit testimony to the Congressional intent that non-preemption was meant to be an extraordinary remedy available only in those "emergency situations" when "certain exceptional circumstances . . . necessitate immediate action to secure more stringent regulations." Thus, before the Department considers whether the statutory criteria have been satisfied, it must first determine whether the petitioner's case is one in which the Department may properly grant the extraordinary remedy of non-preemption.

To conclude this discussion of general authority and preemption under the HMTA, it should be noted that the Department has a single purpose in the area of hazardous materials transportation safety. Whether issuing a final rule, a compliance order, an inconsistency ruling or a non-preemption determination, the Department is concerned solely with implementing the HMTA in accordance with the express Congressional policy of "protect(ing) the Nation adequately against the risk to life and property which are inherent in the transportation of hazardous materials in commerce." (49 U.S.C. 1801.)

III. Background

In January of 1976, New York City amended its Health Code to include § 175.111(l) establishing a permit requirement for each shipment of certain specified radioactive materials transported into or through the City. The practical effect of § 175.111(l) was to ban most commercial shipments of radioactive material.

Among those parties affected by the City's restriction was Associated Universities, Inc. (AUI) which has operated Brookhaven National Laboratory on Long Island since 1947. Spend nuclear fuel from two research reactors is stored at Brookhaven until shipped to a recovery facility for reclamation of valuable materials and eventual disposal of the remaining waste. Prior to the City's adoption of § 175.111(l), Brookhaven's practice was to ship spent fuel by highway through the City and south to South Carolina. After the City effectively banned the highway transportation of spent fuel from Long Island, AUI turned to the use of a water crossing from Long Island to Connecticut. Subsequent adoption of local restrictions in Connecticut barred this route and, as a result, spent fuel shipments from Brookhaven were suspended.

Faced with this impasse, AUI turned to the Department for an administrative ruling on the question of whether the City's restriction was preempted by the HMTA. In its first inconsistency ruling (IR-1, 43 FR 16954, April 20, 1978), the Department concluded that there was no identifiable requirement in the text of the HMTA or the regulations issued thereunder that would provide the basis for a finding of statutory preemption under the HMTA. Recognizing the implications of this ruling with respect to the already growing number of state and local bans and other severe transportation restrictions, the Department announced its intent to examine the need for Federal routing regulations and advised that the City's restriction, as well as similar requirements adopted elsewhere, could face a necessary future harmonization with rulemaking resulting from the Department's intended inquiry.

In August of 1978, the Department initiated rulemaking action on highway routing of radioactive material under docket no. HM-164. This action culminated in the Department's adoption of HM-164 as a final rule (46 FR 5298) on January 19, 1981, with an effective date of February 1, 1982. In the preamble to the final rule, the Department stated its conclusion that, on the basis of the extensive public comment on the docket, documented risk studies and past experience for radioactive material transport, "the public risks in transporting these materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation." (46 FR 5299) Moreover, other modes of transport were generally found not to offer alternatives which lowered public risks to such an extent as to warrant substantial restriction of the highway mode. Nevertheless, the Department found that these already low risks could be further reduced by the adoption of driver training requirements and provisions for a method of selecting the safest available highway route for carriers of large-quantity shipments of radioactive material. On this basis, the Department adopted HM-164.

Perhaps the most controversial feature of HM-164 was its establishment of specific routing requirements for "large quantity radioactive materials." The definition of this term was set forth in the HMR at § 173.389(b). However, in a subsequent rulemaking action (48 FR 10218, March 10, 1983), the term "large quantity radioactive materials" was deleted from the HMR and the term "highway route controlled quantity" radioactive material was adopted in its place. The new term is defined at 49 CFR 173.403(l). While there are some differences between the values for "large quantity" and "highway route controlled quantity" radioactive material, these differences do not materially affect the implementation of HM-164.

Under HM-164, specific routing requirements were established for highway shipments of highway route controlled quantity radioactive material (such as spent nuclear fuel). These are set forth in the HMR at § 177.825(b). Stated briefly, HM-164 requires motor carriers of highway route controlled quantity radioactive material to operate over "preferred routes" selected to reduce time in transit except where an available Interstate System beltway or bypass allows them to avoid urban centers. The term "preferred route" is defined in § 177.825(b)(1) as:

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Shipments of Large Quantity Radioactive Materials."

Carriers are allowed to deviate from the use of preferred routes only under the following circumstances:

(1) In a documented case of emergency;

(2) To make necessary rest, fuel or vehicle repair stops;

(3) To travel to and from a pick-up or delivery site not located on a preferred route; or

(4) When necessary to comply with the requirements of an approved physical security plan.

In its notice of proposed rulemaking, the Department discussed the technical basis for its reliance on the Interstate System of highways. (45 FR 7140, 7149,

January 31, 1980). Generally, the designation of these highways as preferred routes was based on an overall performance rating with respect to lower accident rates and their capacity for reducing transit times. For the most part, public comment expressed support for this proposal as well as the related provision allowing states the prerogative or modifying the preferred status of Interstate highways by designating other roads as acceptable alternatives.

Several commenters pointed out, and the Department acknowledged, that each of the 42,500 miles of Interstate highway is not sufficiently consistent in design, engineering or accident history to provide an even correlation between the statistical safety of the system's parts and that of the whole. This was one of the reasons for enabling the states to modify the preferred status of Interstate segments for which more acceptable alternatives exist. As a basic routing system, however, even in the absence of state action, the Interstate highways are well-suited for the use required by HM-164. They provide a baseline measure for states to use in determining whether potential alternative routes offer an equivalent or greater level of safety and they support emergency response planning by increasing the confidence of planners in their knowledge of routes to be traveled.

HM-164 included a number of other substantive requirements, e.g. driver training, route plans, placarding. Since this proceeding does not involve these other requirements, there is no need to discuss them further.

Throughout the rulemaking process under docket no. HM-164, New York City repeatedly urged the Department to consider barging as an alternative requirement for transporting large-quantity shipments of radioactive materials around urban centers not served by circumferential highways. While acknowledging that a state routing agency could designate an established ferry route as part of an alternate preferred route, the Department considered such a provision to be inappropriate in a highway rulemaking of national applicability. When the Department declined to incorporate the City's barging suggestion into the proposed rule, the City requested the Department to accompany the final rule with a determination waiving preemption of the City's restriction on highway transportation. Because this would have required the Department to rule on the basis of a regulation not yet issued, the City's application for a non-preemption determination was denied as premature.

On March 20, 1981, two months after HM-164 was published, the City renewed its application for a waiver of preemption. Upon reviewing the City's application, the Department determined that there were several areas where additional information was required. Differences of opinion regarding placement of the burden of proof led to an impasse. As the effective date for HM-164 approached, the City requested that the Department provide a preliminary response to its application. By letter dated January 15, 1982, the Department provided a response which indicated that the City's application, as submitted, would likely be denied:

> Given the fact that DOT was fully aware of the purposes underlying bans such as the City's and determined that such bans were inappropriate, the City must make a clear demonstration that, because of its peculiar circumstances, it is entitled to an exception from the general rules of HM-164 and their underlying policies in order for DOT to be able to make the findings necessary to issue a non-preemption determination. Without such a demonstration, the exception permitted by a non-preemption determination would, in effect, "swallow the rule" and severely undermine the policies underlying HM-164.

No further action was taken on the proceeding pending the outcome of the City's legal challenge to the validity of HM-164.

Shortly after publication of HM-164 as a final rule, the City filed a complaint in the U.S. District Court for the Southern District of New York seeking to invalidate HM-164 on numerous grounds. In an exhaustive opinion [*City of New York v. DOT*, 539 F. Supp. 1237 (1982)], the District Court rules that HM-164 violated both the HMTA and the National Environmental Policy Act (NEPA) in its preemption of state and local bans on the transportation of large-quantity radioactive materials along highways in densely populated areas. The District Court permanently enjoined the enforcement of what it concluded to be the invalid effect of HM-164 on the City's restriction.

The District Court ruling was reversed on appeal by the Second Circuit Court of Appeals [*City of New York*, 715 F2d 732 (1983)]. The Circuit Court upheld the validity of HM-164 in all respects and ruled, *inter alia*, that the Department's refusal to consider the barging alternative in the context of a highway routing rule of national applicability violated neither the HMTA nor NEPA.

The City appealed the Circuit Court decision but on February 27, 1984, the U.S. Supreme Court announced its refusal to review the case, thereby upholding the decision of the Circuit Court and the validity of HM-164 [104 S. Ct. 1403 (1984)].

By specifically upholding the preemptive effect of HM-164 on the City's ordinance, the Circuit Court implicitly found the ordinance to be preempted by HM-164. Recognizing this, the City, by letter dated March 30, 1984, requested the Department to respond to a number of specific questions relating to deficiencies which the Department had noted in its preliminary reponse to the City's original application for a non-preemption determination. By letter dated June 4, 1984, the Department responded to the City's request. The City thereupon set to work preparing a revised application.

On November 8, 1984, at the City's request, representatives of the City met with Departmental officials to seek confirmation of certain procedural requirements, as well as clarification of certain technical issues related to the *DOT Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials.*

On December 24, 1984, the City submitted a detailed application, renewing its original request for a non-preemption determination pursuant to section 112(b) of the HMTA. While acknowledging that the Second Circuit's reversal in *City of New York v. DOT* had removed the District Court's permanent injunction on the preemptive effect of HM-164 with regard to all subsections of § 175.111(1) of the City's Health Code, the City applied for a waiver of preemption with regard to only subsection (4). In other words, the City seeks a non-preemptive determination to enable it to resume enforcement of its now-preempted ban on the transportation of "spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies."

In accordance with the procedural requirements of 49 CFR 107.217, the City served a copy of its application on each of 34 parties who it considered would be affected by Departmental issuance of the requested determination. The Department docketed the application as no. NPDA-2 and on January 16, 1985, published a notice and invitation to comment (50 FR 2528) with a deadline of March 4, 1985.

On January 16, 1985, the Attorney General for the State of Connecticut wrote to the Department to request that a public hearing be held in that state concerning the City's application. Because the City's application is based

in large part on a study indicating that safety could be enhanced by shipping spent fuel from Brookhaven by water to Connecticut rather than by highway through the City, the State of Connecticut clearly has a significant interest in this proceeding. By letter dated January 25, 1985, the Department informed the Attorney General of Connecticut that" we have determined that rather than hold a hearing as you requested, the proceeding, and the interests of the State, would be better served through use of a conference in the form of a briefing for those State and local officials who desire to submit substantive factual comments." Accordingly, on February 4, 1985, the Department published a meeting notice and extended the comment period to April 15, 1985. The briefing was held in Newington, Connecticut, on February 14, 1985. Departmental representatives discussed the applicable substantive and procedural requirements and described the history of this proceeding. Representatives of the City of New York described the elements of the City's application and a representative of the City's contractor explained the analytical techniques used in the report prepared for the City and submitted as part of the City's application.

The Department received more than 300 submissions containing more than 800 signatures in response to its invitation to comment. More than 700 of the signatures, however, were attached to petitions and form letters, which, although explicit in their indication of how the Department should rule, failed to address the questions of fact and law which are at issue. While such submissions provide an interesting indicia of the level of public interest in radioactive materials transportation, they do not assist the Department in making a determination. Since this proceeding is not a public policy debate, but an administrative determination of fact and law, mere statements of preference are not compelling. However, the Department also received more than 30 substantive submissions ranging from brief letters to lengthy legal and technical analyses.

After the comment period closed on April 15, 1985, the City requested an opportunity to submit a response to the comments which had been received. The Department had no reason to deny the request. Not having had an opportunity to examine all the submissions, it could not conclude that it had sufficient information to reach a decision. Nor was there a critical time factor, as the only party who had requested an expeditious ruling was the City and the City now sought an extension of time. Accordingly, the Department granted the City's request to submit response comments by no later than May 24, 1985. On that date the City submitted a reply to those comments and an addendum to its technical analysis. The City also served a copy of its submission to each of the 34 parties whom it had served with copies of its application.

On June 7, 1985, the State of Connecticut requested an opportunity to respond to the City's response by no later than July 31, 1985. At the time it received this request, the Department had had an opportunity to examine all of the documents in the docket and had concluded that it had sufficient information on which to base a decision. That being the case, no purpose would be served by extending the proceeding for another seven weeks and Connecticut's request was denied.

On June 11, 1985, the Department, as required by 49 CFR 107.219(d), published a notice that it had received all substantive information considered necessary to process the City's application for a non-preemption determination. (50 FR 24607).

IV. The City's Petition

The local requirement for which the City seeks a waiver of preemption is contained in § 175.111(l)(4) of the New York City Health Code:

> (1) Notwithstanding the foregoing provisions of this section, a Certificate of Emergency Transport issued by the Commissioner or his designated representative shall be required for each shipment, to be transported through the City or brought into the City, of any of the following materials:
>
> * * * * *
>
> (4) Spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies;

On first impression, this would appear to be a permit requirement rather than a ban. The intended purpose of the requirement, however, is made clear in the accompanying notes. "It is intended that such Certificate will be issued for the most compelling reasons involving urgent public policy or national security interests transcending public health and safety concerns and that economic consideration alone will not be acceptable as justification for the issuance of such Certificate." Both from the language accompanying the City's adoption of the rule and the City's discussion of the effects of the rule, it is clear that the rule was intended to ban such shipments, not to merely impose a permit requirement.

The City's petition offers arguments that its ban should be allowed to stand, despite its inconsistency with the HMTA, because: (1) Unique local conditions are such that shipments of spent nuclear fuel should avoid the City if at all possible, and (2) alternate routes are available which offer a greater level of public safety without unreasonably burdening commerce.

Regarding its uniqueness, the City notes that it is not only the most densely populated area in the nation, but also the only major population center in the nation without an Interstate System bypass or beltway for shipments emanating from a location generating highway route controlled quantity shipments of radioactive material. In view of this, the City believes that the problems inherent in confronting a transportation accident are so great as to warrant avoiding the City if at all possible.

Regarding the availability of safer alternate routes, the City submitted a comparative risk assessment of viable alternative routes for the transportation of spent nuclear fuel from Long Island. This study concluded that there are at least three alternatives to the use of Interstate highways through the City which provide a greater level of overall public safety. These are:

1. A chartered ferry from Orient Point, Long Island, to New London, Connecticut.
2. A barge from Shoreham to Bridgeport, Connecticut.
3. A chartered ferry from Port Jefferson, Long Island, to Bridgeport, Connecticut.

According to the City's analysis, the alternate routes provide up to a 32% reduction in risk for an additional expenditure of from $1200 to $2000 per shipment.

In summary, this proceeding involves the City's request that the Department waive the preemptive effect of HM-164 on the City's ban on the transportation, into and through the City, of spent reactor fuel elements or associated mixed fission products containing an activity in excess of 20 curies.

V. Analysis

As discussed previously, the burden of proof to be borne by a petitioner for a waiver of preemption is composed of three elements:

(1) A threshold showing of exceptional circumstances necessitating immediate action to secure more stringent regulations;

(2) A showing that the preempted state or local requirement affords an equal or greater level of protection to

the public as compared with the Federal standards; and

(3) A showing that the preempted state or local requirement does not unreasonably burden commerce.

To be successful, a petitioner must prove all three elements. Failure to demonstrate any one of these elements will require a petition to be denied.

The first element which must be demonstrated is the threshold showing of such "exceptional circumstances" as to warrant the availability of the extraordinary remedy of non-preemption. In its original application, the City had cited its high population density as an exceptional circumstance. The City did not take issue with the designation of preferred routes under HM-164, but with the fact of transportation itself:

> The dispersion of even a small quantity of radioactive materials in a city having a population density of 60–70,000 people per square mile, is unacceptable no matter how remote the possibility. (City's Application of March 20, 1981, page 4.)

The Department's preliminary response to this application found that the City had failed to demonstrate that exceptional circumstances existed. By relying exclusively on a "worst-case" approach to safety analysis, the City considered only the possible consequences of an accident and ignored the probability that such consequences would ever occur. The Department, therefore, pointed out that it had explicitly rejected exclusive reliance on the worst-case approach to safety analysis when promulgating HM-164:

> It is DOT's opinion that public policy for the routing of radioactive materials should be based not only upon a concern for worst-case accident consequences, but also upon all other factors which contribute to the overall risk involved in transporting large quantity radioactive materials. (46 FR 5300, January 19, 1981).

In its renewed application of December 24, 1984, the City cited two factors as presenting exceptional circumstances. "The City of New York is unique in that not only is it the most densely populated area in the nation . . . but it is also the only major population center in the United States without an Interstate system bypass or beltway for shipments emanating from a location generating large quantity radioactive materials— *i.e.*, there is no highway route around the City for shipments emanating from Long Island." (Application of December 24, 1984, page 4.) Because of this "uniqueness" the City believes that the problems inherent in confronting an accident are so great as to warrant avoiding the City if at all feasible.

The City points out that, because there is no circumferential bypass, highway shipments of highway route controlled quantity radioactive materials must traverse densely populated urban areas. "A radioactive materials incident anywhere along the City route could conceivably require the precautionary evacuation of tens of thousands of people . . ." (*Ibid.*, page 6). The City further notes that the public perception of the risks posed by a transportation incident could lead to even greater disruption than that inherent in emergency response procedures.

The Department does not dispute the City's assertion that significant disruption results from a hazardous materials incident in a densely populated urban area. To illustrate its point, the City cited a 1980 incident involving the actual leakage of liquefied petroleum gas from a tank truck on the George Washington Bridge. That incident "tied up the bridge for nearly eight hours and caused the evacuation of thousands of residents because of the dangers of the leaking gas." (*Ibid.*) The Department notes that bulk shipments of flammable liquids and gases continue to move over the City's highways. It would, thus, appear that the problems inherent in the City's confronting an incident of this dimension are not so great as to warrant a total ban on the transportation of these materials.

The City, however, asserts that a radioactive materials incident could cause greater disruption. "Because of the potential atmospheric dispersion of radioactive materials, a radioactive materials incident in New York City (even if no materials were dispersed) could affect an even greater number of people for a longer time period than that caused by the 1980 incident." (*Ibid.*) This assertion requires closer examination. First of all it assumes that the probability of atmospheric dispersion of spent fuel or associated mixed fission products (the materials which the City seeks to ban) is so high as to require massive evacuation as an immediate first response to any transportation incident. In fact, the probability of atmospheric dispersion is so low as to be virtually academic. In any event, it would not take eight hours to determine whether the necessary preconditions existed for atmospheric dispersion to become a realistic possibility. A second flaw in the City's argument is that, unlike the cited case of leaking liquefied petroleum gas, an incident involving radioactive materials would not create an imminent threat of fire or explosion. Thus, the Department is unconvinced by the City's assertion that a transportation incident involving spent nuclear fuel would be so much more disruptive as to be an unacceptable risk, regardless of its low probability of occurrence.

Related to the City's population density argument is its citation of the large number of vehicular accidents which occur each year in the City. (The City states that in 1983 there were approximately 95,000 vehicular accidents resulting in 64,000 injuries, but these figures are not particularly informative. Of greater relevance would be numbers of vehicular accidents resulting in injury which involved motor carriers of hazardous materials.) While acknowledging the improbability that any of these non-fatal accidents could cause the release of radioactive material, the City asserts that "the public perception of such an accident would alone be sufficient to generate great anxiety, with consequent disruption of traffic and precautionary evacuation until local public officials determined whether a release had in fact occurred." (*Ibid.*, pp. 6–7). The Department considers this argument specious. Since the City seeks to ban only spent fuel and associated mixed fission products, it must assume that its officials are capable of maintaining public order in the face of minor vehicular accidents involving shipments of any other hazardous or radioactive material. That being the case, there is little merit in the argument that the effects of public perception alone would be sufficiently disruptive to justify a ban. (Of course, the Department assumes that the official reaction to a minor traffic incident involving a shipment of spent fuel would be a responsible one and not a cry of disaster, in which case the City's argument would become a self-fulfilling prophecy.)

Finally, the City raised the prospect of a worst-case accident. As in its original application, the City relied on a report by Sandia Laboratories entitled "Transportation of Radionuclides in Urban Environs: Draft Environmental Assessment" (NUREG/CR-0743, Sand 79-0369, July 1980). More specifically, the City relied on a few data points contained in a single table in that report. Table 3-11 at page 66 of the report presented estimates of the results of low-probability/high-consequence (i.e., worst-case) accidents involving the catastrophic release of certain kinds of radioactive material in the densely populated areas of New York City. The City noted that the consequences of a worst-case accident involving plutonium

were estimated to be 1800 latent cancer fatalities, 290 early morbidities and 5 early fatalities. The city did not point out that the same table estimated the probability of such an occurrence as 2×10^{-12}, or one in 500 billion shipments. The City did acknowledge that worst-case accidents had a low probability, but added that "they have a way of happening . . . and that alone would end the case for many." (Application, p. 7).

The City's argument is, once again, based on exclusive reliance on the consequences of a worst-case accident without regard to its probability of occurrence. As stated previously, the Department considered and specifically rejected this approach in the course of promulgating HM-164. The reasonableness of this decision was one of the issues raised by the City in its legal challenge to the validity of HM-164. The Second Circuit Court of Appeals ruled on the issue as follows:

> Here, DOT considered a rule that might be expected to generate a catastrophic accident approximately once every 300 million years. After receiving advice from all sides, the Department decided that such a remote possibility, even of a serious consequence, did not create a "significant" risk for the human environment. Disquieting as it may be even to contemplate such matters, this decision cannot be said to be an abuse of discretion. *(City of New York*, 715 F2d 732, 752).

Even if the Department were to accept this approach to transportation risk analysis, it would not be convinced by estimates of consequences which have since been repudiated by their authors. The City cites a 1980 Sandia report on the impacts of malevolent acts directed at spent fuel casks in urban areas. The Department notes that the estimates published in that report were subsequently deemed to be "greatly overestimated" as a result of efforts reported in a later Sandia report entitled "An Assessment of the Safety of Spent Fuel Transportation in Urban Environs" (SAND 82-2365, June 1983, p. 4). An indication of the extent to which the two studies differed is offered by the following comparison of their estimates of the (mean/peak) health consequences resulting from deliberate sabotage of a truck cask containing spent nuclear fuel:

	Early fatalities	Early morbidities	Early latent cancer fatalities
1980 study	4/60	160/1,600	350/1,300
1983 study	0/0	0/0	1/3

The second part of the City's claimed uniqueness involves the lack of an Interstate System beltway or bypass for shipments emanating from a location generating highway route controlled quantity shipments of radioactive materials. The City states that "because the health impacts and economic consequences of a 'worst-case' accident are so severe, HM-164 requires carriers to avoid cities where possible by the use of circumferential routes." (Application, p. 7). From this, the City argues that equal recognition should be given to intermodal circumferential routes when no Interstate beltway or bypass is available.

This argument necessitates a review of the Departmental policy underlying the required use of Interstate beltways and bypasses. In the preamble to HM-164, the Department acknowledged that high consequence accidents in densely populated areas should be of great concern, but not to the extent that public policy on highway routing should be formulated exclusively on the basis of avoiding worst-case accidents. The risk of high consequence/low probability accidents could be substantially reduced by avoiding cities, but the result could be a dramatic increase in overall public risks since routes that avoid the urban areas may have much higher accident rates which increase the chance of a severe accident occurring. Such routes may also increase time in transit and, thus, the length of time the public is exposed to the risks inherent in the transportation of radioactive materials. The Department chose to resolve this dilemma by requiring motor carriers to use urban Interstate circumferential beltways when such are available.

The requirement that carriers of highway route controlled quantities of radioactive material use available Interstate beltways or bypasses to avoid urban centers was generally recognized by those commenting on the proposed rule as a reasonable exception to the requirement that preferred routes be selected on the basis of their ability to reduce time in transit. This requirement did not, however, receive unanimous approval.

The City of Baltimore suggested that the use of beltways would not automatically result in the avoidance of all heavily populated areas and that, during peak traffic hours, it may be less hazardous to direct shipments over an Interstate through-route rather than a beltway. And the Commonwealth of Massachusetts, pointing to situations where there are multiple beltways around a metropolitan area, expressed concern that HM-164 might allow carriers to operate over the shorter circumferential route, despite the availability of a second route with superior design standards and lower population density.

The Department responded to these concerns in two ways. First, it reaffirmed its belief that "packages of large quantity radioactive material can be transported over any Interstate highway, and most other comparable routes, with a confident level of safety." (46 FR 5298, 5309). Then, it stated forcefully that its reaffirmation was in no way intended to discourage state governments from adopting reasonable routing rules which increase this level of confidence. It was for this reason that HM-164 included a mechanism for state designation of alternate preferred routes. Consequently, in adopting a rule of national applicability, the Department chose to direct carriers to use urban Interstate circumferential beltways in the belief that, when considering both normal and accident conditions of radioactive materials transportation, aggregate benefit would be realized. (46 FR 5298, 5309)

The Departmental decison to direct shipments onto urban Interstate circumferential routes, therefore, cannot be construed to imply either that the use of Interstate routes through urban areas is unsafe or that Interstate through-routes are inherently less safe than Interstate beltways or bypasses. The highway routing rulemaking was based on the Department's conclusion that "the public risks in transporting these materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions" and its belief that "these currently low risks [would] be further minimized by the adoption of driver training requirements and provisions of a method for selecting the safest highway routes." (46 FR 5298, 5299). In other words, before adoption of HM-164 the public risks in highway transportation of large quantity radioactive materials were already low. These risks were further reduced by designation of the Interstate System of highways as the primary roadways for such transportation, a designation based on their overall performance rating with respect to lower accident rates and their capacity for reducing transit time. Finally, the Department concluded that it would be possible to reduce the estimatable, albeit extremely low, risk of a worst-case accident by directing motor carriers onto urban Interstate circumferential routes where these were available. Thus, the required use of Interstate beltways and bypasses was intended to provide a further marginal enhancement to an already safe system of highway routing. In view of this, there

is no basis to conclude that the non-availability of an urban Interstate circumferential route is *per se* an exceptional circumstance such that application of the Federal routing rule fails to provide an adequate level of safety.

Having considered the two elements of City's claim of uniqueness separately and determined that neither alone constitutes an exceptional circumstance, it remains to determine whether their combined effect is such as to compel a different conclusion. The City argues that, because there is no Interstate beltway or bypass available to shipments emanating from Long Island, such shipments must pass through the City; and because of the City's population density "the problems inherent in confronting an accident (with or without a release of materials) are so great as to warrant avoiding the City if at all feasible." (Application, p. 4). The City's proposed solution is to ban spent fuel shipments from the City, thereby eliminating any risk of accident.

The Department has considered the City's arguments and finds a fatal flaw in the reasoning. Of all of the hazardous and radioactive materials which may currently be transported through the City, only spent nuclear fuel is singled out as presenting so grave a threat as to be intolerable. Yet "the problems inherent in confronting an accident" involving spent nuclear fuel are not qualitatively different from those involved in responding to an accident involving other kinds of radioactive materials. Moreover, the probability of an accident involving the release of spent fuel is several orders of magnitude below that of other kinds of hazardous materials.

On the basis of the foregoing, I find that the City has not demonstrated that the Federal routing regulations fail to provide an adequate level of safety in the City of New York because of circumstances which are unique to the City. Having failed to make the necessary threshold showing, the City has failed to demonstrate that its circumstances constitute the type of "emergency situation" for which Congress created the extraordinary remedy of non-preemption. That being the case, there is no need to consider whether the City has satisfactorily addressed the statutory criteria governing that remedy.

The Department's conclusion that the City has not presented a case for which non-preemption is an appropriate remedy does not, however, preclude the City from seeking the relief it desires within the framework of the very rule whose preemptive effects the City has sought to avoid. The highway routing scheme created under HM-164 went beyond the Department's designation of Interstate System highways to give full recognition to alternate routes designated by the states.

In the course of promulgating HM-164, the Department recognized that not all segments of the Interstate System of highways were of equal calibre and that in certain areas non-Interstate routes were available which could provide an equal or greater level of safety. The Department further acknowledged that the task of identifying preferable alternative local routes was best performed by the states and, for this reason, developed a mechanism for state-designation of alternate routes.

In response to comments that local governments should be responsible for routing within their jurisdictions, the Department noted that local jurisdictions are inherently limited in perspective with respect to establishing routing requirements. Accountable only to their own citizens, local governments have little incentive to take sufficient account of the adverse impacts of their routing decisions on surrounding jurisdictions. Uncoordinated and unilateral restrictions on the highway transportation of radioactive materials would simply not be conducive to safe transportation. Indeed, it was the proliferation of such restrictions which provided the impetus for Departmental adoption of HM-164

The Department believed that state government could provide the key to ensuring that the safest routes were used to transport high-level radioactive materials. A state government has a much broader perspective than local governments because it is responsible for the safety and welfare of all its communities. A state can not only assess the safety impacts of a routing decision on all communities, but can also address the concerns of tunnel, turnpike and bridge authorities. States thus have the capability, through existing administrative and lawmaking procedures, to incorporate local input directly into their routing analyses. Also, a state, unlike a local government, can work directly with other states (individually or through regional compacts) to ensure the consideration of all safety impacts as well as the continuity of designated routes. Finally, the states have traditionally exercised primary responsibility and control over Federal-Aid Highways, including the Interstate System, and, thus, have demonstrated capabilities and established mechanisms for managing a variety of highway programs.

Many local officials expressed concern that the states would not actively pursue local interests before designating routes. The Department considered establishing specific guidelines to ensure a formal procedure for local consideration, but found that this approach was impractical given the variations in organizational structure and administrative processes from state to state. Instead, the Department took two steps to ensure consideration of local viewpoints. First, it established a general requirement that states consult with affected local jurisdications before designating an alternate preferred route. Second, it developed a set of guidelines to assist states in assessing the safety of potential alternate routes. The Department included both steps in its definition of what constitutes a state-designated route:

> "State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public. Designation must have been preceded by sustantive consultation with affected local jurisdications and with any other affected States to ensure consideration of all impacts and continuity of designated routes. (49 CFR 171.8)

In summary, under HM-164, motor carriers of highway route controlled quantity shipments of radioactive material can be required to operate over alternate preferred routes so long as those alternate routes:

1. Are designated by an authorized state routing agency,

2. In accordance with the DOT Guidelines or equivalent routing analysis, *and*

3. After substantive consultation with affected local jurisdictions and any other affected states.

The City has offered no arguments to demonstrate that exceptional circumstances exist to prevent the State of New York from utilizing the mechanism created under HM-164 to designate the alternate preferred route(s) which the City seeks to establish. In the absence of compelling arguments on this point, Departmental issuance of a waiver of preemption would amount to an arbitrary and capricious withdrawal of authority which the Department has recognized as being vested in the state. Beyond assisting the City to usurp the authority of the state, Departmental issuance of a waiver would also adversely impact those local jurisdictions (e.g., the cities of Bridgeport and New London) and states (e.g. Connecticut) who would be

affected by an alternate route by depriving them of their rights to engage in substantive consultation prior to designation of an alternate route.

The Department has consistently held that the authority to alter the preferred status of Interstate System highways is vested in the states. However, nothing in HM-164 compels a state to act. Within the framework of the Department's highway routing rules, a state's decision to take no action (thereby maintaining the preferred status of the Interstate System highways) is as much as exercise of the state's routing authority as a decision to designate alternate routes. Thus, a state's decision to not designate alternate routes cannot be construed as an abdication of responsibility such as to give rise to local assumption of that authority.

This is not the first time the Department has been approached by a party seeking to modify the preferred status of certain Interstate System highways by direct application to the Department rather than through the established mechanism for state-designation of alternate routes. The Department's consistent response has been to advise such applicants to present their arguments to the appropriate state routing agency. Nothing distinguishes the City's request from those received previously.

Whether or not the potential alternate routes identified by the City offer an equal or greater level of safety as compared to the Interstate routes through the City are questions properly addressed by a state routing agency in consultation with all affected local and state jurisdiction. The Department's role in such deliberations is limited to responding to requests for guidance in applying or interpreting the DOT Guidelines or other risk assessment methodology. After a state routing agency has designated an alternate preferred route, the Department may be called upon to determine whether the designation was made in accordance with the HMR. Such a determination would be made in accordance with the procedures for issuance of inconsistency rulings.

Since the City has failed to make the necessary threshold showing of exceptional circumstances, and since, moreover, the HMR make specific provision for the type of releif sought by the City, I find no justification for Departmental issuance of extraordinary relief in the form of a waiver of preemption.

VI. Ruling

For the foregoing reasons, New York City's request for a waiver of the preemptive effect of the hazardous materials regulations collectively referred to as HM-164 on section 175.111(l)(4) of the City Health Code is hereby denied.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.225.

Issued in Washington, DC on September 9, 1985.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Appendix

The preceding non-preemption determination (NPD-1) has considered only one aspect of the inconsistency of section 175.111(1)(4) of the New York City Health Code, i.e. the manner in which it impedes compliance with the highway routing regulations promulgated under the HMTA. There is a second aspect to the inconsistency of the City's requirement which, although not relevant to the Department's findings in NPD-1, could present a serious impediment to the City's future attempts to gain recognition of its routing rule.

By imposing a ban on the transportation of "spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies", the City's inconsistent rule impedes the accomplishment of the HMTA by creating a non-uniform hazard class. With regard to the issue of hazard class definition, the Department has repeatedly held that there are certain areas where the need for national uniformity is so crucial and the scope of Federal regulation so pervasive that it is difficult to envision any situation where a different state or local rule would not impede the accomplishment of the HMTA. One area where the Department perceives the Federal role to be exclusive is that of hazard warning systems, including the hazard class definitions on which these are based. As stated in inconsistency ruling no. IR-5 which dealt with a New York City regulation on transportation of compressed gases:

> The HMR are, in and of themselves, a comprehensive and technical set of regulations . . . For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme . . . . Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety. [47 FR 51991, 51994, November 18, 1982].

The class of radioactive materials which the City seeks to ban is "spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies." At the time the City adopted this requirement, the language was consistent with the HMR's definition of "large quantity radioactive materials" [49 CFR 173.389(b)]. That definition was based on the transport group system of classifying radionuclides. In 1983, however, the Department issued a final rule (Docket no. HM-169, 48 FR 10218, March 10, 1983) which deleted the term "large quantity radioactive materials" and the transport group system of classification and adopted the term "highway route controlled quantity" radioactive material and the A_1/A_2 classification system on which it is based.

Under the current system of classifying radionuclides, the reference to "20 curies" does not correspond to any classification used in the HMR. For example, a highway route controlled quantity of "mixed fission products" contains an activity of 1200 curies or more. Thus, the City's ordinance would ban some shipments of radioactive materials which are not even subject to the required use of preferred routes under HM-164. As stated in inconsistency ruling no. IR-6:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform comprehensive system of hazardous materials transportation safety regulation. This is precisely the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA [49 U.S.C. 1811]. [48 FR 760, 764, January 6, 1983].

Given the Department's consistently firm position on the need for national uniformity of hazard classification, any action by a state routing agency to designate alternate routes which incorporated the City's non-uniform hazard class definition would be vulnerable to attack as an inconsistent and, thus, preempted state rule. On the other hand, this defect could be cured by a simple amendment adopting language consistent with the HMR.

. Having directed the City to utilize the established mechanism for state-designation of alternate preferred routes, the Department considered it fitting and proper to point out the foreseeable and avoidance problems inherent in the language of the City's ordinance.

[FR Doc. 85-21822 Filed 9-11-85; 8:45 am]

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federal register

Thursday
September 12, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendment

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Reopening and Extension of Public Comment Period on Proposed Amendment to the Illinois Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: By letter dated December 23, 1983, Illinois submitted to OSM proposed requirements for the training and certification of blasters working in surface coal mining operations. OSM published a notice in the **Federal Register** on January 25, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (49 FR 3093).

Following OSM's review of the Illinois amendments, OSM notified the State, on April 25, 1984, of its concerns about amendments relating to providing adequate training for blasters, reexamination for blaster competency, and protection of blasters certificates from theft, loss, or unauthorized duplication.

On May 25, 1984, the State responded by agreeing to amend the rules to answer OSM's concerns. The amended rules were submitted to OSM on March 29, 1985.

On May 1, 1985, OSM reopened and extended the public comment period on the amended rules to May 31, 1985. OSM's review of the amended rules identified concerns with the required courses for blaster certification training. The specific concerns were (1) handling, transportation and storage of explosives; (2) secondary blasting applications, and (3) blasting schedules. The State was notified of these concerns on June 25, 1985. The State responded to OSM's concerns with a policy statement dated August 16, 1985.

Accordingly, OSM is reopening and extending the comment period on Illinois' December 23, 1983 proposed amendments as modified on March 29, 1985, and August 16, 1985. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendments.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. September 27, 1985, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Room 20, Springfield, Illinois 62701.

Copies of the Illinois program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 L Street NW., Washington, D.C. 20240;

Illinois Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Room 201, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Illinois program, can be found in the June 1, 1982 **Federal Register** (47 FR 23858).

At the time of the Secretary's approval of the Illinois program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Illinois program, the Secretary specified that Illinois would be required to adopt such provisions following promulgation of the Federal standards (47 FR 23858, June 1, 1982). On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blaster at 30 CFR Chapter M (48 FR 9486).

II. Proposed Amendment

By letter dated December 23, 1983, Illinois submitted proposed regulations which would establish requirements for the training and certification of blasters working in surface coal mining operations. The new requirements were set forth under Part 1850—Training, Examination and Certification of Blasters.

OSM announced receipt of the amendments and initiated a public comment period on January 25, 1984 (49 FR 3093). The comment period ended February 24, 1984.

During review of the amendments, OSM identified three concerns:

(1) The proposed Illinois rules do not provide that the regulatory authority may require periodic re-examination, training or other demonstration of continued blaster competency;

(2) Illinois' proposed rules do not contain counter parts to all of the courses required for blaster training in 30 CFR 850.13(b); and

(3) The proposed Illinois' rules do not require the blaster to take every reasonable precaution to protect his certificate from loss, theft or unauthorized duplication.

OSM notified Illinois about these concerns by letter dated April 25, 1984. On May 25, 1984, Illinois responded by agreeing to amend its blaster training and certification rules to answer OSM's concerns. Illinois also proposed to make minor editorial changes and correct typographical errors. The State completed its changes on February 15, 1985, and submitted the amended rules to OSM on March 29, 1985.

On May 1, 1985, OSM announced it was reopening and extended the public comment period through May 31, 1985, on the resubmitted Illinois blaster training and certification rules (50 FR 18536). During OSM's review of the resubmitted regulations, it identified three areas of concern. These are that Illinois has no requirement for a course on the handling, transportation and storage of explosives; Illinois does not require training in secondary blasting applications, and in blasting schedules. Illinois was notified of OSM's concerns on June 25, 1985. The State responded in a letter dated August 16, 1985.

The full text of the proposed program amendments and of the subsequent material is available for review at the locations listed above under **"ADDRESSES."** Accordingly, OSM is now seeking public comment on the adequacy of Illinois' December 23, 1983

amendments as modified on March 29, 1985, in light of the State's August 16, 1985 modifications.

List of Subjects in 30 CFR Part 913

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

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: September 9, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85-21828 Filed 9-11-85; 8:45 am]

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federal register

Thursday
September 12, 1985

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Reports; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of September 1, 1985, of 244 rescission proposals and 75 deferrals contained in the first 11 special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), March 1, March 22, May 16, June 20, and July 31, 1985.

Rescissions (Table A and Attachment A)

As of September 1, 1985, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the 244 rescissions proposed by the President in 1985.

Deferrals (Table B and Attachment B)

As of September 1, 1985, $4,159.8 million in 1985 budget authority was being deferred from obligation and $5.5 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Register** listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984
Vol. 49, FR p. 44870, Friday, November 9, 1984
Vol. 49, FR p. 47804, Thursday, December 6, 1984
Vol. 50, FR p. 1420, Thursday, January 10, 1985
Vol. 50, FR p. 6582, Friday, February 15, 1985
Vol. 50, FR p. 6648, Friday, February 15, 1985
Vol. 50, FR p. 9410, Thursday, March 7, 1985
Vol. 50, FR p. 12504, Thursday, March 28, 1985
Vol. 50, FR p. 21014, Tuesday, May 21, 1985
Vol. 50, FR p. 26510, Wednesday, June 26, 1985
Vol. 50, FR p. 31696, Monday, August 5, 1985

Joseph R. Wright,
Acting Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,843.3
Accepted by the Congress	165.6
Rejected by the Congress	1,677.7 a/
Pending before the Congress	0

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TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$15,339.3 b/
Routine Executive releases through September 1, 1985 (OMB/ Agency Releases of $11,411.2 million and cumulative adjustments of $318.6 million)	-11,092.6
Overturned by the Congress	-81.4
Currently before the Congress	$ 4,165.3 c/

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a/ These amounts were available for obligation between March 25 and August 15, 1985, when the Second Supplemental Appropriations Act (P.L. 99-88) was enacted.

b/ This amount includes $170.0 million transmitted by the Comptroller General on June 24, 1985, for the General Services Administration.

c/ This amount includes $5.5 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1	99,000		2-6-85		99,000	4-25-85	
International Development Assistance Functional development assistance program	R85-2	5,168		2-6-85		5,168	4-25-85	
Peace Corps Peace Corps operating expenses	R85-3	1,231		2-6-85		1,231	4-25-85	
Overseas Private Investment Corporation Overseas Private Investment Corporation	R85-4	838		2-6-85		838	4-25-85	
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5	114		2-6-85		114	4-25-85	
Departmental Administration Departmental Administration	R85-6	149		2-6-85	49	149	4-25-85	P.L. 99-88
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7	497		2-6-85		497	4-25-85	
Office of the Inspector General Office of the Inspector General	R85-8	41		2-6-85		41	4-25-85	
Office of the General Counsel Office of the General Counsel	R85-9	24		2-6-85		24	4-25-85	
Agricultural Research Service Agricultural Research Service	R85-10	1,313		2-6-85	1,000	1,313	4-25-85	P.L. 99-88
Buildings and facilities	R85-11 R85-12	16,950 20,950		2-6-85 2-6-85		16,950 20,950	4-25-85 4-25-85	
Cooperative State Research Service Cooperative State Research Service	R85-13	151		2-6-85		151	4-25-85	
Extension Service Extension Service	R85-14	310		2-6-85		310	4-25-85	
National Agricultural Library National Agricultural Library	R85-15	11		2-6-85		11	4-25-85	
Statistical Reporting Service Salaries and expenses	R85-16	206		2-6-85	100	206	4-25-85	P.L. 99-88
Economic Research Service Salaries and expenses	R85-17	132		2-6-85	50	132	4-25-85	P.L. 99-88
World Agricultural Outlook Board World Agricultural Outlook Board	R85-18	32		2-6-85		32	4-25-85	
Foreign Agricultural Service Foreign Agricultural Service	R85-19	424		2-6-85	100	424	4-25-85	P.L. 99-88
Office of International Cooperation and Development Salaries and expenses	R85-20	52		2-6-85		52	4-25-85	
Scientific activities overseas (special foreign currency program)	R85-21	9		2-6-85		9	4-25-85	
Agricultural Stabilization and Conservation Service Salaries and expenses	R85-22	100		2-6-85		100	4-25-85	
Dairy indemnity program	R85-23	88		2-6-85		88	4-25-85	
Federal Crop Insurance Corporation Administrative and operating expenses	R85-24	1,906		2-6-85		1,906	4-25-85	
Commodity Credit Corporation Commodity Credit Corporation fund	R85-25	31		2-6-85		31	4-25-85	
Office of Rural Development Policy Salaries and expenses	R85-26	36		2-6-85		36	4-25-85	
Rural Electrification Administration Salaries and expenses	R85-27	288		2-6-85		288	4-25-85	
Reimbursement to the Rural Electrification and Telephone revolving fund	R85-28	215,964		2-6-85		215,964	4-25-85	
Purchase of Rural Telephone Bank capital stock	R85-29	30,000		2-6-85		30,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses	R85-30	1,315		2-6-85		1,315	4-25-85	
Soil Conservation Service								
Conservation operations	R85-31	5,174		2-6-85		5,174	4-25-85	
River basin surveys and investigations	R85-32	235		2-6-85		235	4-25-85	
Watershed planning	R85-33	133		2-6-85		133	4-25-85	
Watershed and flood prevention operations	R85-34	918		2-6-85		918	4-25-85	
Great plains conservation program	R85-35	126		2-6-85		126	4-25-85	
Resource conservation and development	R85-36	164		2-6-85		164	4-25-85	
Animal and Plant Health Inspection Service								
Salaries and expenses	R85-37	1,464		2-6-85	400	1,464	4-24-85	P.L. 99-88
Federal Grain Inspection Service								
Salaries and expenses	R85-38	94		2-6-85		94	4-25-85	
Agricultural Marketing Service								
Marketing services	R85-39	150		2-6-85		150	4-25-85	
Office of Transportation								
Office of Transportation	R85-40	18		2-6-85		18	4-25-85	
Food Safety and Inspection Service								
Salaries and expenses	R85-41	2,473		2-6-85		2,473	4-25-85	
Food and Nutrition Service								
Food stamp administration	R85-42	684		2-6-85		684	4-25-85	
Food stamp program	R85-43	8,762		2-6-85		8,762	4-25-85	
Human Nutrition Information Service								
Human Nutrition Information Service	R85-44	34		2-6-85		34	4-25-85	
Packers and Stockyards Administration								
Packers and Stockyards Administration	R85-45	117		2-6-85	85	117	4-25-85	P.L. 99-88
Agricultural Cooperative Service								
Salaries and expenses	R85-46	50		2-6-85		50	4-25-85	
Forest Service								
Forest research	R85-47	923		2-6-85	462	923	4-25-85	P.L. 99-88
State and private forestry	R85-48	463		2-6-85	232	463	4-25-85	P.L. 99-88
National forest system	R85-49	12,134		2-6-85	6,067	12,134	4-25-85	P.L. 99-88
Construction	R85-50	1,922		2-6-85	961	1,922	4-25-85	P.L. 99-88
Land acquisition	R85-51	68		2-6-85	68	68	4-25-85	P.L. 99-88
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	R85-52	3,700		2-6-85		3,700	4-25-85	
	R85-53	499		2-6-85	499	499	4-25-85	P.L. 99-88
Economic Development Administration								
Salaries and expenses	R85-54	120		2-6-85	120	120	4-25-85	P.L. 99-88
Economic development assistance programs	R85-55	24,000		2-6-85		24,000	4-25-85	
	R85-56	179,000		2-6-85		179,000	4-25-85	
Bureau of the Census								
Salaries and expenses	R85-57	241		2-6-85	241	241	4-25-85	P.L. 99-88
Periodic censuses and programs	R85-58	791		2-6-85		791	4-25-85	
Economic and Statistical Analysis								
Salaries and expenses	R85-59	433		2-6-85	433	433	4-25-85	P.L. 99-88
International Trade Administration								
Operations and administration	R85-60	2,783		2-6-85		2,783	4-25-85	
	R85-60A	18,750		2-6-85		18,750	4-25-85	
Participation in United States expositions	R85-61	6		2-6-85	6	6	4-25-85	P.L. 99-88
Minority Business Development Agency								
Minority business development	R85-62	305		2-6-85	305	305	4-25-85	P.L. 99-88
United States Travel and Tourism Administration								
Salaries and expenses	R85-63	468		2-6-85	468	468	4-25-85	P.L. 99-88
	R85-63A	3,417		2-6-85		3,417	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R85-64	4,140		2-6-85		4,140	4-25-85	
	R85-64A	100,200		2-6-85		100,200	4-25-85	
Fisheries loan fund	R85-65	1,550		2-6-85		1,550	4-25-85	
Patent and Trademark Office								
Salaries and expenses	R85-66	1,472		2-6-85	1,472	1,472	4-25-85	P.L. 99-88
National Bureau of Standards								
Scientific and technical research and services	R85-67	1,019		2-6-85	500	1,019	4-25-85	P.L. 99-88
National Telecommunications and Information Administration								
Salaries and expenses	R85-68	183		2-6-85	183	183	4-25-85	P.L. 99-88
Public telecommunications facilities, planning and construction	R85-69	32		2-6-85	32	32	4-25-85	P.L. 99-88
	R85-69A	9,968		2-6-85		9,968	4-25-85	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations	R85-70	2,000		2-6-85		2,000	4-25-85	
Construction, general	R85-71	4,000		2-6-85		4,000	4-25-85	
Operation and maintenance, general	R85-72	8,000		2-6-85		8,000	4-25-85	
General expenses	R85-73	1,200		2-6-85		1,200	4-25-85	
Flood control, Mississippi River and tributaries	R85-74	1,000		2-6-85		1,000	4-25-85	
Revolving fund	R85-75	3,900		2-6-85		3,900	4-25-85	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs	R85-76	80,000		2-6-85		80,000	4-24-85	
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants	R85-77	30,000		2-6-85		30,000	4-24-85	
Office of Postsecondary Education								
Higher education	R85-78	59,750		2-6-85		59,750	4-24-85	
Departmental Management								
Salaries and expenses	R85-79	4,189		2-6-85		4,189	4-24-85	
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities	R85-80	8,280		2-6-85	8,280	8,280	4-25-85	P.L. 99-88
Energy Programs								
General science and research activities	R85-81	38		2-6-85		38	4-25-85	
Energy supply, research and development activities	R85-82	2,676		2-6-85		2,676	4-25-85	
Uranium supply and enrichment activities	R85-83	968		2-6-85		968	4-25-85	
Fossil energy research and development	R85-84	3,276		2-6-85		3,276	4-25-85	
	R85-85	860		2-6-85		860	4-25-85	
Naval petroleum and oil shale reserves	R85-86	181		2-6-85		181	4-25-85	
Energy conservation	R85-87	931		2-6-85		931	4-25-85	
Strategic petroleum reserve	R85-88	156		2-6-85		156	4-25-85	
Energy Information Administration	R85-89	846		2-6-85		846	4-25-85	
Emergency preparedness	R85-90	51		2-6-85	51	51	4-25-85	P.L. 99-88
Economic regulation	R85-91	156		2-6-85	102	156	4-25-85	P.L. 99-88
Federal Energy Regulatory Commission	R85-92	204		2-6-85		204	4-25-85	
Alternate fuels production	R85-93	23		2-6-85		23	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Power Marketing Administration								
Operation and maintenance, Alaska Power Administration	R85-94	29		2-6-85		29	4-25-85	
Operation and maintenance, Southeastern Power Administration	R85-95	15		2-6-85		15	4-25-85	
	R85-243	23,402		5-16-85		23,402	7-19-85	
Operation and maintenance, Southwestern Power Administration	R85-96	243		2-6-85		243	4-25-85	
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	R85-97	432		2-6-85		432	4-25-85	
Departmental Administration								
Departmental administration	R85-98	2,786		2-6-85		2,786	4-25-85	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Salaries and expenses	R85-99	2,194		2-6-85		2,194	4-25-85	
Health Resources and Services Administration								
Health resources and services	R85-100	2,263		2-6-85		2,263	4-25-85	
Indian health	R85-101	161		2-6-85	161	161	4-25-85	P.L. 99-88
Centers for Disease Control								
Disease control	R85-102	2,261		2-6-85		2,261	4-25-85	
National Institutes of Health								
National Cancer Institute	R85-103	4,362		2-6-85		4,362	4-25-85	
National Heart, Lung and Blood Institute	R85-104	1,401		2-6-85		1,401	4-25-85	
National Institute of Dental Research	R85-105	166		2-6-85		166	4-25-85	
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	R85-106	1,171		2-6-85		1,171	4-25-85	
National Institute of Neurological and Communicative Disorders	R85-107	462		2-6-85		462	4-25-85	
National Institute of Allergy and Infectious Diseases	R85-108	428		2-6-85		428	4-25-85	
National Institute of General Medical Sciences	R85-109	211		2-6-85		211	4-25-85	
National Institute of Child Welfare and Human Development	R85-110	309		2-6-85		309	4-25-85	
National Eye Institute	R85-111	173		2-6-85		173	4-25-85	
National Institute of Environmental Health Sciences	R85-112	542		2-6-85		542	4-25-85	
National Institute on Aging	R85-113	196		2-6-85		196	4-25-85	
Research resources	R85-114	250		2-6-85		250	4-25-85	
John E. Fogarty International Center	R85-115	241		2-6-85		241	4-25-85	
National Library of Medicine	R85-116	354		2-6-85		354	4-25-85	
Office of the Director	R85-117	182		2-6-85		182	4-25-85	
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R85-118	3,972		2-6-85		3,972	4-25-85	
Office of Assistant Secretary for Health								
Public health service management	R85-119	493		2-6-85		493	4-25-85	
Health Care Financing Administration								
Program management	R85-120	1,540		2-6-85		1,540	4-25-85	
Human Development Services								
Human development services	R85-121	1,334		2-6-85		1,334	4-25-85	
Family social services	R85-122	396		2-6-85		396	4-25-85	
Community services block grant	R85-123	34		2-6-85		34	4-25-85	
Departmental Management								
General departmental management	R85-124	1,246		2-6-85		1,246	4-25-85	
Office of the Inspector General	R85-125	496		2-6-85		496	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payments for operation of low income housing projects	R85-126	253,138		2-6-85		253,138	4-25-85	
Management and Administration								
Salaries and expenses	R85-127	6,919		2-6-85	6,919	6,919	4-25-85	P.L. 99-88
DEPARTMENT OF INTERIOR								
Bureau of Land Management								
Management of lands and resources	R85-128	5,778		2-6-85	2,900	5,778	4-25-85	P.L. 99-88
Oregon and California grant lands	R85-129	679		2-6-85	350	679	4-25-85	P.L. 99-88
Working capital fund	R85-130	2,951		2-6-85	2,951	2,951	4-25-85	P.L. 99-88
Minerals Management Service								
Minerals and royalty management	R85-131	1,764		2-6-85	1,764	1,764	4-25-85	P.L. 99-88
Office of Surface Mining Reclamation and Enforcement								
Regulation and technology	R85-132	546		2-6-85		546	4-25-85	
Abandoned mine reclamation fund	R85-133	333		2-6-85		333	4-25-85	
	R85-133A	2,900		2-6-85		2,900	4-25-85	
Bureau of Reclamation								
Construction program	R85-134	2,571		2-6-85		2,571	4-25-85	
General investigations	R85-135	209		2-6-85		209	4-25-85	
Operation and maintenance	R85-136	1,540		2-6-85		1,540	4-25-85	
General administrative expenses	R85-137	1,468		2-6-85		1,468	4-25-85	
Geological Survey								
Surveys, investigations and research	R85-138	4,519		2-6-85	1,269	4,519	4-25-85	P.L. 99-88
Bureau of Mines								
Mines and minerals	R85-139	1,355		2-6-85		1,355	4-25-85	
United States Fish and Wildlife Service								
Resource management	R85-140	3,869		2-6-85	1,900	3,869	4-25-85	P.L. 99-88
Construction	R85-141	40		2-6-85	40	40	4-25-85	P.L. 99-88
National Park Service								
Operation of the national park system	R85-142	8,598		2-6-85	4,300	8,598	4-25-85	P.L. 99-88
National recreation and preservation	R85-143	94		2-6-85		94	4-25-85	
Construction	R85-144	397		2-6-85	397	397	4-25-85	P.L. 99-88
Land acquisition and state assistance	R85-145	52		2-6-85	52	52	4-25-85	P.L. 99-88
	R85-146	30,000		2-6-85	30,000	30,000	4-25-85	P.L. 99-88
Bureau of Indian Affairs								
Operation of Indian programs	R85-147	5,570		2-6-85	2,800	5,570	4-25-85	P.L. 99-88
Office of Territorial Affairs								
Administration of territories	R85-148	107		2-6-85	107	107	4-25-85	P.L. 99-88
DEPARTMENT OF JUSTICE								
General Administration								
Salaries and expenses	R85-149	166		2-6-85	166	166	4-25-85	P.L. 99-88
Working capital fund	R85-150	3,000		2-6-85		3,000	4-25-85	
Legal Activities								
Salaries and expenses, General Legal Activities	R85-151	470		2-6-85	470	470	4-25-85	P.L. 99-88
Salaries and expenses, Antitrust Division	R85-152	65		2-6-85	65	65	4-25-85	P.L. 99-88
Salaries and expenses, United States Attorneys and Marshals	R85-153	889		2-6-85	889	889	4-25-85	P.L. 99-88
Fees and expenses of witnesses	R85-154	309		2-6-85	309	309	4-25-85	P.L. 99-88
Salaries and expenses, Community Relations Service	R85-155	43		2-6-85	43	43	4-25-85	P.L. 99-88

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal Bureau of Investigation								
Salaries and expenses	R85-156	3,505		2-6-85	3,505	3,505	4-25-85	P.L. 99-88
Drug Enforcement Administration								
Salaries and expenses	R85-157	876		2-6-85	876	876	4-25-85	P.L. 99-88
Immigration and Naturalization Service								
Salaries and expenses	R85-158	947		2-6-85	947	947	4-25-85	P.L. 99-88
Federal Prison System								
Salaries and expenses	R85-159	451		2-6-85	451	451	4-25-85	P.L. 99-88
National Institute of Corrections	R85-160	894		2-6-85		894	4-25-85	
Buildings and facilities	R85-161	13		2-6-85	13	13	4-25-85	P.L. 99-88
Office of Justice Programs								
Justice assistance	R85-162	2,031		2-6-85		2,031	4-25-85	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration	R85-163	218		2-6-85		218	4-25-85	
	R85-163A	1,703		2-6-85		1,703	4-25-85	
Training and employment services	R85-164	11,447		2-6-85		11,447	4-24-85	
	R85-164A	244,291		2-6-85		244,291	4-24-85	
Labor-Management Services Administration								
Salaries and expenses	R85-165	1,678		2-6-85		1,678	4-25-85	
Employment Standards Administration								
Salaries and expenses	R85-167	1,635		2-6-85		1,635	4-24-85	
	R85-167A	600		2-6-85		600	4-24-85	
Occupational Safety and Health Administration								
Salaries and expenses	R85-168	1,694		2-6-85		1,694	4-24-85	
Mine Safety and Health Administration								
Salaries and expenses	R85-169	1,776		2-6-85		1,776	4-24-85	
Bureau of Labor Statistics								
Salaries and expenses	R85-170	765		2-6-85		765	4-25-85	
	R85-170A	5,000		2-6-85		5,000	4-25-85	
Departmental Management								
Salaries and expenses	R85-171	728		2-6-85		728	4-24-85	
Inspector General salaries and expenses	R85-172	3,766		2-6-85		3,766	4-24-85	
Special foreign currency program	R85-173	20		2-6-85		20	4-24-85	
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R85-174	2,432		2-6-85	2,432	2,432	4-25-85	P.L. 99-88
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Motor carrier safety	R85-175	164		2-6-85	164	164	4-25-85	P.L. 99-88
National Highway Traffic Safety Administration								
Operations and research	R85-176	767		2-6-85	808	767	4-25-85	P.L. 99-88
Trust fund share of operations and research	R85-177	408		2-6-85		408	4-25-85	
Highway traffic safety grants	R85-178	250		2-6-85	250	250	4-25-85	P.L. 99-88
Federal Railroad Administration								
Office of the Administrator	R85-179	100		2-6-85		100	4-25-85	
Railroad research and development	R85-180	170		2-6-85	170	170	4-25-85	P.L. 99-88
Rail service assistance	R85-181	90		2-6-85	90	90	4-25-85	P.L. 99-88
Railroad safety	R85-182	140		2-6-85		140	4-25-85	
Northeast corridor improvement program	R85-183	200		2-6-85	200	200	4-25-85	P.L. 99-88
Urban Mass Transportation Administration								
Urban mass transportation fund, administrative expenses	R85-184	265		2-6-85		265	4-25-85	
Federal Aviation Administration								
Operations	R85-185	18,888		2-6-85		18,888	4-25-85	
Headquarters administration	R85-186	1,065		2-6-85		1,065	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Operation and maintenance, Washington metropolitan airports	R85-187	17		2-6-85		17	4-25-85	
Facilities and equipment (Airport and airway trust fund)	R85-188	10,000		2-6-85	10,000	10,000	4-25-85	P.L. 99-88
Coast Guard Operating expenses	R85-189	14,724		2-6-85		14,724	4-25-85	
Acquisition, construction and improvements	R85-190	500		2-6-85		500	4-25-85	
Reserve training	R85-191	441		2-6-85		441	4-25-85	
Research, development, test, and evaluation	R85-192	135		2-6-85		135	4-25-85	
Maritime Administration Operations and training	R85-193	888		2-6-85		888	4-25-85	
Office of the Inspector General Salaries and expenses	R85-194	300		2-6-85		300	4-25-85	
Office of the Secretary Salaries and expenses	R85-195	435		2-6-85		435	4-25-85	
Transportation planning, research and development	R85-196	65		2-6-85		65	4-25-85	
DEPARTMENT OF THE TREASURY								
Office of the Secretary Salaries and expenses	R85-197	969		2-6-85	969	969	4-25-85	P.L. 99-88
Office of Revenue Sharing Salaries and expenses	R85-198	90		2-6-85	90	90	4-25-85	P.L. 99-88
Federal Law Enforcement Training Center Salaries and expenses	R85-199	75		2-6-85	75	75	4-25-85	P.L. 99-88
Financial Management Service Salaries and expenses	R85-200	972		2-6-85	972	972	4-25-85	P.L. 99-88
Bureau of Alcohol, Tobacco and Firearms Salaries and expenses	R85-201	397		2-6-85	397	397	4-25-85	P.L. 99-88
United States Customs Service Salaries and expenses	R85-202	1,223		2-6-85	1,223	1,223	4-25-85	P.L. 99-88
Bureau of the Mint Salaries and expenses	R85-203	87		2-6-85	87	87	4-25-85	P.L. 99-88
Bureau of the Public Debt Administering the public debt	R85-204	52		2-6-85	52	52	4-25-85	P.L. 99-88
Internal Revenue Service Salaries and expenses	R85-205	198		2-6-85	198	198	4-25-85	P.L. 99-88
Processing tax returns and executive direction	R85-206	781		2-6-85	781	781	4-25-85	P.L. 99-88
Examinations and appeals	R85-207	1,588		2-6-85	1,588	1,588	4-25-85	P.L. 99-88
Investigation, collection, and taxpayer service	R85-208	1,633		2-6-85	1,633	1,633	4-25-85	P.L. 99-88
United States Secret Service Salaries and expenses	R85-209	1,465		2-6-85	1,465	1,465	4-25-85	P.L. 99-88
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210	1,863		2-6-85		1,863	4-26-85	
Research and development	R85-211	4,125		2-6-85	4,125	4,125	4-26-85	P.L. 99-88
Abatement, control, and compliance	R85-212	7,413		2-6-85		7,413	4-26-85	
GENERAL SERVICES ADMINISTRATION								
Real Property Activities Federal buildings fund	R85-213	3,204		2-6-85	3,204	3,204	4-25-85	P.L. 99-88
Personal Property Activities Operating expenses	R85-214	300		2-6-85	300	300	4-25-85	P.L. 99-88
General supply fund	R85-215	30,848		2-6-85	30,848	30,848	4-25-85	P.L. 99-88
Office of Information Resources Management Operating expenses	R85-216	45		2-6-85	45	45	4-25-85	P.L. 99-88
Consumer information center fund	R85-217	63		2-6-85	63	63	4-25-85	P.L. 99-88

Attachment A - Status of Rescissions - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal telecommunications fund.....	R85-218	415		2-6-85	415	415	4-25-85	P.L. 99-88
Automatic data processing fund.....	R85-219	145		2-6-85	145	145	4-25-85	P.L. 99-88
Federal Property Resources Activities Operating expenses.....	R85-220	207		2-6-85	207	207	4-25-85	P.L. 99-88
Expenses, disposal of surplus real and related personal property.....	R85-221	1,832		2-6-85	1,832	1,832	4-25-85	P.L. 99-88
General Activities General management and administration, salaries and expenses.....	R85-222	403		2-6-85	403	403	4-25-85	P.L. 99-88
Office of the Inspector General.....	R85-223	35		2-6-85	35	35	4-25-85	P.L. 99-88
Allowances and staff for former Presidents.....	R85-224	19		2-6-85	19	19	4-25-85	P.L. 99-88
Working capital fund.....	R85-225	8		2-6-85	8	8	4-25-85	P.L. 99-88
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management.....	R85-226	4,000		2-6-85	4,000	4,000	4-25-85	P.L. 99-88
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....	R85-227	1,161		2-6-85	1,161	1,161	4-25-85	P.L. 99-88
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses.....	R85-228	3,781		2-6-85		3,781	4-25-85	
VETERANS ADMINISTRATION								
Medical care.....	R85-229	10,261		2-6-85	3,520	10,261	4-25-85	P.L. 99-88
Medical and prosthetic research.....	R85-230	323		2-6-85		323	4-25-85	
Medical administration and miscellaneous operating expenses.....	R85-231	2,109		2-6-85	2,109	2,109	4-25-85	P.L. 99-88
General operating expenses.....	R85-232	4,334		2-6-85		4,334	4-25-85	
Construction, minor projects.....	R85-233	377		2-6-85	377	377	4-25-85	P.L. 99-88
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses.....	R85-234	1,139		2-6-85		1,139	4-24-85	
Corporation for Public Broadcasting Public broadcasting fund.....	R85-244	14,000		5-16-85		14,000	7-19-85	
Federal Emergency Management Agency Salaries and expenses.....	R85-235	786		2-6-85	786	786	4-25-85	P.L. 99-88
Emergency management planning and assistance.....	R85-236	1,287		2-6-85	1,287	1,287	4-25-85	P.L. 99-88
National Archives and Records Administration Operating expenses.....	R85-237	166		2-6-85	166	166	4-25-85	P.L. 99-88
National Labor Relations Board Salaries and expenses.....	R85-238	1,070		2-6-85		1,070	4-24-85	
National Science Foundation Research and related activities.....	R85-239	2,002		2-6-85	1,000	2,002	4-25-85	P.L. 99-88
Nuclear Regulatory Commission Salaries and expenses.....	R85-240	4,329		2-6-85		4,329	4-25-85	
Tennessee Valley Authority Tennessee Valley Authority fund.....	R85-241	1,538		2-6-85		1,538	4-25-85	
United States Information Agency Salaries and expenses.....	R85-242	433		2-6-85		433	4-25-85	
TOTAL, RESCISSIONS.....		1,843,315	0		165,609	1,843,315		

NOTE: Amounts rescinded in the Second Supplemental Appropriations Act (P.L. 99-88) on August 15, 1985, were available between the date of release and the date of enactment.

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	4,929,500				10,000
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	3,978,100				201,633
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	778,950				22,320
International military education and training.....	D85-25	55,521		11-29-84	55,521				0
Peacekeeping operations.....	D85-38	7,000		1-4-85	7,000				0
Agency for International Development									
International disaster assistance.....	D85-73	110,000		6-20-85	57,000				53,000
Operating expenses, Agency for International Development.....	D85-74	1,300		6-20-85					1,300
African Development Foundation									
African Development Foundation.....	D85-40	2,287		2-6-85		2,287	99-88		0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	5,000			5,000	13,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Foreign Assistance Programs									
Expenses, Public Law 480, Foreign Assistance Programs, Agriculture.....	D85-72	167,200		6-20-85	70,000				97,200
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-59	8,365		3-1-85	8,365				0
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,008		10-1-84					
	D85-6A		906,322	11-29-84	951,752			98,878	353,456
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	218,990				11,800
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	190			135	1,137
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply research and development.....D85-70		15,000		5-16-85					15,000
Uranium supply and enrichment activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	13,696				34,700
Fossil energy construction.....	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					
	D85-29A		155,644	2-6-85					
	D85-29B		1	3-22-85					155,668
Energy conservation.....	D85-30	3,398		11-29-84					
	D85-30A		2,374	3-22-85					
	D85-30B		552	6-20-85					6,324
Strategic petroleum reserve.....	D85-31	401		11-29-84					
	D85-31A		270,337	2-6-85					270,738
SPR petroleum account.....	D85-42	827,028		2-6-85					827,028
Energy security reserve and alternative fuels production.....	D85-32	852		11-29-84					
	D85-32A		297	2-6-85					
	D85-32B		89	3-22-85					1,238
Power Marketing Administration Southeastern Power Administration, Operation and maintenance.....	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85	1,216				14,745
Southwestern Power Administration, Operation and maintenance.....	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					
	D85-18B		2,000	5-16-85					32,300
Departmental Administration Departmental administration.....	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Health Care Financing Administration Program management.....	D85-66	4,271		3-22-85		4,271	99-88		0
Social Security Administration Limitation on administrative expenses (construction).....	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85	7,181				8,531
Limitation on administrative expenses (information technology systems).....	D85-44	81,926		2-6-85					81,926
Limitation on administrative expenses.....	D85-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)..	D85-10	49		10-1-84					49
National Park Service Construction (trust fund).....	D85-45	38,172		2-6-85	38,172				0
Land acquisition.....	D85-68	3,356		3-22-85					3,356
Bureau of Indian Affairs Construction.....	D85-33	8,918		11-29-84	893				8,025
DEPARTMENT OF JUSTICE									
General Administration Salaries and expenses.....	D85-46	3,890		2-6-85					3,890
Legal Activities Support of United States prisoners.....	D85-47	5,319		2-6-85					5,319
Federal Prison System Buildings and facilities.....	D85-19	44,534		10-31-84					44,534
Office of Justice Programs Justice assistance.....	D85-60	13,026		3-1-85					13,026

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85		162	99-88		0
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84		3,767	99-88		0
	D85-34A			3-1-85					
	D85-62	37,000		3-1-85		37,000	99-88		0
Unemployment trust fund (veterans employment and training)	D85-63	119		3-1-85		119	99-88		0
Pension Benefit Guaranty Corporation									
Pension Benefit Guaranty Corporation	D85-64	228		3-1-85		228	99-88		0
Bureau of Labor Statistics 1)									
Salaries and expenses	D85-35	5,000		11-29-84	5,000				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	34,999			20,000	18,081
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration									
Limitation on general operating expenses	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration									
Rail service assistance	D85-49	413		2-6-85	413				0
Northeast corridor improvement program	D85-50	30,000		2-6-85		30,000	99-88		0
Railroad rehabilitation and improvement financing funds	D85-51	7,200		2-6-85	7,200				0
Urban Mass Transportation Administration									
Research, training and human resources	D85-52	25,206		2-6-85	609				24,597
Federal Aviation Administration									
Construction, metropolitan Washington airports	D85-53	910		2-6-85	910				0
Facilities and equipment (airport and airway trust)	D85-11	537,205		10-1-84					
	D85-11A		652,957	1-4-85					
	D85-11B		93,731	2-6-85	163,000			163,000	1,283,894
Maritime Administration									
Operations and training	D85-54	8,500		2-6-85					8,500
Office of the Secretary									
Salaries and expenses	D85-55	800		2-6-85					800
Payments to air carriers	D85-69	14,741		3-22-85	14,741				0
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D85-12	55,400		10-1-84	32,561			31,510	54,349
	D85-13	19,900		10-1-84	14,439			33	5,494
GENERAL SERVICES ADMINISTRATION									
Federal Property Resources Activities									
National defense stockpile transaction fund	2)	170,000		6-24-85					170,000
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses	D85-21	4,408		10-1-84	4,408				0
National Archives and Records Service									
Operating expenses	D85-36	4,700		11-29-84					4,700

Attachment B - Status of Deferrals - Fiscal Year 1985

As of September 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-85
National Science Foundation									
Science and engineering education activities	D85-56	31,450		2-6-85					31,450
Panama Canal Commission									
Operating expenses	D85-37	6,346		11-29-84	6,346				0
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D85-14	14,300		10-1-84	5,000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	D85-15	108		10-1-84					
	D85-15A		7	2-6-85					115
Limitation on administration	D85-57	3,098		2-6-85		3,098	99-88		0
Limitation on Railroad Unemployment Insurance Administration fund	D85-58	502		2-6-85		502	99-88		0
Tennessee Valley Authority									
Tennessee Valley Authority fund	D85-71	9,000		5-16-85					9,000
U. S. Information Agency									
Salaries and expenses	D85-22	2,433		10-31-84					2,433
Acquisition and construction of radio facilities	D85-75	16,005		7-30-85					16,005
Salaries and expenses, special foreign currency program	D85-23	852		10-31-84					
	D85-23A		1,617	6-20-85					2,469
U.S. Institute of Peace									
U.S. Institute of Peace	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS		8,465,994	6,873,302		11,411,152	81,434		318,556	4,165,266

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

1) The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.
2) The General Services Administration deferral of $170.0 million was transmitted to Congress by the Comptroller General on June 24, 1985, under section 1015 (a) of the Impoundment Control Act.

[FR Doc. 85-21876 Filed 9-11-85; 8:45 am]

BILLING CODE 3110-01-C

federal register

Thursday
September 12, 1985

Part V

Environmental Protection Agency

40 CFR Parts 261 and 271

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[SWH-FRL 2861-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by modifying the listing for certain dioxin-containing wastes to designate as toxic (rather than acute hazardous), wastes derived from the incineration or thermal treatment of these wastes by fully permitted incinerators or by interim status incinerators or thermal treatment units that have been certified to burn these wastes. The effect of this rule, if promulgated, would be to allow these wastes to be managed in accordance with the general waste management standards contained in 40 CFR Parts 264 and 265.

DATES: EPA will accept comment on this proposal until October 28, 1985. Any person may request a hearing on this proposal by filing a request with Eileen B. Claussen, whose address appears below, by September 27, 1985. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste [WH-562], U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001/Dioxin Residues."

The public docket for this proposal is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, and is available for viewing from 9:00 AM to 4:00 PM, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at (800) 424-9346 or (202) 382-3000. For technical information contact: Dr. Judith S. Bellin, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 382-4761.

I. Background

On January 14, 1985, EPA promulgated a final rule ("the dioxin rule") designating as acute hazardous wastes certain wastes containing tetra-, penta-, and hexachlorinated dioxins (CDDs), -dibenzofurans (CDFs), and certain chlorinated phenols and their derivatives. See 50 FR 1978-2006. These wastes were designated as acute hazardous wastes because of their chlorinated dioxin and -dibenzofuran content. These regulations also specified certain management standards for these wastes. Among other things, the regulations limit the burning of these wastes in fully permitted incinerators, or in interim status incinerators or thermal treatment units that have been certified by the Assistant Administrator for Solid Waste and Emergency Response to burn these wastes; incinerators or thermal treatment units that burn these wastes must achieve 99.9999% (six 9s) destruction and removal efficiency (DRE) of tetra-, penta-, and hexachlorinated dioxins (CDDs) and -dibenzofurans (CDFs) or on a compound more difficult to incinerate than the CDDs and CDFs.

Under 40 CFR 261.3(c), any residue derived from the treatment of a hazardous waste is a hazardous waste (unless otherwise designated or delisted under the provisions of 40 CFR 260.20 and 260.22); *i.e.*, the residue has the same hazardous properties as the waste from which it is derived until the generator shows otherwise (see 45 FR 33096, May 19, 1980). EPA has interpreted this to mean that the residues resulting from the incineration of acute hazardous wastes (*e.g.*, dioxin wastes) are acute hazardous wastes, unless otherwise designated, or delisted.

In the January 14, 1985 dioxin regulation, the Agency designated the residues resulting from six 9s DRE incineration or thermal treatment of dioxin-contaminated soils as RCRA toxic (not acute hazardous) wastes (EPA Hazardous Waste No. F028). Persons disposing of these residues therefore do not have to comply with the special management standards (*i.e.*, this waste can be managed at interim status facilities), and these wastes need not be land disposed pursuant to a waste management plan. However, residues resulting from the incineration or thermal treatment of other dioxin-containing wastes are still considered to be acute hazardous wastes and must be managed in accordance with the special management requirements.

This determination regarding the management of wastes resulting from the incineration or thermal treatment of dioxin-containing wastes is now judged to be unnecessarily restrictive, and inhibitory of the result desired: proper, safe, and effective management of CDDs and CDFs. It is also extremely resource intensive for the government and the regulated community, and will create needless demands on the limited resources available to the Agency and the regulated community.

II. Basis for This Proposed Regulation

This proposed regulation covers residues[1] resulting from the incineration or thermal treatment of EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 (dioxin wastes (excepting F028) (residues from incineration of dioxin-contaminated soil)) containing 10 ppm or less of TCDD equivalents.[2] The proposed rule would designate such residues as RCRA toxic (rather than acute hazardous) wastes. As noted above, the Agency already designated the residues resulting from the incineration or thermal treatment of dioxin-contaminated soil as a toxic hazardous waste (EPA Hazardous Waste No. F028), allowing the treatment, storage, or disposal of such residues at facilities meeting the normally applicable Parts 264 and 265 standards (*i.e.*, for these residues, the Agency did not require the special standards mandated for other dioxin-containing wastes, such as the secondary containment requirements for non-liquid wastes, or a waste management plan for land disposal). The Agency made that determination based on the characteristics of the residues resulting from the incineration of materials such as PCB capacitors, sewage treatment sludges, and carbon adsorbents (see 50 FR 1994-1995). Those data show that the residues resulting from the incineration or thermal treatment at six 9s DRE contain PCBs at levels about four orders of magnitude less than those contained in the waste before incineration.

More recent data shown even greater levels of destruction. The results of a

[1] This term includes liquid residues such as scrubber water.

[2] "TCDD equivalence" of a mixture of chlorinated dioxins and -dibenzofurans is an estimate of the toxicity of the mixture expressed as the equivalent toxicity of 2,3,7,8-TCCD. It is calculated by applying specific weighting factors to the concentration of individual isomers or homologous classes of CDDs and CDFs. See USEPA, Chlorinated Dioxins Workgroup Position Document, Interim risk assessment procedures for mixtures of chlorinated dioxins and -dibenzofurans (CDDs and CDFs), July 1985. This issue is discussed in detail in Section III of this preamble.

trial burn of dioxin-containing waste in EPA's mobile incinerator; data submitted in support of an incineration facility requesting certification to burn dioxin-containing wastes in a stationary hazardous waste incinerator; and data submitted by the operators of a hazardous waste incinerator show that the residues resulting from the incineration at six 9s DRE of CDDs and CDFs,[3] and PCBs[4,5] contain these toxicants at concentrations about five to seven orders of magnitude less than those of the starting material.

Thus, solid residues resulting from the incineration or thermal treatment at six 9s DRE of dioxin-containing wastes containing 10 ppm TCDD equivalents of CDDs and CDFs or less are expected in all cases to contain less than 0.1 ppb TCDD equivalents,[6,7] and in some cases, orders of magnitude less than this concentration. These levels of CDDs and CDFs (less than 0.1 ppb TCDD equivalents) are less than a tenth of the value determined to be "a reasonable level at which to begin consideration of action to limit human exposure to contaminated soil".[8] As EPA determined in the January 14 rulemaking, this concentration is no longer considered to be a substantial concentration of a potent carcinogen within the meaning of § 261.11(a)(2). See 50 FR 1995. In light of the diminished risk posed by these reduced concentrations, and because the wastes will continue to be managed in a controlled setting, EPA does not believe that these wastes are still acute hazardous wastes requiring heightened regulatory controls, and therefore proposes to list the solid residues resulting from the incineration or thermal treatment of dioxin-containing wastes containing less than 10 ppm TCDD equivalents as hazardous wastes.[9] These residues include bottom ash, kiln residue, air pollution control residues such as CHEAF filters, fly ash, and emission control dust.

In addition to the solid residues discussed above, incinerators also generate a liquid waste, scrubber water. This waste arises from the scrubbing of the hot exit gases with water containing caustic or lime, entraining flyash. It therefore contains particulate matter (flyash), as well as dissolved organic compounds that are removed to some extent by subsequent treatment of the scrubber effluent. This untreated scrubber water also is proposed to be listed as a toxic hazardous rather than an acute hazardous waste. The reasons for this determination, as is the case for the solid residues of incineration, is that the scrubber effluent is expected to contain CDDs and CFS at levels five to seven orders of magnitude less than are present in the waste feed to the incinerator, so that the water no longer contains high concentrations of potent carcinogen.

The treatment of the scrubber water results in the formation of several solid residues. Sludges are created in cooling ponds by natural settling aided by treatment with flocculants. The cooling/settling ponds are periodically dug out to remove these solids (sludges), which are often landfilled or incinerated on-site. The clarified scrubber water may be filtered by use of a particulate filter or a filter press, and is sometimes passed through a carbon adsorbent. Treatment of scrubber water thus gives rise to sludges (settling sludges, filter solids, spent carbon, or particulate filters) that contain particles derived from flyash. These residues from treating scrubber water resulting from the incineration of wastes containing less than 10 ppm TCDD equivalents also would be classified as toxic hazardous wastes, since they are derived from treating a toxic waste (the scrubber water). See 40 CFR 261.3(c). This application of the "derived from" rule is factually justified because these residues would not be expected to contain higher concentrations of dioxins and furans than the flyash, since these residues in essence consist of flyash that has become entrained in the scrubber water.[10]

In changing the status of these wastes, EPA is also determining that the special management standards for other listed dioxin-containing wastes are not necessary for these wastes. The special management standards were premised on the high concentrations of potent carcinogens typically found in the listed wastes (50 FR at 1985, 1994–1995). When these concentrations are greatly reduced, as here, the residual wastes present much less risk, and can be safely managed in the same manner as other hazardous wastes. (*Id.* at 1995.)

Note, however, that EPA's conclusion is that these wastes still require the same level of management as other hazardous wastes. This is of particular relevance with respect to secondary containment requirements for tank storage of these wastes, since secondary containment is not presently required for tank storage of toxic hazardous wastes, and so would not presently be required for these dioxin-containing residues. However, if EPA finalizes its proposal to require secondary containment for all new tanks storing hazardous wastes and for all existing tanks not adopting the ground-water monitoring alternative (see 50 FR 26444, June 26, 1985), EPA would necessarily conclude that secondary containment is appropriate for these particular hazardous wastes. Thus, today's proposal should not be viewed as finding that these residues require less regulatory control than other hazardous wastes.

III. Issues Related to This Regulation

A. Whether These Wastes Should Be Considered Non-Hazardous

In evaluating the wastes proposed to be designated as toxic (rather than acute) hazardous wastes, EPA also

[3] Delisting petition for treated wastewater, ash, filter media, and other solids from the U.S. EPA mobile incineration system field demonstration at Denney Farm, McDowell, MO, April 19. See also 50 FR 30271, July 25, 1985.

[4] Rollins Co. Application for incinerator permit, April 12, 1985.

[5] G. D. Combs (ENSCO) to M. Straus (USEPA), May 14, 1985.

[6] Concentration of CDDs and CDFs in the residue equals the amount in the waste feed times the fraction remaining—10 mg/kg × 10^6 ng/mg × (10^{-7} to 10^{-9} reduction)—1 to 100 ng/kg—1 to 100 ppt. This estimate assumes that the net formation of CDDs and CDFs in the course of incineration is negligible. [This assumption is warranted because the conditions necessary to ensure six 9s DRE are presumably consistent with conditions to minimize the formation of products of incomplete combustion. It also assumes that the net distribution of CDDs and CDFs will not change in such a way as to substantially change the TCDD equivalents per mass of CDDs and CDFs.

[7] This concentration is less than the limit of detection [DL] of total CDDs and CDFs in such residues. For example, in kiln ash, the DL is 0.07–0.2 ppb for each isomer or congeneric group, and 0.37–1.03 ppb (average 0.7 ppb) for total CDDs and CDFs. In Cleanable High Efficiency Filter [CHEAF] material, which contains trapped flyash particulates, the DL for total CDD and CDF's was reported as 0.33 ppb.

[8] Kimbrough, R. D., et al., Health implications of 2,3,7,8-chlorodibenzodioxin (TCDD) contamination of residential soil. J. Toxicol. Env. Health 14:47–93: 1984.

[9] It should be noted that the levels of destruction of the wastes burned in EPA's mobile incinerator achieved CDD and CDF levels that EPA believes are below those of regulatory concern. See 50 FR 32071, July 25, 1985. While EPA is not prepared to generalize that result to all dioxin wastes in the absence of actual operating data, these findings support the conclusion that residues from burning dioxin-containing wastes containing 10 ppm TCDD equivalents of CDDs and CDFs or less at six 9's DRE should not remain acute hazardous wastes.

[10] Particulates filtered from scrubber water from a hazardous waste incinerator contained 2.2 ppm of 2,3,7,8–TCDD; filtered scrubber water contained 1 pptr of the same isomer. (See R.R. Bumb et al., Trace chemistries of fire: a source of chlorinated dioxins, Science 210:385–390:1980). The efficiency of the incinerator's operating conditions, and its waste feed composition are not known. These data are thought not to be indicative of concentrations in residues from hazardous waste incinerators incinerating wastes containing 10 ppm TCDD equivalents of CDDs and CDFs at six 9s DRE, in light of the significant levels of destruction of organic pollutants achieved by such incineration.

considered whether they should still be considered hazardous (*i.e.*, whether they should be excluded from regulatory control altogether). The Agency is not proposing to designate these wastes as non-hazardous because information directly showing the concentration of other hazardous constituents—particularly chlorophenols and their derivatives and other toxicants, such as the polynuclear aromatic compounds—is at present very limited. Moreover, the levels of CDDs and CDFs that might conceivably be in some of these wastes are orders of magnitude higher than those occurring in the residues from the mobile incinerator that were recently delisted (50 FR 30271, July 25, 1985). Thus, the Agency believes it's inappropriate to make a generic determination as to delisting at this time.

B. Whether This Rule Should Be Extended to All Incineration Residues

The Agency also considered whether this rule should be extended to residues resulting from the incineration of wastes containing more than 10 ppm TCDD equivalents of CDDs and CDFs. However, at the present time there is not sufficient information to make a determination on this issue. When sufficient data to enable proper evaluation of this issue becomes available (*e.g.*, from delisting petitions, permitting data, and as public comment on this proposal), it is possible that the Agency will be able to justify further modification of the hazardous waste status of the residues from six 9s DRE incineration or thermal treatment of wastes with higher concentrations of TCDD equivalents.

C. Concerning the Application of a Proposed Method for Estimating the Toxicity of Mixtures of CDDs and CDFs

The concept of TCDD equivalence (see footnote 2) used in this proposed regulation is based on the application of an interim method proposed by the Agency's Chlorinated Dioxin Workgroup (CDWG). The CDWG has considered several approaches for assessing the human health risks posed by mixtures of CDDs and CDFs. This approach was selected as an interim measure to estimate the toxic risks by taking into account the distribution of the CDD/CDF congeners or homologues that are estimated to have the greatest toxic potential. This proposed regulation relies on the interim approach recommended by the CDWG, *i.e.*, the use of "2,3,7,8–TCDD Toxicity Equivalence Factors (TEFs)" to assess the toxicity of complex mixtures of CDDs and CDFs. In this approach, information is obtained on the concentrations of homologues and/or congeners present in the mixture. Then, reasoning on the basis of structure-activity relations and results of short term tests, the toxicity of each of the components is estimated and expressed as an "equivalent amount of 2,3,7,8–TCDD". Combined with estimates of exposure and known toxicity information on 2,3,7,8–TCDD, the risks associated with the mixture of CDDs and CDFs can be assessed. Key to the approach are "2,3,7,8–TCDD Toxicity Equivalence Factors" (TEFs). The CDWG Position Document (see footnote 2) lists them as follows:

Homologue/Congener	Proposed TEF [11]
Mono through trichloro dioxins and -dibenzofurans	0
2378–TCDD [12]	[13] 1
2378–PeCDD	0.2
2378–HxCDDs	0.04
2378–HpCDDs	[14] 0.001
2378–TCDF	0.1
2378–PeCDFs	0.1
2378–HxCDFs	0.01
2378–HpCDFs	0.0001
Octachloro dioxins and -dibenzofurans	0

[11] TEFs proposed in the CDWG Position Document (see footnote 2).

[12] "2378" means a dioxin or dibenzofuran having chlorine atoms substituted for hydrogen at the 2,3,7 and 8 positions.

[13] In each case the TEFs for the homologues or congeners *not* substituted in the 2,3,7 and 8 positions are one hundredth of those listed above. In cases where only the concentration on homologous groups is known (*i.e.*, no isomer-specific data are available), the assumption that the 2378-congeners of concern consitute all of the CDDs and CDFs present in the mixture is likely to provide the most conservative estimate to toxicity.

[14] Although the CDWG Document suggests that the HpCDDs and HpCDFs be considered in evaluating the toxicity of the mixture, this proposed regulation does not consider their inclusion (nor are they cited as Appendix VII hazardous constituents), because they are not likely to be present in the residues resulting from six-9s DRE destruction in a permitted or certified incinerator or thermal treatment unit in light of the high levels of destruction achieved.

The CDWG Position Document discusses the basis for the above assignments. The procedure is not based on a thoroughly established scientific foundation, but represents a consensus recommendation on science policy.

The approach has undergone considerable scientific comment within the Agency, and has been submitted for review and comment to scientists from the academic, environmental, and industrial community, as well as to scientists from other government agencies. Public comment is also solicited in this Notice.

As a result of such comment, the TEFs listed above may be altered in the final version of this regulation. (Therefore, the TEFs are not listed in the regulatory language of this proposed regulation; they will be specifically enumerated in the promulgated listing.)

It is also possible that the TEFs may change in the future if new data show that the scientific basis for their assignment makes further revision desirable. If such revision is made after the final promulgation of this regulation, the Agency may, if warranted, amend the TEF values assigned with the promulgated version of this regulation, by amending it.

IV. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6929(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule would be added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. The Agency believes that it is extremely important to clearly specify which EPA regulations implement HSWA since these requirements are immediately effective in authorized States. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

B. Effect on State Authorizations

Today's announcement proposes regulations that would be effective in all States since the requirements are imposed pursuant to section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(e)(2). Thus, EPA will implement the regulations in nonauthorized States and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA. (The final rule listing dioxin-containing wastes discussed the manner in which authorized State programs must be revised to incorporate new requirements. See 50 FR 1997 (January 14, 1985).)

However, it should be noted that States which adopt the January 14 rules on dioxin wastes, and which choose not to adopt today's modifying amendments, would still be considered to have programs equivalent to the Federal program for purposes of State authorization. In fact, their programs would be more stringent than the Federal program.

V. Economic, Environmental, and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to designate certain wastes as hazardous waste is not major, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by enabling the management of certain dioxin-containing wastes at RCRA interim status facilities, instead of restricting their management to facilities permitted under 40 CFR Part 264, and having special management standards for these wastes. Since this rulemaking is not a major rule, a Regulatory Impact Analysis was not conducted.

B. Regulatory Flexibility Act.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities, since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. The Agency is designating certain dioxin-containing wastes as hazardous, instead of acute hazardous wastes, based on new data from hazardous waste incineration. The new designation is less restrictive than the former designation.

Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities. This regulation, therefore, does not require a Regulatory Flexibility Analysis.

VI. List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 4, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§ 261.31 [Amended]

2. In § 261.31, add the following waste stream in numerical order:

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * * * *		
F029	Residues resulting from the incineration or thermal treatment of EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 when these wastes contain less than 10 ppm TCDD equivalents of tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and -dibenzofurans (CDDs and CDFs). The TCDD equivalence of a mixture of CDDs and CDFs is an estimate of its toxicity expressed as the equivalent toxicity of 2,3,7,8-TCDD. It is calculated by the application of weighting factors (TEFs) to the concentration of individual isomers or homologous classes of CDDs and CDFs. The TEFs for 2,3,7,8-substituted congeners are as follows: TCDDs = 1.0; PeCDDs = ; HxCDDs = ; TCDFs = ; PeCDFs = ; HxCDFs = . For the congeners not so substituted, the TEFs are 0.01 times those listed above. In the absence of isomer-specific analytical data, it should be assumed that all the isomers are 2,3,7,8-substituted.	(T)
* * * * *		

Appendix VII [Amended]

3. Add the following entry in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous constituents for which listed
* * * * *	
F029	Tetra-, penta-, and hexachlorodibenzo-*p*-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative.
* * * * *	

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

4. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

5. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	FEDERAL REGISTER reference
* * * * *		
[insert date of publication].	Redesignation of residues derived from the incineration or thermal treatment of dioxin-containing wastes from acute hazardous wastes to toxic wastes.	50 FR [insert page number].
* * * * *		

[FR Doc. 85-21897 Filed 9-11-85; 8:45 am]

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Street address
City State ZIP Code
(or Country)

For Office Use Only

Quantity Charges
____ Publications ____
____ Subscription ____
Special Shipping Charges ____
International Handling ____
Special Charges ____
OPNR ____
____ UPNS
____ Balance Due
____ Discount
____ Refund

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