AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

18 326-282 G.S.A.

5-1-80
Vol. 45 No. 86
Pages 29001-29262

federal register

Thursday
May 1, 1980

Highlights

29243, 29247 **Cuban Aliens** Justice/INS and Treasury/Customs issue regulations regarding aircraft flights proceeding between United States and Cuba; effective 4-28 and 4-29-80 (2 documents) (Parts VI and VII of this issue)

29234 **Public Utilities** DOE/ERA proposes voluntary guidelines and announces public hearing; comments by 7-10-80; hearing on 6-19-80 (Part V of this issue)

29196 **Handicapped Research** HEW/HDS announces availability of grant funds; apply by 6-30-80 (Part II of this issue)

29121 **Domestic Violence** HEW/HDS announces availability of grant funds for demonstration projects in Regions III and IV; apply by 6-30-80

29015 **Bicycles** DOT/FHWA implements grant program to enhance safety and use; effective 4-25-80

29045, 29102 **Seat Belts** DOT/NHTSA amends final regulations for child restraint systems, and proposes amendment of test procedures; rule effective 5-1-80; comments on proposal by 6-16-80 (2 documents)

29206 **Adjudicative Proceedings** CPSC sets forth final Rules of Practice; effective 5-1-80; (Part IV of this issue)

CONTINUED INSIDE

Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Area Code 202-523-5240

29072 **Outer Continental Shelf** Transportation/CG proposes amendments affecting various operations of vessels engaged in mineral exploration, production or development; comments by 6-30-80

29070 **Mineral Leases** Interior/BIA announces receipt of petition from Mobil Oil Co. dealing with mining on Indian land; comments by 6-2-80

29087 **OCS Oil** DOT/CG proposes design and equipment standards for tank vessels; comments by 6-16-80

29010 **Boycott of Israel** Commerce/ITA clarifies application of regulations dealing with Arab Republic of Egypt's termination of economic boycott; effective 1-25-80

29032 **Traffic Safety** DOT/NHTSA issues final rule regarding its information gathering powers; effective 6-16-80

29115 **PCB** EPA gives notice that 5-1-80 is expiration of "Open Border Policy"

29164 **Sunshine Act Meetings**

Separate Parts of This Issue

29196 **Part II, HEW/HDS**
29200 **Part III, NTSB**
29206 **Part IV, CPSC**
29234 **Part V, DOE/ERA**
29243 **Part VI, Justice/INS**
29247 **Part VII, Treasury/Customs**
29250 **Part VIII, Commerce/NOAA**

Contents

Federal Register
Vol. 45, No. 86
Thursday, May 1, 1980

Agency for International Development
NOTICES
Authority delegations:
29141 Tunisia, Mission Director; contracting functions

Agricultural Marketing Service
RULES
29002 Oranges (navel) grown in Ariz. and Calif.
29002 Oranges (Valencia) grown in Ariz. and Calif.
29003 Peaches, fresh, grown in Ga.
PROPOSED RULES
29063 Oranges (Valencia) grown in Ariz. and Calif.

Agriculture Department
See Agricultural Marketing Service; Federal Crop Insurance Corporation; Forest Service.

Arts and Humanities, National Foundation
NOTICES
Meetings:
29143 Artists-in-Schools Advisory Panel

Civil Aeronautics Board
NOTICES
Hearings, etc.:
29107 International Air Transport Association
29109 Ohio/Indiana/Michigan Subpart Q proceeding
29110 Pocatello-Salt Lake City Subpart Q proceeding
29110 Scheduled Skyways, Inc.
29111 United Air Lines, Inc.
29164, 29165 Meetings; Sunshine Act (3 documents)

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
29111 Kansas

Coast Guard
RULES
Drawbridge operations:
29020 Texas
Safety zones:
29020 Chesapeake Bay, Hampton Roads, James River, Newport News, Va
PROPOSED RULES
29072 Outer Continental Shelf mineral exploration, production, or development activities
Pollution:
29087 Tank vessels transferring Outer Continental Shelf oil; design and equipment standards

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Consumer Product Safety Commission
RULES
Practice rules:
29206 Adjudicative proceedings

Customs Service
RULES
29247 Cuba, flights to or from; Fort Lauderdale-Hollywood Airport, designation as sole port of entry

Defense Department
See Engineers Corps.

Depository Institutions Deregulation Committee
NOTICES
29165 Meetings; Sunshine Act

Economic Regulatory Administration
NOTICES
Consent orders:
29113 J. J. Bardesonna Co.
Decisions and orders:
29113 Shell Oil Co.
Public Utility Regulatory Policies Act of 1978:
29234 Automatic adjustment clauses standard; proposed voluntary guideline; hearing and inquiry

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
29114 Sweden
29114 Switzerland and European Atomic Energy Community

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
29112 Big Stone Lake-Whetstone River Project, Minn. and S. Dak.; availability date revision
29112 Petit Anse, Tigre, and Carlin Bayous, La.

Environmental Protection Agency
NOTICES
Toxic and hazardous substances control:
29115 PCB disposal; open border policy expiration

Environmental Quality Council
NOTICES
29165 Meetings; Sunshine Act

Federal Aviation Administration
RULES
Airworthiness directives:
29005 Beech
29007 Learjet
29008 Messerschmitt
29005 Piper
29004 Swearingen
29009 Transition areas (2 documents)
PROPOSED RULES
Air carrier certification and operations:
29064 Foreign-registered aircraft operation

29063 VOR Federal airways
NOTICES
29153 Transport category airplanes; pilot compartment view requirements; draft advisory circular; availability and inquiry

Federal Communications Commission
RULES
Common carrier services:
29023 Public mobile radio services; availability of land mobile channels in 13 urbanized areas; frequency application filing procedures
NOTICES
29115 Domestic fixed satellite service; processing of pending space station applications

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
29001 Barley; correction
29001 Cotton; correction
29001 Wheat; correction
PROPOSED RULES
Crop insurance; various commodities:
29056 Sweet corn
29056 Crop insurance; various commodities; list of "sunset review" dates

Federal Emergency Management Agency
RULES
Flood insurance; special hazard areas:
29021 Kentucky et al.
PROPOSED RULES
Flood elevation determinations:
29090 Connecticut et al.

Federal Energy Regulatory Commission
RULES
Natural gas companies:
29011 Rate schedules and tariffs; interstate pipeline; Louisiana First Use Tax recovery
NOTICES
29165 Meetings; Sunshine Act
Natural gas companies:
29114 Small producer certificates, applications

Federal Highway Administration
RULES
Engineering and traffic operations:
29015 Bicycle grant program
NOTICES
Environmental statements; availability, etc.:
29153 Alexandria, Va.
29154 Gregg and Rusk Counties, Tex.
29155 Mayaguez, P.R.
29155 San Juan, P.R.
29154 State College, Centre County, Pa.

Federal Home Loan Bank Board
NOTICES
29165 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
Energy and environmental statements; availability, etc.:
29118 Matson Navigation Co.; bunker surcharge in Hawaii trade
Freight forwarder licenses:
29118 Sindik, Emmett I.

Federal Procurement Policy Office
NOTICES
29149 Commercial products acquisition and distribution guide; proposed pamphlet; availability and inquiry

Federal Railroad Administration
NOTICES
Petitions for exemptions, etc.:
29157 Amador Central Railroad Co.
29156 Chessie System et al.
29157 Union Railroad Co. et al.

Federal Reserve System
NOTICES
Applications, etc.:
29119 Harper Associates Bancshares Ltd.
29119 Manufacturers Hanover Corp.

Federal Trade Commission
RULES
Prohibited trade practices:
29010 S. Klein, Inc.
NOTICES
Premerger notification waiting periods; early termination:
29120 Charter Co.
29120 Eller, Karl (2 documents)

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
29126 Blackwater National Wildlife Refuge, Md.

Forest Service
NOTICES
Environmental statements; availability, etc.:
29107 Bridger-Teton National Forest, land and resource management plan, Wyo.
29106 Jefferson National Forest, land and resource management plan, Ky., Va., and W. Va.
29106 Manistee National Forest, Tower Mountain alpine skiing development, Mich.

General Accounting Office
NOTICES
29120 Regulatory reports review; proposals, approvals, etc. (CAB)

Geological Survey
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
29127 Ocean Production Co.

Health, Education, and Welfare Department
See Human Development Services Office.

Human Development Services Office
NOTICES
Grant applications and proposals; closing dates:
29121 Domestic violence resource networks, State and local demonstration projects
29196 Handicapped research; rehabilitation research and demonstration program

Immigration and Naturalization Service
RULES
29243 Cuba, flights to or from; Fort Lauderdale-Hollywood Airport, designation as sole port of entry

Indian Affairs Bureau
PROPOSED RULES
29070 Mining; execution of mineral leases on behalf of individuals owning undivided interests in allotted lands; rulemaking petition

Interior Department
See Fish and Wildlife Service; Geological Survey; Indian Affairs Bureau; Land Management Bureau; Surface Mining Office.

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
RULES
Trade practices, restrictive, or boycotts:
29010 Prohibited requests or requirements; termination of Egypt's participation in Arab economic boycott of Israel; interpretation

International Trade Commission
NOTICES
Import investigations:
29141 Apparatus for continuous production of copper rod
29141 Steel jacks from Canada

Interstate Commerce Commission
RULES
Railroad car service orders; various companies:
29051 Cedar Rapids & Iowa City Railway Co.
29054 Chesapeake & Ohio Railway Co.
29052 Chicago & Northwestern Transportation Co.
29052 Consolidated Rail Corp.
29053 Des Moines Union Railway Co.
29052 Escanaba & Lake Superior Railroad Co.
29048 Illinois Central Gulf Railroad Co.
29054 La Salle & Bureau County Railroad Co.
29050 Norfolk & Western Railway Co.
29049 Seattle & North Coast Railroad Co.
PROPOSED RULES
Passes and free transportation:
29104 Passenger carriers; elimination of recordkeeping requirements
Practice and procedure:
29103 Railroad cost recovery; filing of general rate increases; advance notice
NOTICES
Motor carriers:
29127 Permanent authority applications
29140 Permanent authority applications; correction (2 documents)
Rail carriers:
29139 Revenue adequacy (1980 determination) proceedings; capital costs
Railroad services abandonment:
29140 Chicago, Rock Island & Pacific Railroad Co.
Rerouting of traffic:
29140 All railroads

Justice Department
See also Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
29142 Los Angeles, Calif.
U.S. Court of Appeals; vacancies:
29141 Second Circuit (New York); request for prospective nominees

Land Management Bureau
RULES
Public land orders:
29021 Arizona
NOTICES
Alaska native claims selections; applications, etc.:
29123 Doyon, Ltd.
Authority delegations:
29123 Arizona State Office; Chief, Division of Technical Services; Cadastral Survey instructions
Environmental statements; availability, etc.:
29123 Ironside grazing management, Oreg.; hearings
29122 Wild horses and burros, roundup by helicopter; Caliente planning unit and Ash Meadows area, Nev.; hearing
Wilderness areas; characteristics, inventories, etc.:
29124 Utah

Legal Services Corporation
NOTICES
29142, 29143 Grants and contracts; applications (4 documents)

Management and Budget Office
See also Federal Procurement Policy Office.
NOTICES
29148 Agency forms under review

National Highway Traffic Safety Administration
RULES
29032 Information gathering powers
Motor vehicle safety standards:
29045 Child restraint systems; seat belt assemblies
PROPOSED RULES
Motor vehicle safety standards:
29102 Seat belt assemblies; "resistance to light" test
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
29161 B.F. Goodrich Co.; new pneumatic tires, passenger cars
29160 Ford Motor Co.; brake hoses

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
29054 Green, loggerhead, and olive ridley sea turtles; technical amendments
Fishery conservation and management:
29250 Salmon fisheries, commercial and recreational, off Wash., Oreg., and Calif.; emergency interim regulations

National Transportation Safety Board
NOTICES
29143 Accidents reports, safety recommendations and responses, etc.; availability

Organization and functions:
29200 Field offices; areas of responsibility; correction

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
29147 Metropolitan Edison Co.
29147 Ohio Edison Co. et al.
Meetings:
29147 Reactor Safeguards Advisory Committee
29166 Meetings; Sunshine Act

Postal Rate Commission
NOTICES
29166 Meetings; Sunshine Act

Railroad Retirement Board
NOTICES
29166 Meetings; Sunshine Act

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
29067 Transactions with affiliated persons; exemption
NOTICES
Hearings, etc.:
29150 Investors Syndicate of America, Inc.
29151 Itel Corp.
29151 Northeast Utilities
29151 PMI Mortgage Corp.

Small Business Administration
NOTICES
Applications, etc.:
29152 Golden Gate Capital, Inc.
29152 Regional Financial Enterprises, Inc.
Disaster areas:
29153 Texas

Surface Mining Office
PROPOSED RULES
Permanent program submission; various States:
29072 New Mexico

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.

Treasury Department
See Customs Service

Veterans Administration
NOTICES
29161 Ionization radiation claims; adjudication procedures

World Hunger, Presidential Commission on
NOTICES
29150 Meetings; cancellation

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
29111 Kansas City Advisory Committee, 5-27-80

NATIONAL ENDOWMENT FOR THE ARTS
29143 Artists in School Advisory Panel, 5-19, 5-20, and 5-21-80

NUCLEAR REGULATORY COMMISSION
29147 Reactor Safeguards Advisory Committee, 5-19 and 5-20, 5-28 and 5-29-80

CANCELLED MEETING

PRESIDENTIAL COMMISSION ON WORLD HUNGER
29150 Meeting, 5-5-80, Cancelled

HEARINGS

INTERIOR DEPARTMENT
Land Management Bureau—
29122 Wild Horse Roundups By Helicopter, request to give testimony by 5-13-80; hearing 5-14-80

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.

7 CFR
418 29001
419 29001
421 29001
907 29002
908 29002
918 29003
Proposed Rules:
Ch. IV 29056
401 29056
437 29056
908 29063

8 CFR
239 29243

14 CFR
39 (5 documents) 29004, 29005, 29007, 29008
71 (2 documents) 29009
Proposed Rules:
71 29063
121 29064
127 29064
135 29064

15 CFR
369 29010

16 CFR
13 29010
1025 29206

17 CFR
Proposed Rules:
270 29067

18 CFR
154 29011

19 CFR
6 29247

23 CFR
663 29015

25 CFR
Proposed Rules:
172 29070

30 CFR
Proposed Rules:
Ch. VII 29072

33 CFR
117 29020
165 29020
Proposed Rules:
140 29072
141 29072
142 29072
143 29072
144 29072
145 29072
146 29072
147 29072
157 29087

43 CFR
Public Land Orders:
5719 29021

44 CFR
65 29021
Proposed Rules:
67 29090

47 CFR
22 29023

49 CFR
510 29032
571 29045
1033 (10 documents) 29048–29054
Proposed Rules:
571 29102
1102 29102
1270 29104
1271 29104
1272 29104
1273 29104
1274 29104
1275 29104
1276 29104
1277 29104
1278 29104
1279 29104

50 CFR
227 29054
661 29250

Rules and Regulations

Federal Register
Vol. 45, No. 86
Thursday, May 1, 1980

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 418

Wheat Crop Insurance Regulations—Amendment No. 1; Corrections

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; corrections.

SUMMARY: The final rulemaking published in the **Federal Register** on Thursday, December 13, 1979 (44 FR 72092), on the Wheat Crop Insurance Regulations, Amendment No. 1, contained inadvertent omissions of two county names where such insurance is otherwise authorized to be offered. This notice is being published to correct those omissions.

EFFECTIVE DATE: May 1, 1980.

ADDRESS: Any suggestions or inquiries on this notice should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3325.

The corrections are as follows:

1. Under the subheading "Arkansas" in the list of counties appearing in the left column of page 72091 (44 FR 72091), insert the word "Drew" between the words "Desha" and "Greene".

2. Under the subheading "Mississippi" in the left column of page 72092 (44 FR 72092), insert the word "Lowndes" between the words "Leflore" and "Quitman".

Done in Washington, D.C., on April 25, 1980.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: April 25, 1980.

Approved by:

James D. Deal,
Manager.

[FR Doc. 80-13316 Filed 4-30-80; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 419

Barley Crop Insurance Regulations—Amendment No. 1; Corrections

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; corrections.

SUMMARY: The final rulemaking published in the **Federal Register** on Thursday, December 13, 1979 (44 FR 72093–72094), on the Barley Crop Insurance Regulations, Amendment No. 1, contained an inadvertent omission of a county, a misspelled county name, and an incorrect listing of another county where such insurance is otherwise authorized to be offered. This notice is being published to correct those errors and omissions.

EFFECTIVE DATE: May 1, 1980.

ADDRESS: Any suggestions or inquiries on this notice should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3325.

The corrections are as follows:

1. Under the subheading "Maryland" in the list of counties appearing in the left column of page 72094 (44 FR 72094), "Carolina" is correctly spelled "Caroline".

2. In the list of counties appearing in the left column of page 72094 (44 FR 72094), beneath the word "Yellowstone", and above the words "North Dakota", insert the following:

North Carolina

Rowan

3. Under the subheading "South Dakota" in the list of counties appearing in the center column of page 72094 (44 FR 72094), delete the word "Charles" on the left side of the column and the work "Mix" on the right side of the column, and insert the words "Charles Mix" on the left side of the column in alphabetical order.

Done in Washington, D.C., on April 25, 1980.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: April 25, 1980.

Approved by:

James D. Deal,
Manager.

[FR Doc. 80-13317 Filed 4-30-80; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 421

Cotton Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This rule corrects the Cotton Crop Insurance Regulations and is published under the authority of the Federal Crop Insurance Act, as amended. The Cotton Crop Insurance Regulations contains an incorrect reference to the term "production". In order to remove any possibility of a restriction on policyholders, this term should be corrected. This notice is being published to correct that error.

EFFECTIVE DATE: May 1, 1980.

ADDRESS: Comments on this notice should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202–447–3325.

SUPPLEMENTARY INFORMATION: On Friday, September 28, 1979, the Federal Crop Insurance Corporation published a final rule on the Cotton Crop Insurance Regulations (44 FR 55792–55800), effective with the 1980 crop year.

In reviewing the regulations, it has been noted that Section 8(c)(2) Claim for indemnity, begins with the words "Any harvested". It has been determined that these two words do not clearly define what is meant by production with respect to quality adjustment and if left unchanged may impose a possible restriction on a policyholder affected by

quality adjustment production provisions. To remove these two words, and insert the word "Mature" would correct this matter and broaden the meaning of the term "production" as it relates to quality adjustment provisions of the insurance policy.

While it is noted that the regulations for insuring cotton as found at 44 FR 55792–55800, are presently in effect for the 1980 crop year, the correction as outlined below will have no effect on the intent of the regulations and will impose no adverse effect on a policyholder. The intended effect is to clarify the term "production" at the mature stage.

The correction is as follows:

Section 8(c)(2) of the Cotton Crop Insurance Regulations for the 1980 and Succeeding Crop Years, as appearing in the center column of page 55797 (44 FR 55797), is corrected in the first line thereof, to read as follows:

* * * * *

(2) Mature production shall be

* * * * *

Done in Washington, D.C., on April 24, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: April 24, 1980.

Approved by:

James D. Deal,

Manager.

[FR Doc. 80-13318 Filed 4-30-80; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 491]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period May 2–8, 1980. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: May 2, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 30, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on April 29, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges continues to be very active on all sizes and grades.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and 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). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.791 Navel Orange Regulation 491.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period May 2, 1980, through May 8, 1980, are established as follows:

(1) District 1: 1,500,000 cartons;

(2) District 2: Unlimited cartons;

(3) District 3: Unlimited cartons;

(4) District 4: Unlimited cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

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

Dated: April 30, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-13652 Filed 4-30-80; 11:54 am]

BILLING CODE 3410-02-M

7 CFR Part 908

[Valencia Orange Reg. 643, Amdt. 1; Valencia Orange Reg. 644]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 2–May 8, 1980, and increases the quantity of such oranges that may be so shipped during the period April 25–May 1, 1980. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: The regulation becomes effective May 2, 1980, and the amendment is effective for the period April 25–May 1, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V,

AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on April 29, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges continues to improve.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and 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), and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

§ 908.944 Valencia Orange Regulation 644.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period May 2, 1980 through May 8, 1980, are established as follows:

(1) District 1: 125,000 cartons;

(2) District 2: 140,000 cartons;

(3) District 3: 235,000 cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" mean the same as defined in the marketing order.

Paragraph (a) in § 908.943 Valencia Orange Regulation 643 (45 FR 27740), is hereby amended to read:

§ 908.943 Valencia Orange Regulation 643.

(a) * * *

(1) District 1: 81,000 cartons;

(2) District 2: 99,000 cartons;

(3) District 3: 270,000 cartons.

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

Dated: April 30, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-13653 Filed 4-30-80; 11:55 am]

BILLING CODE 3410-02-M

7 CFR Part 918

[Peach Reg. 1]

Fresh Peaches Grown in Georgia; Grade and Size Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes minimum grade and size requirements for fresh peaches grown in Georgia for the 1980 season. These requirements are designed to promote orderly marketing in the interest of producers and consumers.

EFFECTIVE DATE: May 2, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918), regulating the handling of peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based on information submitted by the Industry Committee, established under the order, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on April 17, 1980, to consider supply and market conditions and other factors affecting the need for regulation. It recommended minimum grade and size requirements for shipments of fresh peaches grown in Georgia, except for those shipped in bulk to adjacent markets, which it deemed advisable for the 1980 season. The exception of peaches shipped in bulk to adjacent markets from regulation requirements follows the practice of prior years. It is designed to permit shipment of peaches which are of a quality and size acceptable in the adjacent markets but are not suitable for distribution in more distant markets in competition with peaches from other areas.

The committee reports that it expects 1,700 carlots of inspected peaches to be shipped this season, compared with 1,733 carlots in 1979. It also reports that the developing crop is of good quality, and the fruit is sizing well. Shipment of this season's Georgia peach crop is expected to begin about May 2, and ample supplies of peaches meeting the following requirements are expected to be available to satisfy the demand. Peaches failing to meet these requirements may be marketed in Georgia, shipped to adjacent markets, or utilized in processing.

The following regulations reflect the Department's appraisal of the need for regulation based on the current and prospective crop and market conditions.

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 of insufficient time between the date when information became available upon which this regulation is based 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. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, phone (202) 447–5975.

Therefore, new § 918.322 is added to read as follows: (§ 918.322 expires August 31, 1980, and will not be published in the annual Code of Federal Regulations).

§ 918.322 Peach Regulation 1.

(a) No handler shall ship, except peaches in bulk to destinations in the adjacent markets, any peaches which:

(1) During the period May 2 through August 31, 1980, do not grade at least 85 percent U.S. No. 1 quality: *Provided,* That peaches with well-healed hail marks or split pits not scored as serious damage, or peaches with not more than 1 percent decay, may be shipped if they otherwise meet the requirements of this subparagraph.

(2) During the period May 2 through August 31, 1980, are smaller than 1⅝ inches in diameter, except that not more than 10 percent, by count, of such peaches in any bulk lot or any lot of packages, and not more than 15 percent, by count of such peaches in any container in such lot, may be smaller than 1⅝ inches in diameter.

(b) The inspection requirement contained in § 918.64 shall not be applicable to any shipment of peaches in bulk to destinations in the adjacent markets, except for peaches in closed containers, during the period May 2 through August 31, 1980.

(c) The maturity regulations contained in § 918.400 are hereby suspended with respect to shipments of peaches to all destinations other than those in the adjacent markets during the period May 2 through August 31, 1980.

(d) As used in this section, "handler," "adjacent markets," "peaches," "peaches in bulk," and "ship" mean the same as defined in this marketing order, and "U.S. No. 1" and "diameter" mean the same as defined in the United States Standards for Peaches (7 CFR 2851.1210–2851.1233).

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

Dated: April 29, 1980.

D. S. Kuryloski,

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

[FR Doc. 80–13585 Filed 4–30–80; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Airworthiness Docket No. 80–ASW–16; Amdt. 39–3758]

Airworthiness Directives; Swearingen Models SA226–AT and SA226–TC Airplanes

AGENCY: Federal Aviation Adminstration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective to all persons an amendment adopting an airworthiness directive (AD) which was previously made effective to all known operators of Swearingen Models SA226–AT and SA226–TC airplanes by telegraphic message dated March 20, 1980. This AD was prompted by the failure of the aft cargo door during pressurized flight which could occur in other aircraft of the same type design.

DATES: Effective May 14, 1980, and was effective earlier for all recipients of telegraphic AD T80SW 15 dated March 20, 1980. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from the Director of Products Support, Swearingen Aviation Corporation, P.O. Box 32486, San Antonio, Texas 78284.

These documents may also be examined at the Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas, or Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Milton G. Martin, Airframe Section, Engineering and Manufacturing Branch, ASW–212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas. Telephone: (817) 624–4911, Extension 516.

SUPPLEMENTARY INFORMATION: An emergency airworthiness directive was adopted March 20, 1980. The AD was made effective immediately upon receipt of telegram to all known U.S. operators of Swearingen Models SA226–AT and SA226–TC airplanes. The AD was necessary because of a failure of the aft cargo door on a Swearingen Model SA226–AT airplane during pressurized flight. This AD requires inspection of the latching mechanism of the aft cargo door before further flight to assure proper adjustment, operation, and structural integrity and to permit flight operations with a pressurized cabin.

Since it was found that immediate action was required, notice and public procedure thereon was impractical and contrary to the public interest, and good cause existed to make the AD effective immediately to all operators of the Swearingen Models SA226–AT and SA226–TC airplanes. These conditions still exist and the amended AD is hereby published in the Federal Register as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Swearingen: Applies to Swearingen Models SA226–AT and SA226–TC airplanes certificated in all categories. Compliance required before pressurized flight or prior to obtaining 250 unpressurized flight hours after compliance with emergency telegraphic AD T80SW 14 dated March 15, 1980, amended March 15, 1980 (Airworthiness Docket No. 80–ASW–16).

To assure proper adjustment, operation, and structural integrity of the cargo door latching mechanism, accomplish the following:

(a) With the cargo door open, conduct the following inspection to assure full expansion of the click-clack latch jaws. Move the door handle to the door closed position. Using a "go, no-go" type of gage, determine that the distance from the inside of the click-clack plunger face to the edge of the click-clack jaws is not less than 0.34 inches. Adjust each latch as necessary to gain a minimum of 0.34 inches by varying the length of its connecting push-pull rod.

(b) To assure proper engagement of the click-clack jaws into the door frame receptacle, three measurements are necessary. The first measurement (door open) is the dimension from the door face plate surface to the undercut on the click-clack jaws. The second measurement (door open) is the dimension from the door frame receptacle face plate surface to the jaws seating surface. The third measurement (door closed) is the gap (taken with a feeler gage) between the surface of the door frame receptacle and the door face plate surface. The first dimension must be at least the sum of the second and third dimensions to assure proper engagement of the click-clack jaws in the door frame receptacle. Adjust each latch as necessary to gain the proper click-clack engagement by varying the length of its connecting push-pull rod.

(c) Inspect each door face plate and receptacle face plate for evidence of deformation. If deformed, also inspect door frame and door latch assembly for evidence of cracks or deformation. If such defects are detected, replace with airworthy part.

(d) Using an inside micrometer, or equivalent, measure the inside diameter of each receptacle. Measure across the hole in at least three directions to check for roundness. The widest dimension must be used to compare with the following allowables.

(1) Receptacles on side of cargo door, one piece type, limit .690 inches.

(2) Receptacles on side of cargo door, eccentric type, limit .700 inches.

(3) Receptacles on bottom of cargo door, one piece type, limit .670 inches.

(4) If any receptacle is oversized, replace with an airworthy part.

(e) Check the cargo door warning system as follows:

(1) With the door in the open position, manually depress all door warning switches. Check to see that the cargo door warning light in the annunciator panel is extinguished.

(2) Selectively release and depress each warning switch. Check that with all other switches depressed, releasing any individual switch causes illumination of the cargo door warning light. Actuate each switch several times while checking for any tendency for the switch to stick in the depressed position.

(3) Any switches that show any tendency to stick in the depressed position should be replaced.

(f) After the inspections and adjustments required by paragraphs (a) through (e) have been satisfactorily completed, open and close the cargo door a minimum of three cycles.

(1) Operate the door handle to the closed position during each door closed cycle.

(2) Door open light on annunciator panel must be out when door is closed. (Reference Swearingen SA226 series maintenance manual for proper switch adjustment.)

(3) If the door mechanism or warning light system does not function properly during the three open and close cycles, reconduct inspections and adjustments as described above.

(g) Repeat the steps as necessary until the cargo door operates properly.

(h) Repeat the inspections and adjustments required by paragraph (a) through (g) every 250 hours of flight.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base where the inspections and adjustments can be accomplished.

Note.—Swearingen Service Bulletin SB 52-009 dated March 18, 1980, refers to this same subject.

This amendment becomes effective May 14, 1980, and was effective upon receipt for all recipients of telegraphic AD T80SW 15 dated March 20, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Issued in Fort Worth, Texas, on April 14, 1980.

C. R. Melugin,

Director, Southwest Region.

[FR Doc. 80-13368 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 80-SO-6; Amdt. No. 39-3761]

Airworthiness Directives; Piper Model PA-31-350 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing Airworthiness Directive (AD) applicable to Piper Model PA-31-350 series airplanes to correct airplane serial number applicability which was incorrectly published in Amendment 39-3733, AD 80-08-05.

DATES: Effective April 28, 1980. Compliance as prescribed in body of AD.

ADDRESSES: Piper Service Bulletin #684, dated April 14, 1980, may be obtained from Piper Aircraft Corporation, 820 E. Bald Eagle Street, Lock Haven, Pennsylvania 17745.

A copy of the Service Bulletin and the AD are contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Norman Berry Drive, East Point, Georgia 30344.

FOR FURTHER INFORMATION CONTACT: R. J. Sample, Flight Test Section, ASO-216, Engineering and Manufacturing Branch, Flight Standards Division, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, Telephone (404) 763-7446.

SUPPLEMENTARY INFORMATION: This amendment further amends Amendment No. 39-3733, AD 80-08-05, which currently requires revision to the airplane flight manuals and pilot operating handbooks applicable to certain Piper PA-31-350 series airplanes, and modification or replacement of flap position indicators installed in those airplanes. After issuing Amendment No. 39-3733, the FAA has determined that the serial number applicablility as published in the amendment is not correct. Therefore, the FAA is amending Amendment No. 39-3733 by correcting the airplane serial number applicability.

Since the amendment provides a clarification only and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment No. 39-3733 as follows:

By revising applicable paragraphs in Amendment No. 39-3733 to read as follows:

"**Piper Aircraft Corporation:** Applies to Model PA-31-350 airplanes, Serial Numbers 31-5001 through *31-7652176*, 31-7752001 through 31-7952250 and 31-8052001 through 31-8052129 certificated in all categories."

and

"(1) Airplane Serial Numbers: 31-5001 through *31-7652176*. FAA Approved Airplane Flight Manual (PAC Report No. 1750), Revision 17."

This amendment is effective April 28, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89).

Note.—Piper Service Bulletin No. 684, dated April 114, 1980, applies and will be changed accordingly.

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by 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 above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in East Point, Georgia: April 21, 1980.

Louis J. Cardinali,

Director, Southern Region.

[FR Doc. 80-13189 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 80-CE-15-AD; Amdt. 39-3759]

Airworthiness Directives; Beech Models B90, C90, E90 (Military T-44A), 100, A100, A100 (Military U-21F), B100, 200 and A200 (Military C-12A) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to all Beech Aircraft Corporation Models B90, C90, E90, H90 (Military T-44A), 100, A100, A100 (Military U-21F), B100, 200 and A200 (Military C-12A and C-12C) airplanes. The AD adds a limitation to some airplanes prohibiting operation above 25,000 feet unless the oxygen system is ARMED (ON) and prohibits operation of other airplanes above 25,000 feet unless the occupants are using oxygen. The prohibitions are removed upon modification of the airplanes in accordance with Beechcraft Service Instructions No. 0867-341, Revision II, Part I. These operating limitations are necessary to assure that oxygen is available for use during flight above 25,000 feet. Seizure or binding of the oxygen control cable due to freezing of contaminating moisture may prevent actuation of the oxygen system. If this occurs during operation at altitudes greater than 25,000 feet, oxygen would not be available to the occupants for normal or emergency requirements.

EFFECTIVE DATE: May 1, 1980.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Beechcraft Service Instructions No. 0867-341, Revision II, Part I, applicable to this AD, may be obtained from local Beechcraft Aviation and Aero Centers or Beech Aircraft Corporation, Commercial Service Department, 9709 East Central, Wichita, Kansas 67201. A copy of the above Service Instructions is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Dale Vassalli, Wichita Engineering and

Manufacturing District Office, FAA, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-4281.

SUPPLEMENTARY INFORMATION: There have been numerous incidents on the subject Beech airplanes wherein moisture entered the cabling housing and froze, thereby seizing the control cable. In addition, there have been other reports of the cable operation being impeded because corrosion resulting from moisture was found to be deteriorating the control cable assembly, including the center wire.

The oxygen control cable on the Beech Model 90 (series), 100 (series) and 200 (S/N BB-54 and below) is actuated in flight only when oxygen is needed. Therefore, a malfunctioning cable may not be detected until there is an emergency need for oxygen. The Airplane Flight Manual (AFM) for the Model 200, S/N BB-55 and above, specifies that the oxygen system should be ARMED (ON) prior to engine start. However, some pilots are not following procedures in the AFM. Therefore, these airplanes which have experienced malfunctioning cables are included in the AD to assure that oxygen will be available at flight altitudes above 25,000 feet.

To preclude contamination of the oxygen control cable due to moisture, the manufacturer has developed a moisture-sealed oxygen control cable assembly for new production and in-service airplanes. Beechcraft Service Instructions No. 0867-341, Revision II, Part I, covers replacement of the present cable assemblies in the Model B90, C90, E90, 100, A100, B100, 200, 200T and 200C airplanes with two new moisture proof cable assemblies, P/Ns 90-384020-7/-9. The Model H90 (Military T-44A) and A100 (Military U-21F, S/N B-95 thru B-99) airplanes are not referenced in Service Instructions No. 0867-341; however, cable assemblies, P/N 90-384020-7 and P/N 90-384020-9, are respectively approved replacement cables for those airplanes and should be installed in accordance with the Service Instructions. The Model A200 (Military C-12A and C-12C) airplanes and its replacement cable assembly, P/N 90-384020-11, are also not listed in the Service Instructions. However the cable used on the Model A200 airplane is subject to the same moisture problem; therefore, the Model A200 airplane is included in the AD. The replacement cable assembly, P/N 90-384020-11 for the Model A200 (Military C-12A and C-12C) should be installed in accordance with Service Instructions No. 0867-341, Revision II, Part I.

Since an unsafe condition is likely to develop in airplanes of the same type design, and AD is being issued, applicable to the Beech Models B90, C90, E90, H90 (Military T-44A), 100, A100, A100 (Military U-21F), B100, 200, and A200 (Military C-12A and C-12C) airplanes requiring a placard to prohibit flight above 25,000 feet unless the oxygen system has been ARMED (ON), or to limit the maximum operating altitude to 25,000 feet unless the occupants are using oxygen. These limitations are no longer necessary upon replacement of the oxygen control cable assembly in accordance with Part I of Beechcraft Service Instructions No. 0867-341, Revision II. Since a situation exists that requires the expeditious adoption of the regulation, it is found that notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest, and good cause exists for making the amendment effective in less than thirty (30) days after the date of publication in the **Federal Register.**

Adoption of the Amendment

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13) is amended by adding the following new Airworthiness Directive:

Beech: Applies to the following models and serial numbers of airplanes certificated in all categories:

Group I

Model	Serial Numbers
B90	LJ-490 thru LJ-501.
C90	LJ-502 thru LJ-667.
E90	LW-1 thru LW-326.
H90 (Military T-44A)	LL-1 thru LL-53.
200	BB-2, BB-6 thru BB-185, BB-187 thru BB-202, BB-204 thru BB-269, BB-271 thru BB-407, BB-409 thru BB-468, BB-470 thru BB-482, BB-483 thru BB-488, BB-490 thru BB-509, BB-511 thru BB-518.
200T	BT-1 thru BT-7.
200C	BL-1 and BL-2.
A200 (Military C-12A)	BC-1 thru BC-61 and BD-1 thru BD-30.
A200 (Military C-12C)	BC-62 thru BC-71.
C90	LJ-668 thru LJ-851.
100	B-2 thru B-89 and B-93.
A100	B-1, B-90 thru B-92, B-94, B-100 thru B-247, except B-205.
A100 (Military U-21F)	B-95 thru B-99.
B100	BE-1 thru BE-70.

Compliance: Required on airplanes, not modified in accordance with Beechcraft Service Instructions No. 0867-341, Revision II, Part I, within 50 hours time-in-service after the effective date of this AD, unless previously accomplished.

(A) On airplanes listed in Group I of the applicability statement, locally fabricate, using letters at least 3/32" high, and install in clear view of the pilot, a placard which reads as follows: "Flight above 25,000 feet prohibited unless the oxygen system is ARMED (ON)."

and operate the airplane in accordance with this limitation.

(B) On airplanes listed in Group II of the applicability statement, locally fabricate, using letters at least 3/32" high, and install in clear view of the pilot, a placard which reads as follows: "Flight above 25,000 feet prohibited unless the occupants are using oxygen"

and operate the airplane in accordance with this limitation.

(C) Install a copy of the AD in the Limitation Section of the AFM of the airplanes listed in Group I and Group II of the applicability statement.

(D) The installation of the required placard and insertion of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by that person, who must make an entry in the airplane maintenance records indicating compliance with this AD.

(E) The placards specified herein may be removed from the airplane and a copy of the AD removed from the AFM upon modification of the airplane in accordance with Beechcraft Service Instructions No. 0867-341, Revision II, Part I, and recording of compliance with this paragraph in the airplane maintenance records.

Note.—The Beech Model H90 (Military T-44A), A100 (Military U-21F, S/N B-95 through B-99) and A200 (Military C-12A and C-12C) airplanes utilize P/N 90-384020-7, P/N 90-384020-9 and P/N 90-384020-11, respectively, as replacement oxygen cable assemblies. These military airplanes and P/N 90-384020-11 cable assembly are not listed in Beechcraft Service Instruction No. 0867-341, Revision II. However, the replacement cable assemblies may be installed in these airplanes in accordance with said Service Instructions if removal of the placards is desired.

(F) Any equivalent method of compliance with this AD must be approved by the Chief, Wichita Engineering and Manufacturing District Office, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209.

This amendment becomes effective May 1, 1980.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)) and Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room

1558, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374–5446.

Issued in Kansas City, Missouri, on April 16, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-13185 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-CE-16-AD; Amendment 39-3764]

Airworthiness Directives; Learjet 23, 24, 25, 28, 29, 35 and 36 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adopts a new Airworthiness Directive (AD), applicable to Gates Learjet Models 23, 24, 25, 28, 29, 35 and 36 Series Airplanes which requires inspections of the tailcone service area to detect possible sources of ignition and fuel leakage. This action is necessary to reduce the possibility that conditions may develop in this area which could result in a fire or explosion.

EFFECTIVE DATE: May 8, 1980.

COMPLIANCE SCHEDULE: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: R. A. Brenk, Aerospace Engineer, Engineering and Manufacturing District Office, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942–7927.

SUPPLEMENTARY INFORMATION: Reports have been received of failures of O-ring seals in P/N AV1616E1182 motive flow shutoff valves in the tailcone service area of Gates Learjet airplanes. In the most recent failure, the tailcone service area was reported to be saturated with fuel. The FAA believes that a one-time inspection of the tailcone service area for leaks, integrity of fuel and hydraulic lines and of the battery and electrical equipment for possible ignition sources plus an inspection after each flight, for possible leaks of the motive flow valves, will improve the level of safety of these airplanes.

Although design features have been incorporated to preclude ignition of fuel or vapors in the tailcone service area, the frequent release of fuel in this area where service deterioration of components has occurred may increase the possibility of an ignition source for this leakage and compromises the design level of safety of these airplanes. The FAA considers these circumstances an unsafe condition. Since the condition described herein is likely to develop in other airplanes of the same type design, the FAA is issuing an AD, applicable to Gates Learjet Models 23, 24, 25, 28, 29, 35 and 36 series airplanes, which will require an inspection of the tailcone service area to detect possible sources of ignition and repetitive post-flight inspections to detect fuel leakage.

To preclude existence of an undetected source of ignition in the tailcone service area, the FAA believes a one-time inspection should be required of all components that could become a source of ignition due to service deterioration or damage. Leakage of the motive flow valve is more severe under high pressure conditions which exist when the engines are running at higher thrust settings. Tests showed that at 500 p.s.i. pressure, leakage in a valve in excess of 6 gallons per hour may occur. Consequently, the repetitive inspection for leaks must be made immediately after the engines are shut down because evidence of leakage during the last flight may not be present at a preflight inspection. Therefore, the AD includes a temporary Airplane Flight Manual Supplement which requires the operator to inspect the interior of the tailcone service area immediately after engine shutdown at the conclusion of each flight, for evidence of leaks and proper drainage of the tailcone service area.

The FAA has determined that there is an immediate need for a regulation to assure safe operation of the affected airplanes. Therefore, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest, and good cause exists for making the amendment effective in less than thirty (30) days after the date of publication in the **Federal Register.**

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Sec. 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13) is amended by adding the following new AD:

Gates Learjet: Applies to Model 23 airplanes equipped with jet pumps, and to all Model 24, 25, 28, 29, 35 and 36 series airplanes.

Note.—Model 23 airplanes were not equipped with jet pumps when manufactured. Model 23 airplanes which have been retrofitted with jet pumps in the field will be so identified on the title page of the Airplane Flight Manual.

Compliance: Required as indicated unless already accomplished.

To reduce the probability of undetected fuel leakage and/or ignition sources causing a fire or explosion in the tailcone service area, within the next 25 hours time-in-service after the effective date of this AD, accomplish the following:

(A) Run each engine to takeoff thrust momentarily, shut down and immediately open the access cover under the tailcone service area and make the following visual inspections:

1. Inspect the fuel and hydraulic system components for deterioration or damage, leakage and stains indicating leakage, paying particular attention to the motive flow valves.
2. Inspect the batteries and electrical equipment for deterioration or damage and conditions which may cause arcing.
3. Inspect all vents and drains for obstruction or blockage.

Before further flight correct any of the above noted unsatisfactory conditions.

(B) Install in the existing Airplane Flight Manual, the Temporary Airplane Flight Manual Supplement included in this AD as Figure 1, or, if available, the applicable Gates Learjet Company Airplane Flight Manual or Pilot/Owner handbook revision containing the same information and comply with these instructions.

(C) Airplanes may be flown in accordance with FAR 21.197 to a location where Paragraph A may be accomplished.

(D) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing District Office, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209.

Figure 1

Temporary Airplane Flight Manual Supplement For Gates Learjet Models 23, 24, 25, 28, 29, 35 and 36 Series Airplanes

(AD———requires this supplement to remain in the below designated Airplane Flight Manual until replaced by an equivalent Gates Learjet Company Flight Manual Supplement.)

Model———————————————

N———————————————

S/N———————————————

In addition to the presently specified post-flight procedures, immediately after the engines are shut down, open the access cover under the tailcone service area and accomplish the following, using a flashlight or supplemental light as necessary for adequate illumination:

1. Check the motive flow valves for leaks or stains indicating leaks.
2. Check all vents and drains to assure that they are clean and free from obstruction.
3. Any leak detected must be corrected prior to further flight.
4. Secure access cover.

This amendment becomes effective May 8, 1980.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as

implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri on April 22, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-13190 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 20293; Amdt. 39-3765]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm Model B0-105 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known operators of Messerschmitt-Bolkow-Blohm Model B0-105 series helicopters by individual telegrams. The AD requires inspection of the tail rotor blade grip, and replacement of parts as necessary to prevent loss of directional control of helicopter.

DATES: Effective May 1, 1980, as to all persons except those persons to whom it was made immediately effective by the telegram dated March 30, 1979, which contained this amendment.

Compliance schedule—as prescribed in the body of the AD.

ADDRESS: The applicable service bulletins may be obtained from: Messerschmitt-Bolkow-Blohm GmbH, Box 801140, 8000 Munich 80, Germany.

A copy of the service bulletins are contained in the Rules Docket, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Christie, Chief, Technical Analysis Branch, AWS-110, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone: 202-426-8374.

SUPPLEMENTARY INFORMATION: On March 23, 1979, a telegraphic airworthiness directive was issued and made effective immediately as to all known U.S. operators of Messerschmitt-Bolkow-Blohm Model B0-105 series helicopters. The AD required inspection of the tail rotor blade grip clevis area for cracks, and replacement as necessary. The AD was superseded on March 30, 1979, by a telegraphic AD, which required inspection of additional areas of the tail rotor blade grip for cracks. In addition to inspection of the clevis area, the March 30 telegram required inspection of the inboard end of the tail rotor blade grip and in the vicinity of the bore of the laminated pack retaining bolt (on the inner side), and replacement as necessary.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known operators of Messerschmitt-Bolkow-Blohm Model B0-105 series helicopters by individual telegrams dated March 23, 1979, and March 30, 1979. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Messerschmitt-Bolkow-Blohm: Applies to Model B0-105 series helicopters with tail rotor blade grip P/N 105-31711 or P/N 105-31722 installed, certificated in any category.

To prevent failure of the tail rotor system, accomplish the following:

(a) Within the next 10 hours time in service after the effective date of this AD, unless already accomplished within the last 90 hours time in service, and thereafter at intervals not to exceed 100 hours time in service from the last inspection, inspect the visible part of the inner surface of the tail rotor blade grip clevis area (do not remove blade retaining bolt bushings) for cracks using the dye penetrant method in accordance with Messerschmitt-Bolkow-Blohm B0-105 Alert Service Bulletin No. 18 dated March 15, 1979, or an FAA-approved equivalent.

(b) Within the next 100 hours after installing a replacement tail rotor blade grip in accordance with paragraph (g) of this AD, and thereafter at intervals not to exceed 100 hours time in service from the last inspection, inspect the visible part of the inner surface of the tail rotor blade grip clevis area (do not remove blade retaining bolt bushings) for cracks using the dye penetrant method in accordance with Messerschmitt-Bolkow-Blohm B0-105 Alert Service Bulletin No. 18 dated March 15, 1979, or an FAA-approved equivalent.

(c) Within the next 100 hours time in service after the effective date of this AD—

(1) Visually inspect the inboard end of the tail rotor blade grip for cracks in accordance with paragraph 2.A.1 "Accomplishment Instructions" of Messerschmitt-Bolkow-Blohm Service Bulletin 30-24 dated December 1, 1978, or an FAA-approved equivalent; and

(2) Inspect the tail rotor blade grip in the vicinity of the bore of the laminated pack retaining bolt (on the inner side) for cracks using the dye penetrant method in accordance with paragraph 2.A.2. "Accomplishment Instructions" of Messerschmitt-Bolkow-Blohm B0-105 Service Bulletin 30-24 dated December 1, 1978, or an FAA-approved equivalent.

(d) Within the next 100 hours time in service after accomplishing the inspection required by paragraph (c)(1) of this AD or installing a replacement tail rotor blade grip in accordance with paragraph (g) of this AD, and thereafter at intervals not to exceed 100 hours time in service from the last inspection, visually inspect the inboard end of the tail rotor blade grip for cracks in accordance with "Special Inspections", Chapter 10 of the Messerschmitt-Bolkow-Blohm B0-105 Maintenance and Overhaul Manual or an FAA-approved equivalent.

(e) Within the next 600 hours time in service after accomplishing the inspection required by paragraph (c)(2) of this AD or installing a replacement tail rotor blade grip in accordance with paragraph (g) of this AD, and thereafter at intervals not to exceed 600 hours from the last inspection, inspect the tail rotor blade grip in the vicinity of the bore of the laminated pack retaining bolt (on the inner side) for cracks using the dye penetrant method in accordance with "Special Inspections," Chapter 10, of the Messerschmitt-Bolkow-Blohm B0-105 Maintenance and Overhaul Manual or an FAA-approved equivalent.

(f) If, during any inspection required by this AD, any cracks are found, before further flight, replace the cracked tail rotor blade grip in accordance with paragraph (g) of this AD.

(g) For all replacement tail rotor blade grips installed after the effective date of this AD—

(1) Use a new or used crack-free tail rotor blade grip of the same part number. Before installation of a used tail rotor blade grip, inspect the part using the dye penetrant method to ensure that it is crack-free; and

(2) Comply with the repetitive inspection requirements of paragraphs (b), (d), and (e) of this AD.

Note.—This AD applies to both tail rotor blade grips installed on the helicopter.

This amendment becomes effective May 1, 1980, as to all persons except those persons to whom it was made immediately effective by the telegram dated March 30, 1979, which contained this amendment.

(Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation 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 writing to C. Christie, Chief, Technical Analysis Branch, AWS-110, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Issued in Washington, D.C., on April 22, 1980.

M. C. Beard,

Director, Office of Airworthiness.

[FR Doc. 80-13188 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket Number 79-CE-36]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Designation of Transition Area—Cabool, Mo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Cabool, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Cabool, Missouri Memorial Airport based on a Non-Directional Radio Beacon (NDB), a navigational aid being installed on the airport by the City of Cabool. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 10, 1980.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Cabool Memorial Airport, Cabool, Missouri, is being established based on a Non-Directional Radio Beacon (NDB), a navigational aid being installed on the airport by the City of Cabool. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Cabool, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 11507 and 11508 of the **Federal Register** dated February 21, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Cabool, Missouri. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. Two comments were received. The Aircraft Owners and Pilots Association had no objection to the proposal. The Missouri Air National Guard objected to the proposal because the proposed transition area would extend approximately one half the way across Military Training Routes IR-522 and VR-1569. The Missouri Air National Guard is concerned that implementation of the instrument approach procedure and transition area as proposed would result in undue delays in the use of IR-522. They also advise that they will continue to use VR-1569 in accordance with present procedures. After reviewing the proposal, Kansas City ARTCC, the controlling agency, advised that the conflict is not significant and they could provide adquate and safe aircraft separation between those using the training routes and the instrument approach to Cabool. Accordingly, the FAA has determined that no changes are required in the designation of the transition area for the Cabool, Missouri Memorial Airport.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445), is amended effective 0901 GMT July 10, 1980, by adding the following new transition area:

Cabool, Missouri

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Cabool Memorial Airport (latitude 37°07'59" N; longitude 92°05'00" W), and within 3 miles each side of the NDB 032° bearing extending from the 5-mile radius area to 8.5 miles NE of the NDB, and within 3 miles each side of the NDB 209° bearing; extending from the 5-mile radius area to 8.5 miles SW of the NDB, and within 3 miles each side of the Maples, Missouri VORTAC R205°, extending from the 5-mile radius area to 6.5 miles NE of the Cabool Memorial Airport.

Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69).

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on April 18, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-13186 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 79-CE-39]

Alteration of Transition Area—Oelwein, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Oelwein, Iowa to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Oelwein,

Iowa Municipal Airport utilizing the Waterloo, Iowa Omni-directional Range as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 10, 1980.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An additional instrument approach procedure to the Oelwein Municipal Airport, Oelwein, Iowa has been established utilizing the Waterloo, Iowa Omni-directional Range as a navigational aid. The establishment of an additional instrument approach procedure based on this approach aid entails the alteration of the transition area at Oelwein, Iowa at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 11508 and 11509 of the **Federal Register** dated February 21, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Oelwein, Iowa. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445), is amended effective 0901 GMT July 10, 1980, by altering the following transition area:

Oelwein, Iowa

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Oelwein Municipal Airport (latitude 42°41'04" N, longitude 91°58'42" W) and within 4 miles each side of the 304° bearing from the airport extending from the 9-mile radius to 12 miles northwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on April 18, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-13187 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 369

Restrictive Trade Practices or Boycotts; Interpretation

AGENCY: International Trade Administration, Commerce.

ACTION: Interpretation.

SUMMARY: This document sets forth the views of the Department of Commerce with respect to the application of the Department's regulations on restrictive trade practices or boycotts (15 CFR Part 369) to requests or requirements arising in the Arab Republic of Egypt since the formal termination of Egypt's participation in the Arab economic boycott of Israel.

EFFECTIVE DATE: Retroactive to January 25, 1980.

FOR FURTHER INFORMATION CONTACT: Richard M. Seppa, Acting Director, Office of Antiboycott Compliance, (202) 377-5914.

The following Appendix is added to Part 369 as Supplement 3.

Appendix—Interpretations

Pursuant to Article 2, Annex II of the Peace Treaty between Egypt and Israel, Egypt's participation in the Arab economic boycott of Israel was formally terminated on January 25, 1980. On the basis of this action, it is the Department's position that certain requests for information, action or agreement which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Arab Republic of Egypt ports has been considered a boycott-related request that the exporter could not comply with because Egypt has a boycott in force against Israel (*See* 43 FR 16969, April 21, 1978). Such a request after January 25, 1980 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Egyptian government officials to furnish the place of birth of employees the company is seeking to take to Egypt, because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the regulations, irrespective of the country or origin. For example, requests containing references to "blacklisted companies", "Israel boycott list", "non-Israeli goods" or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

Dated: April 25, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-13994 Filed 4-30-80; 8:45 am]

BILLING CODE 3510-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3015]

S. Klein, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Washington, D.C. retailer of consumer goods to cease entering into layaway

agreements which fail to clearly and conspicuously advise customers of their right to revoke transactions and receive refunds of money paid toward the cost of their purchases. Additionally, the order requires the firm to honor cancellations; furnish credit customers with cost disclosures required by Federal Reserve Systems regulations; and refund to eligible customers all monies known to have been forfeited under layaway transactions since August 1, 1975.

DATE: Complaint and order issued April 4, 1980.*

FOR FURTHER INFORMATION CONTACT:

FTC/PD, Irvin E. Abrams, Washington, D.C. 20580, (202) 724–1568.

SUPPLEMENTARY INFORMATION: On Friday, July 14, 1978, there was published in the **Federal Register**, 43 FR 30297, a proposed consent agreement with analysis In the Matter of S. Klein, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.73 Formal regulatory and statutory requirements; 13.73–92 Truth in Lending Act; 13.155 Prices; 13.155–95 Terms and conditions; 13.155–95(a) Truth in Lending Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; § 13.533–37 Formal regulatory and/or statutory requirements. 13.533–45 Maintain records; 13.533–55 Refunds, rebates and/or credits; Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1623 Formal regulatory and statutory requirements; 13.1623–95 Truth in Lending Act.Prices: § 13.1823 Terms and conditions; 13.1823–20 Truth in Lending Act. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; 18.1852–75 Truth in Lending Act; § 13.1892 Sales contract, right-to-cancel provision; § 13.1905 Terms and conditions; 13.1905–50 Sales contract; 13.1905–60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*)

Carol M. Thomas,

Secretary.

[FR Doc. 80–13315 Filed 4–30–80; 8:45 am]

BILLING CODE 6750–01–M

* Copies of the Complaint and the Decision and Order filed with the original document.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM78–23; Order No. 10–C]

Interstate Pipeline Recovery of State of Louisiana First Use Tax

April 24, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: This final rule amends the procedures, established in Order No. 10 (43 FR 45553, October 3, 1978), No. 10–A (43 FR 60438, December 28, 1978) and No. 10–B (44 FR 13460, March 12, 1979) for recovery of the Louisiana First Use Tax by interstate natural gas pipelines. The rule sets forth the rate treatment and accounting procedures to be followed until a final and non-appealable court determination of the constitutionality of the Louisiana First Use Tax is made.

EFFECTIVE DATE: This final rule is effective as of April 24, 1980.

FOR FURTHER INFORMATION CONTACT:

William A. Topping, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Phone: 202–357–8583.

The Commission has under consideration applications for rehearing of the March 30, 1979, order in *Arkansas-Louisiana Gas Company, et al.*, Docket Nos. RP79–53, *et al.*[1] After reviewing these applications, we concluded that Order No. 10–B as well as the March 30 Order should be modified. The United States Court of Appeals for the Fifth Circuit has granted our request for a remand of the record in *Tennessee Gas Pipeline Company, et al.* v. *Federal Energy Regulatory Commission*, No. 78–3816, so that we may modify Order No. 10–B.[2] Accordingly, we will modify Order No. 10–B, but we turn first to the events which lead to Order No. 10–B and the March 30 Order.

[1] See pages 6–8, *infra*, for a discussion of the proceedings in those dockets and this docket.

I. Louisiana First Use Tax on Natural Gas.

In July of 1978, the State of Louisiana adopted a law establishing the First Use Tax on Natural Gas.[3] The First Use Tax is imposed, at a rate of 7 cents per thousand cubic feet ("Mcf"),[4] upon the first "use" [5] of certain natural gas [6] within Louisiana.

[2] By order filed October 12, 1979, the Fifth Circuit granted the Commission's motion and "remanded (the cause) to the Commission so that they may modify their orders."

[3] 1978 La. Sess. Law Serv. 482 (Act No. 294), codified as La. Rev. Stat. §§ 47:1301–47:1307 (West) (1979 Supp.) Hereinafter referred to as "First Use Tax." This act is one of several acts adopted to impose a tax on specified "uses" of certain classes of natural gas which is transported into and/or through Louisiana in interstate commerce to provide for credits against that tax liability, and to dispose of revenues generated by the First Use Tax. The other acts are: (1) Act No. 293, 1978 La. Sess. Law Serv. 480, codified as La. Rev. Stat. §§ 47:1351 (establishes a First Use Tax Trust Fund); (2) Act No. 436, 1978 La. Sess. Law Serv. 842, codified as La. Rev. Stat. § 47:647 (allows credits against liability for the Louisiana Severance Tax); (3) Act No. 599, 1978 La. Sess. Law Serv. 1112, to be codified as La. Rev. Stat. § 47:11 (allows credits against Louisiana state and local taxes for electric generating utilities, gas distribution companies, and industrial users of natural gas); and (4) Act No. 797, 1978 La. Sess. Law Serv. 1613 (places on ballot a proposal to amend Louisiana constitution to incorporate therein a First Use Tax Trust Fund).

[4] La. Rev. Stat. § 47:1303(B).

[5] The term "use" is defined broadly as "(1) the sale; (2) the transportation in (Louisiana) to the point of delivery at the inlet of any processing plant; (3) the transportation in (Louisiana) of unprocessed natural gas to the point of delivery at the inlet of any measurement or storage facility; (4) transfer of possession or relinquishment of control at a delivery point in (Louisiana); (5) processing for the extraction of liquefiable component products or waste materials; (6) use in manufacturing; (7) treatment; or (8) other ascertainable action at a point within (Louisiana)." La. Rev. Stat. § 47:1302(8).

[6] Natural gas is subject to the First Use Tax if it is not subject to any severance or production tax levied by Louisiana or any other state or territory of the United States or is not subject to any import tax or tariff levied by the United States on imports from foreign countries. La. Rev. Stat. § 47:1303(A). Because almost every state including Louisiana (La. Rev. Stat. §§ 47:631–47:646), imposes a severance or production tax on gas produced within the state, the First Use Tax will apply only to gas not subject to state taxation. Such gas is produced from federal enclaves within a state (*e.g., Mississippi River Fuel Corp.* v. *Cocreham*, 382 F.2d 929 (5th Cir. 1967)) or the federal portion of the Continental Shelf (43 U.S.C. § 1331(a)(2)), or is imported from a foreign country. While the First Use Tax is imposed on gas from all three sources, the principal target of the tax is gas from the federal portion of the Continental Shelf ("OSC gas") which enters Louisiana. *Hearings on H.B. 768 Before the Revenue and Fiscal Affairs Committee of the Louisana Senate*, 1 (Governor Edwards), 3 (Rep. Tauzin), 13 (Mr. Slaton) (Hereinafter *"Senate Hearings"*); *Hearings on H.B. 768 Before the Committee on Ways and Means of*

Footnotes continued on next page

The constitutionality of the First Use Tax has been questioned since the inception of the tax. In testimony before the Revenue and Fiscal Affairs Committee of the Louisiana Senate several witnesses questioned the constitutionality of the tax,[7] and the sponsors of the tax noted questions regarding its constitutionality.[8]

The Commission is of the opinion that the First Use Tax is unconstitutional and directly interferes with paramount federal authority to determine the terms and conditions on, and the rates at, which natural gas may be transported and/or sold in interstate commerce. Accordingly, it instituted proceedings challenging the First Use Tax, *FERC* v. *McNamara, et al.*, Civil Action No. 78–384 (M.D. La. filed September 29, 1978),[9] and has supported the states' motions for leave to file an original complaint in *Maryland, et al.* v. *Louisiana*, No. 83 Original (U.S. filed March 29, 1979), and their motion for judgment on the pleadings.[10]

The cost of the First Use Tax to the interstate natural gas pipelines and their customers is significant; the first year liability alone will exceed $260 million. Until a court declares the First Use Tax unconstitutional, or until collection of the tax is enjoined, the interstate pipelines must pay the First Use Tax, since non-payment subjects the interstate pipelines to penalties and to forfeiture of the natural gas.[11] Considering these factors, the Commission established procedures for recovery of the First Use Tax, subject to refund, pending the conclusion of litigation challenging the constitutionality of that tax. These procedures balanced the needs of the interstate pipelines to recoup the amounts paid for the First Use Tax from gas consumers or other persons for whom they render services, with the Commission's responsibility to protect the ultimate consumers from a tax of questionable constitutionality. This order, although revising and simplifying those procedures, continues to balance equitably the interests of the pipelines and gas consumers.

II. Procedural History

A. Commission Orders

In Order Nos. 10, 10–A, and 10–B,[12] the Commission established procedures governing recovery of the First Use Tax.[13] These orders amended § 154.38 of the Commission's Regulations (18 CFR 154.38) by adding a new paragraph (h). Paragraph (h), as amended by Order Nos. 10–A and 10–B, permits pipelines to collect the First Use Tax, subject to refund, pursuant to a temporary tracking mechanism similar to a purchased gas adjustment clause.

While allowing the pipelines to collect the First Use Tax from their gas customers, the Commission imposed conditions to ensure that gas consumers receive refunds of all amounts paid pursuant to § 154.38(h) with interest upon a final court determination that the First Use Tax is unconstitutional. In Order Nos. 10 and 10–A, the Commission required the pipelines to deposit all funds collected in an escrow account until a final court determination of the constitutionality of the First Use Tax. In Order No. 10–B, the Commission, acting in response to comments and petitions for rehearing, amended § 154.38(h) to allow pipelines to select either the escrow account procedure established in Order No. 10–A, or, under certain conditions, a corporate undertaking procedure.

Pursuant to Order Nos. 10, 10–A, and 10–B, eighteen pipeline companies filed tariff sheets to establish provisions for tracking and deferred accounting of the First Use Tax. By orders issued March 30, 1979,[14] and May 9, 1979,[15] the Commission accepted the original or revised tariff sheets of the eighteen pipelines. Subject to the refund provisions of Order No. 10–B, these pipelines are presently collecting, from their customers, funds to cover the pipelines' First Use Tax liability. Several pipelines filed applications for rehearing of the March 30 Order. After reviewing these petitions for rehearing, the Commission finds that the refund provisions of Order No. 10–B as applied in the Commission's March 30 Order should be amended. Thus, the Commission is amending Order No. 10–B and clarifying the March 30 Order.

B. Petitions for Rehearing of March 30 Order

Applications for rehearing of the Commission's March 30 Order have been filed by twelve pipelines.[16] The major issues raised in the applications for rehearing are: (1) Whether the Commission can require pipelines selecting the corporate undertaking to refund "voluntarily" those payments made on that portion of the First Use Tax found unconstitutional by a final and non-appealable court order; and (2) whether paragraph (N) of the March 30 Order denies pipeline companies their right to seek judicial review of the Commission's orders.

After reviewing these applications for rehearing, the Commission finds that the following amendments and clarifications to Order No. 10–B are appropriate: (1) The escrow account procedure, and all references to it, are

---

Footnotes continued from last page
the Louisiana House of Representatives, 7 (Rep. Tauzin) (Hearing of June 5, 1978) (Hereinafter *"House Hearings"*); *id.*, 8–9, 16 (Mr. Brooksher), 25–26 (Mr. Woodward) (Hearing of June 6, 1978).

[7] *Senate Hearings*, at 13–18 (Mr. Slaton), 18–22 (Mr. Gardner), 22–25 (Mr. Woodward).

[8] The Governor of Louisiana stated: "May I say first that no one and I repeat and emphasize no one can tell you whether the legislation is constitutional or is not constitutional," and Representative Tauzin, author of the First Use Tax, stated: "The reason that we do that (establishment of a trust fund) is the same as the governor said that it is possible and we have got to recognize it, that the courts could rule that we have some constitutional problem with our act." *Senate Hearings*, at 2, 6.

[9] By order filed January 26, 1979, the district court stayed proceedings in this case pending the outcome of the proceedings in *Edwards, et al.* v. *Transcontinental Gas Pipe Line Corp., et al.*, No. 216,867 (19th Judicial District Court, La., filed September 22, 1978). The Commission appealed this order, *FERC* v. *McNamara*, No. 79–1403 (5th Cir.), and the Fifth Circuit has indicated that these proceedings should be stayed pending further developments in *Maryland, et al.* v. *Louisiana, infra.*

[10] By order entered June 18, 1979, the Supreme Court granted leave to file the original complaint, and directed Louisiana to answer the complaint within sixty (60) days. Louisiana has answered the complaint and moved for appointment of a special master. Maryland, *et al.*, have moved for judgment on pleadings requesting the Court to declare the tax unconstitutional, and have opposed the motion for appointment of a special master. In response Louisiana has filed a motion to dismiss and has opposed the motion for judgment on pleadings. Maryland, *et al.* have opposed the motion to dismiss. In addition, New Jersey has filed a complaint, and a brief in support thereof. Seventeen interstate pipelines have moved for leave to intervene and to file a complaint and have filed a motion for judgment on the pleadings and a brief in support thereof. Finally, Associated Gas Distributors have filed for leave to file a brief *amicus curiae* in support of the motion for judgment on the pleadings and the brief.

On March 3, 1980, the Supreme Court appointed John F. Davis as special master in *Maryland* v. *Louisiana*.

[11] La. Rev. Stat. § 47:1306(B).

[12] 43 FR 45553 (October 3, 1978); 43 FR 60438 (December 28, 1978); 44 FR 13460 (March 12, 1979), petitions for review pending *sub nom. Tennessee Gas Pipeline Co., et al.* v. *FERC*, No. 78–3816 (5th Cir.).

[13] In addition to establishing these procedures, the Commission challenged the constitutionality of the First Use Tax. See page 4 and notes 9 and 10, *supra.*

[14] *Arkansas Louisiana Gas Co., et al.*, Docket Nos. RP79–53, RP79–54, *et al.*, "Order Accepting Certain Tariff Sheets, Conditionally Accepting Certain Tariff Sheets and Rejecting Certain Other Tariff Sheets Which Reflect the Louisiana First Use Tax in Pipeline Rates Pursuant to Order Nos. 10, 10–A, and 10–B" (March 30, 1979), 44 FR 21330 (April 10, 1979) (hereinafter "March 30 Order").

[15] *Arkansas Louisiana Gas Co., et al.*, Docket Nos. RP79–53, RP79–54, *et al.*, "Order Accepting Revised Tariff Sheets" issued May 9, 1979 ("May 9 Order").

[16] Michigan Wisconsin Pipe Line Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Sea Robin Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Trunkline Gas Company, Transcontinental Gas Pipe Line Corporation, United Gas Pipe Line Company, and Texas Eastern Transmission Corporation.

deleted; (2) all references to "voluntary" agreement are deleted; (3) the interest rate provision is amended; and (4) filing requirements are established in accordance with Order No. 10–B. The March 30 Order is amended and clarified by deleting paragraph (N) and the references to "voluntary" agreement and "further selection" of escrow account.

III. Issues

A. The Full Refund Obligation of the Corporate Undertaking

The Commission, in Order Nos. 10 and 10–A, required the interstate pipelines to escrow all funds collected from their gas customers for the First Use Tax. In their applications for rehearing of Order No. 10–A, many pipelines referred to legal opinions stating that Louisiana would provide full refunds if the First Use Tax is found unconstitutional.[17] Based on these arguments the Commission, in Order No. 10–B, established a corporate undertaking, subject to conditions, as an alternative to the escrow account.

All eighteen pipelines which have filed tariffs to recover the First Use Tax selected the corporate undertaking procedure. In this regard, Tennessee stated that, since 1971, when the Commission adopted a corporate undertaking requirement as a condition precedent to a pipeline collecting rates subject to refund,[18] "pipelines have collected billions of dollars (over $1.7 billion in fiscal year 1977 alone) subject to refund" and "there is no instance in which (Tennessee is) aware in which a pipeline has failed to comply with this undertaking commitment."[19] Because many pipelines have concluded that Louisiana will provide full refunds if the First Use Tax is found unconstitutional, because all eighteen pipelines have selected the corporate undertaking, and because this Commission's experience with the corporate undertaking provision in § 154.67 indicates that it adequately protects pipeline customers, the Commission modifies § 154.38(h) by deleting the escrow account procedure.

The Commission will retain the corporate undertaking provision and the requirement that pipelines make full refunds plus interest upon a final and non-appealable court order finding the First Use Tax unconstitutional. In the absence of this refund requirement, the ultimate consumers might be required to bear the cost of a tax found unconstitutional simply because the taxing state fails to refund the amounts which it collected. The refund provision assures that the taxpayer-pipelines will vigorously pursue refunds from Louisiana upon a final and non-appealable court order finding the First Use Tax unconstitutional.

The Commission has an affirmative duty to protect consumers, *e.g.*, *California* v. *Southland Royalty Co.*, 436 U.S. 519, 523–524 (1978), and "to allow (regulated companies) only such rates as will prevent consumers from being charged any unnecessary or illegal costs." *NAACP* v. *Federal Power Commission*, 425 U.S. 662, 666 (1976) (footnote omitted); *Acker* v. *United States*, 298 U.S. 426, 430–431 (1936); *Cities Service Gas Co.* v. *Federal Power Commission*, 424 F. 2d 411, 417 (10th Cir. 1969); *Safe Harbour Water Power Corp.* v. *Federal Power Commission*, 179 F. 2d 179, 199–200 (3d Cir. 1949). Any portion of a tax which has been found to be unconstitutional is clearly an "unnecessary," if not "illegal," cost. *Cf. Tennessee Natural Gas Lines, Inc.* v. *Federal Power Commission*, 221 F. 2d 531 (D.C. Cir. 1954). Compare *Safe Harbour Water Power Corp.* v. *Federal Power Commission*, 179 F. 2d 179, 199–200 (holding that a company is not entitled to recover its actual cost of debt where it could refinance at a lower interest rate). If the First Use Tax, or any portion thereof, is held unconstitutional, the increased charges attributable to that tax are not properly chargeable to consumers. In such circumstances, consumers are entitled to prompt refund of the amounts attributable to such tax payments. *Federal Power Commission* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154–155 (1962); *Tennessee Natural Gas Lines, Inc.* v. *Federal Power Commission, supra.* Such refunds provide, at best, inadequate recompense to consumers for the illegal charges paid while the validity of the tax is litigated. *Cf. Federal Power Commission* v. *Hunt*, 376 U.S. 515, 524–525 (1964); *Federal Power Commission* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154–155 (1962). To reduce those refunds by any amounts not immediately refunded to the taxpayer-pipelines by the state would render the consumers' rights to refunds even more inadequate.

The requirement of full refunds also ensures that the taxpayer-pipelines will vigorously prosecute suits for refund of the First Use Tax payments submitted under protest. Under Louisiana law, the only procedure for challenging the constitutionality of a Louisiana state tax is a suit for refund of the tax paid under protest. La. Rev. Stat. §§ 47:1575, 47:1576. Only the taxpayer may bring such a suit. And, if the state does not refund all amounts paid under protest, the taxpayer probably would be the only person with standing to bring a suit to compel Louisiana to make refunds in accordance with La. Rev. Stat. § 47:1576(A). In such circumstances, the taxpayer-pipelines are not unduly burdened by the requirement that they promptly refund all amounts collected from their customers, since, if Louisiana does not refund all amounts collected subject to the refund, they (and, perhaps, only they) can sue to compel such refunds.

The pipelines will incur losses only if Louisiana does not refund all amounts paid under protest together with interest. Most pipelines collecting the First Use Tax pursuant to § 154.38(h)[20] and several Louisiana officials[21] have assured the Commission that Louisiana will promptly refund all amounts paid under protest if the First Use Tax is held unconstitutional.[22] Indeed, should the state fail to make full refunds, the pipelines could bring suit in federal court to compel such refunds, since in those circumstances they may not have a "plain, speedy, and efficient remedy" (28 U.S.C. 1341) in the state courts, *Cf. Mississippi River Fuel Corp.* v. *Cocreham*, 382 F.2d 929, 932–934 (5th Cir. 1967). Accordingly, it is most unlikely that the pipelines will even be exposed to any significant risk of loss, much less acutally suffer any losses, as a result of the refund requirement.

Thus, pipelines losses, if they materialize, would be limited to interest costs during the time between payment of refunds to their customers and the time Louisiana refunds the money. Since Louisiana may make refunds at only 6% per annum,[23] these losses will be limited to the difference between the prevailing interest rate and the 6% interest rate. Pipeline customers, however, will have incurred similar interest losses throughout the pendency of litigation of the constitutionality of the First Use Tax. If the interest rate of refunds is not increased above the 6% level,[24] pipeline

[17] Order No. 10–B, 44 FR at 13461–13462.

[18] See 18 CFR 154.67(c).

[19] *Tennessee Gas Pipeline Company*, Docket No. RP79–52, "Application of Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., For Rehearing and Reconsideration and Motion For Stay Pending Completion of Judicial Review" at page 6 (filed April 20, 1979).

[20] Order No. 10–B, 44 FR at 13461.

[21] *Ibid.*

[22] Some pipelines have asserted that Louisiana's failure to refund all amounts collected under an unconstitutional tax is unlawful. See, *e.g.*, *United Gas Pipe Line Company, et al.*, Docket No. RP79–44, *et al.*, "Joint Application for Rehearing and Motion for Stay" at 7 (filed April 24, 1979).

[23] Six percent per annum is the present interest rate on refunds under Louisiana Law. La. Rev. Stat. § 47:1576(A).

[24] The plaintiffs in *Maryland, et al.* v. *Louisiana, supra*, seek refund of all amounts collected under the First Use Tax together with all interest earned on such amounts.

customers will incur losses because of the difference between the prevailing interest rate and the 6% interest rate. While pipeline customers are now suffering real and measurable losses, the pipelines' potential losses are speculative—Louisiana would have to refuse to refund taxes paid under a tax found unconstitutional before any pipeline losses occur. Even if this very speculative event should occur, the duration of the litigation of this issue will probably be shorter than the duration of the litigation of the constitutionality of the First Use Tax, and therefore the magitude of potential losses by the pipelines would not approach the losses suffered by the pipeline customers.

The establishment of the special tracking mechanism with its full refund provision balances the interests and burdens of pipelines and their customers. Without the special tracking mechanism, the pipelines would have had to file a general section 4 rate case in order to recover the cost of the First Use Tax. Since in a section 4 general rate increase proceeding the increased cost of the First Use Tax might be offset by a decrease in the cost of another item in the overall cost of service, the special tracking provision might allow pipelines higher rates than if they were required to file a section 4 rate case to recover the First Use Tax.[25] The Commission has balanced this potential benefit to pipelines—*i.e.*, lack of exposure to offsetting rate decreases—against the benefit to the pipeline's gas customers of full refunds upon a final court determination that the First Use Tax is unconstitutional.

B. Refund Interest Rate

Order No. 10–B requires refunds "with corresponding interest at the refund interest rate under Louisiana law, but not less than 6% per annum." [26] As previously stated, six percent per annum is the present interest rate on refunds under Louisiana law. La. Rev. Stat. § 47:1576(A). The Commission believes this rate to be an inadequate interest rate.[27] In Order 10–B the Commission allowed a higher interest rate if the interest rate was changed "under Louisiana law." This language needs further clarification since the interest rate could be changed by the Louisiana legislature, by Louisiana state courts, or by federal courts.[28] Therefore, the interest rate provision is amended to read: "together with corresponding interest at the rate of 6 percent per annum; in the event that the State of Louisiana is required to make refunds with interest at a rate greater than 6 percent per annum, the pipeline shall refund all interest in excess of 6 percent per annum received from Louisiana. The pipeline shall make refunds with 6 percent interest within 60 days even if the State of Louisiana has not yet refunded, or does not refund, the tax payments plus interest to the pipeline; when refunds are received from the State of Louisiana, the pipelines shall refund immediately all interest, if any, in excess of 6 percent received from the State of Louisiana."

C. Termination of Tracking Provisions

Several pipelines question this Commission's termination of the tracking provisions after final court determination of the constitutionality of the First Use Tax. They claim that they will incur significant losses between the termination date and the filing of their next section 4 rate case if the First Use Tax is found constitutional. This issue is premature; it will be addressed when the tracking provisions are terminated. At that time the Commission will know what further liability, if any, exists for the First Use Tax.

D. Compliance With La. Rev. Stat. § 47:1576

Order No. 10–B required pipelines to "submit such evidence as the Commission shall require in order to determine whether the procedures set out in La. Rev. Stat. § 47:1576 have been complied with." [29] Order No. 10–B did not detail what was required to meet this requirement. The Commission therefore amends Order No. 10–B to require pipelines to file with this Commission:[30] (1) A copy of all complaints filed in Louisiana protesting the constitutionality of the First Use Tax; and (2) reports summarizing the status of the proceedings instituted by, or against, the pipelines, to be submitted on or before June 1, 1980, and every three months thereafter. These filing requirements will allow the Commission to monitor more effectively pipeline challenges to the First Use Tax.[31]

IV. Proceeding To Determine Which Persons Should Bear the First Use Tax

Order No. 10–B required those interstate "pipelines (collecting the First Use Tax pursuant to § 154.38(h) to) take all legal action necessary to enforce contract provisions which could require the other contracting party to pay for the First Use Tax." 44 FR at 13464 (18 CFR 154.38(h)(6)). The Commission has determined that this matter is also governed by orders and certificates issued by the Commission as well as contracts between the pipelines and the owners of liquid and liquefiable hydrocarbons, many of which have been incorporated into certificates of public convenience and necessity issued by this Commission or the Federal Power Commission. Accordingly, the Commission is today instituting proceedings in Docket No. RM78–23 (Phase II) to resolve the question of whether persons other than natural gas consumers should pay the First Use Tax, subject to refund, while its constitutionality is litigated.

V. Effective Date

The Commission is making these amendments effective upon the date of issuance of this order upon a finding that good cause exists to proceed without compliance with the effective date provisions of 5 U.S.C. 553. The amendments of Order 10–B contained herein reduce the burdens on the pipelines (escrow provisions are deleted), allow the Commission to monitor more effectively pipeline challenges to the First Use Tax, further clarify the refund provisions to protect the pipelines' customers, and allow for expeditious court review of Order Nos. 10, 10–A, 10–B, and this order. The Commission therefore finds good cause exists to make these amendments effective upon issuance of this order. (Natural Gas Act, 15 U.S.C. 717 c, f, o); Administrative Procedure Act (5 U.S.C. 553); Department of Energy Organization Act, (42 U.S.C. 7101, *et seq.*); and E.O. 12009, (42 FR 46267).

In consideration of the foregoing, the Commission hereby orders that:

---

[25] *See* Order 10–A, 43 FR 60441 (December 28, 1978) and Application of Associated Gas Distributors for Rehearing and Reconsideration of Order No. 10 at 3–4. (filed September 27, 1978)

[26] Order No. 10–B, 44 FR at 13464 (18 CFR 154.38(h)(5)(i)).

[27] The Commission's refund interest rate for the second quarter of 1980 is 15.39%. Louisiana will make money if it refunds to pipelines with only 6% interest. State Representative Tauzin noted the benefit to Louisiana of a 6% interest rate (*Senate hearings* at 6):

So that the total amount that we might be liable for in the event that we should lose the litigation is available for refund at 6% interest. We are likely to make more than 6% interest on it in investments. We are actually going to probably come out a little bit ahead on it.

In light of the increase in interest rates since the First Use Tax went into effect (April 1979), State Representative Tauzin's prediction understates the benefit to Louisiana.

[28] *See* note 24, *supra.*

[29] Order No. 10–B, p. 21.

[30] The above-quoted language accordingly is deleted.

[31] The pipelines are encouraged to file jointly one report and one copy of the complaint filed in *Southern Natural Gas Co., et al.* v. *McNamara, et al.*, No. 225–553 (19th Judicial District Court, Louisiana), and any other cases seeking refund of the amounts paid under protest.

(A) The Commission's Order Nos. 10, 10–A, and 10–B and the March 30 Order are amended and clarified consistent with this order.

(B) Paragraph (N) of the March 30 order is deleted.

(C) Part 154, Chapter I of Title 18, The Code of Federal Regulations, is amended as set forth below, to become effective as of the date of issuance of this order:

1. Section 154.38 is amended by revising paragraph (h) to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(h) *Pipeline recovery of the State of Louisiana First Use Tax.* (1) Except as otherwise provided in this paragraph (h), no pipeline shall be permitted to reflect the costs attributable to the Louisiana First Use Tax in general section 4 rate applications prior to the date the tax is determined to be valid and constitutional by a final and nonappealable court order.

(2) Should a pipeline be required to pay the Louisiana First Use Tax during the pendency of litigation challenging the constitutionality of that tax, the pipeline will be permitted to collect the tax subject to refund if on or before March 15, 1979, it submits an application for tracking which is accompanied by an affidavit signed by an authorized representative stating that the applicant will undertake the procedures set out in La. Rev. Stat. § 47.1576. Upon completion of this requirement the Commission shall waive the filing requirements of § 154.63 and the provisions of § 154.38(d)(3) of its regulations in order to permit the pipeline to reflect the tax in its rate by adjusting its rates, to become effective April 1, 1979, subject to refund, to reflect the estimated effect of the Louisiana First Use Tax. The initial amount to be tracked by the pipeline from April 1 through the date of its first adjustment date under the temporary tracking provision shall be based upon volumes estimated to be subject to the Louisiana First Use Tax during that period. The initial rate adjustment shall be calculated on the estimated total system sales for that same period. Coincident with filing the initial rate adjustment, pipelines shall file temporary tracking provisions to provide for semi-annual rate adjustments to coincide with their semi-annual PGAC adjustments. The tracking provisions shall include deferred accounting provisions through use of Account 186, Miscellaneous Deferred Debits, but no carrying charges will be permitted on balances accrued in the deferred account. Pipelines which have elected to recover changes in purchased gas costs through general section 4 rates cases pursuant to § 154.38(d)(4)(ix) may establish a tracking provision, which generally follows the PGA regulation, with any two semi-annual adjustment dates which are six months apart. Pipelines shall keep accurate accounts of all amounts received under this paragraph, specifying when, by whom, and in whose behalf such amounts are paid.

(3) All funds collected pursuant to this paragraph are subject to refund. A pipeline shall refund, within 60 days of the issuance of a final and nonappealable court order, or such other date established by Commission order, those payments made on that portion of the First Use Tax found to be invalid, together with corresponding interest at the rate of 6 percent per annum; in the event that the State of Louisiana is required to make refunds with interest at a rate greater than 6 percent per annum, the pipeline shall refund all interest in excess of 6 percent per annum received from Louisiana. The pipeline shall make refunds with 6 percent interest within 60 days even if the State of Louisiana has not yet refunded or does not refund the tax payments plus interest to the pipeline; when refunds are received from the State of Louisiana, the pipelines shall refund immediately all interest, if any, in excess of 6 percent received from the State of Louisiana.

(4) The pipeline company shall file, on or before March 15, 1979, an undertaking with the Secretary of this Commission to comply with the terms of this paragraph signed by a responsible officer of the company evidenced by proper authority from the Board of Directors and accompanied by a certificate showing service of copies thereof upon the purchasers under the rate schedules to be made effective by motion of the company, and shall conform to the following model:

Agreement and Undertaking of (Company) To Comply With the Terms and Conditions of Section 154.38(h) of the Commission Rules and Regulations Under the Natural Gas Act in Respect to (Company's) Motion To Allow Recovery of the Louisiana First Use Tax

In conformity with the requirements of § 154.38(h) of the Commission's rules and regulations under the Natural Gas Act (Company) hereby agrees and undertakes to comply with the terms and conditions of said paragraph of the Commission's rules and regulations and has caused this agreement and undertaking to be executed and sealed in its name by its officers thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this ——— day of ————, 1979.

[Company]

By: ———

Attest: ———

(5) If the pipeline company, acting in conformity with the terms and conditions of the undertaking required by this paragraph, makes refunds as provided in subparagraph (3) of this paragraph as otherwise directed by order of the Commission, the undertaking shall be discharged; otherwise it shall remain in full force and effect.

(6) Pipelines shall take all legal action necessary to enforce contract provisions which could require any and all other contracting parties to pay for the First Use Tax, including any actions directed by the Commission.

(7) Should a final and nonappealable court order find the tax to be valid, the Commission shall by order terminate the temporary Louisiana First Use Tax tracking provisions, and provide for a final surcharge to clear the balance in the deferred account. The tax thereafter shall be recovered through general section 4 rate filings.

(8) Pipelines shall file with this Commission:

(i) A copy of all complaints filed in Louisiana protesting the constitutionality of the First Use Tax;

(ii) A report submitted every three months, beginning June 1, 1980, summarizing, the status of the proceedings instituted by, or against, the pipelines.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-13390 Filed 4-30-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 663

Bicycle Grant Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this regulation to implement the bicycle grant program authorized by section 141(c) of the Surface Transportation Assistance Act of 1978. This rule provides Federal funds to State and local governments for projects that will enhance the use of bicycles.

EFFECTIVE DATE: April 25, 1980.

FOR FURTHER INFORMATION CONTACT: Tom Jennings, Highway Design Division, Office of Engineering (202–426–0314), or Reid Alsop, Office of the Chief Counsel (202–426–0800), Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This regulation provides Federal funds to State and local governments for bikeway construction, and for nonconstruction projects that can be expected to enhance the safety and use of bicycles, as authorized by section 141(c) of the Surface Transportation Assistance Act of 1978 (STAA), Public Law 95–599, 92 Stat. 2689. The FHWA developed this regulation to be responsive to the bicycling needs of State and local governments and the public. A wide variety of bicycle projects are eligible for funding under the Bicycle Grant Program established by this regulation.

Applications for funds may be submitted by States and their political subdivisions. The regulation provides that all proposals must be submitted through the appropriate State highway agency, which will forward all proposals to the FHWA for review and selection.

The Department of Transportation Appropriations Act, Public Law 96–131, appropriated $4,000,000 to carry out section 141(c). These funds are only available for obligation until September 30, 1980. Many proposals that are submitted may not be funded, since applicants will be competing for the limited funds available. If additional funds are appropriated for future fiscal years, it is anticipated that they will be distributed in accordance with the procedures in this rule. Proposals not approved for funding in this fiscal year could be resubmitted in future years.

The submission dates for proposals contained in this rule are intended to apply to proposals submitted for funds appropriated in subsequent fiscal years. The FHWA Regional Administrators will use the authority provided by § 663.15 to establish later submission dates for this fiscal year.

In order to facilitate the processing of applications for the current fiscal year and assure obligation of available funds by September 30, 1980, this regulation is effective upon issuance.

The current design and construction criteria for bikeways, referred to in this rule, are contained in "A Guide for Bicycle Routes," American Association of State Highway and Transportation Officials (AASHTO), 1974. Copies of this Guide are on file at the Office of the Federal Register in Washington, D.C., and are available for inspection from the FHWA Washington Headquarters and all FHWA division and regional offices as prescribed in 49 CFR Part 7, Appendix D. Copies are also available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, Washington, D.C. 20001. The FHWA is in the process of developing its own design and construction criteria pursuant to section 141(b) of the STAA. When promulgated, these FHWA criteria will replace those in the current AASHTO Guide on federally funded bicycle projects.

While the Bicycle Grant Program established by section 141(c) is not subject to many of the requirements contained in Title 23 of the United States Code, projects in urban areas are required to be a product of the urban planning process in accordance with 23 U.S.C. 134. In order to simplify and clarify management of the grants, the regulation provides that each grant will be governed by a project agreement. The agreement is similar to that used on a Federal-aid highway project, and will contain basic provisions relating to the development and completion of the proposed project. The rule also provides that fiscal procedures will be the same as those that are applicable to Federal-aid highway projects.

It is the objective of FHWA to implement and administer this program with a minimum of "red tape." Within the broad parameters of the program, FHWA encourages great flexibility in developing proposals that will encourage bicycle transportation.

This rule replaces the previous regulation on bikeway demonstration projects contained in 23 CFR Part 663. Since all the demonstration projects have been approved and funded, the former provisions of Part 663 are no longer necessary. Bikeway demonstration projects that are not yet completed will continue to be administered in accordance with the project agreement and the provisions of Part 663 which were in effect at the time such projects were approved.

Disposition of Comments

A notice of proposed rulemaking for the Bicycle Grant Program was published for comment in the **Federal Register** on January 3, 1980 (45 FR 952). Fifty-two comments were submitted. These include: 7 from State highway agencies, 4 from other State agencies, 20 from cities and counties, 3 from planning organizations, 8 from bicycle groups, 6 from private citizens, and 1 each from a trade association, a university, a consultant, and a Federal agency.

Commenters generally expressed support for the proposed regulation and suggested only editorial or minor changes. Concerns expressed in the comments, changes to the regulations, and pertinent considerations are discussed below:

Definitions (§ 663.3)

This section includes only those definitions considered necessary. Several commenters recommended that the definition of "applicant" be expanded to include metropolitan planning organizations, transit authorities, councils of government, school-systems, and any other tax-levying organization. Section 141(c) of Public Law 95–599 is specific in stating that, "The Secretary is authorized to make grants to States and to political subdivisions thereof. . . ." In some cases, the organizations mentioned in the comments may not be recognized as political subdivisions of a State, and thus cannot be applicants. In these situations, the organizations can prepare a proposal on behalf of a political subdivision, but may not themselves be the actual applicant. If an organization is recognized as a political subdivision by State law, then it may be the actual applicant.

General Provisions (§ 663.5)

This section contains several general provisions which apply to the projects funded under this regulation. Several minor changes were made on this section as a result of comments received.

One commenter was concerned as to whether construction projects have to be related to Federal-aid highway routes. A sentence was added to clarify this and to emphasize that projects do not have to be associated with Federal-aid highway routes.

Several comments were received concerning the use of mopeds on bicycle paths funded under this regulation. Several commenters supported prohibiting mopeds, whereas other commenters suggested that under certain circumstances it could be desirable to allow moped operation on bicycle paths. It was recommended that the use of mopeds should be controlled by State and local governments. The FHWA is concerned about potential safety conflicts with mixing bicycles, mopeds, and pedestrians on bicycle paths. However, the FHWA realizes that there may be circumstances where moped use is acceptable and has revised the regulation to permit their use on bicycle paths on a case-by-case basis. Before granting approval, the FHWA must be assured that their use is

permitted by State or local law and they will not impair the safety of bicyclists and pedestrians using the bike path.

Several comments were received which suggested that State highway agencies (SHA) should assume greater authority and should be responsible for selecting projects for funding. In contrast, other comments suggested that the SHA should be bypassed by applicants, and that agreements should be entered into directly between the FHWA and successful applicants. As mentioned in the discussion on definitions, Section 141(c) provides that grants may be made to States and to political subdivisions. The law does not address the role of SHA's in the application and selection process. Because of the unique character of the Bicycle Grant Program, the FHWA believes that the procedures contained in this regulation have the highest probability for successful implementation. The procedures provide for the utilization of existing FHWA–SHA relationships, but require that all proposals must be forwarded to FHWA for selection.

Comments were also made concerning the need for clarification of such details as the time period for project completion, dedication of rights-of-way for bicycle use, and project life. These subjects have not been addressed in the regulation because of the FHWA's desire to avoid unnecessary detail and red tape. The FHWA believes that specific project details such as these should normally be included in the individual project agreements.

Several comments were received concerning the Transportation Improvement Program (TIP) requirement for bikeway projects in urban areas. These comments generally indicated that the TIP requirement was not appropriate or necessary for the Bicycle Grant Program. This requirement has therefore been deleted from the regulation. However, proposed projects in urban areas still must be in accord with the 23 U.S.C. 134 planning process.

Several comments were received questioning whether bikeway construction projects are subject to compliance with Section 106 of the National Historic Preservation Act (36 CFR 800), section 504 of the Rehabilitation Act of 1973, and other Federal requirements. The categorical exclusion mentioned in subsection (d) only pertains to the National Environmental Policy Act process. All bikeway projects funded under this regulation must comply with section 106, section 504, and any other Federal requirements applicable to programs receiving Federal assistance.

Construction Criteria (§ 663.7)

This section specifies the criteria that are required when designing and constructing bikeway projects. Several commenters expressed concern over the use of FHWA's current bikeway criteria which are contained in the AASHTO publication, "A Guide For Bicycle Routes." In response to this concern, the regulation was revised to specify that the FHWA Division Administrators have the authority to approve other criteria that reflect the current state-of-the-art.

Federal Participation (§ 663.9)

This section establishes the level of Federal participation in projects funded under this regulation. Several commenters urged that the maximum allowable Federal share be greater than 75 percent. This limit is set by section 141(d) of the STAA, and therefore cannot be increased.

Application Procedures (§ 663.11)

Numerous comments were received concerning the State's role in applying for grants. Several comments were received recommending that proposals not be submitted to SHA's, but instead go directly to FHWA. As mentioned in the discussion of § 663.5, the FHWA believes that the established Federal-State relationship is important to successfully implement this program. Applicants must submit proposals to the SHA's, who in turn will forward all of them to the FHWA. The SHA's are not authorized to reject any proposals.

Several comments were received suggesting that Federal offices outside of FHWA be required to review the selection of proposals and allocation of funds. The FHWA believes that the current review mechanisms are sufficient to address State and local needs, and allow for funding a diversity of projects. No additional review requirement is felt necessary.

Several comments were received recommending that the SHA's send all proposals directly to FHWA regional offices. The regulation provides that FHWA Regional Administrators will specify the number of proposals that the FHWA Division Administrators will forward to the FHWA regional offices. This allows flexibility and will lessen the difficulties in selecting projects at the FHWA regional level. The FHWA Regional Administrators can specify that all proposals be sent to the regional office.

Content of Proposals (§ 663.13)

This section provides information to assist applicants in developing a proposal. Based on comments received, a few minor changes have been made. The indication that projects in urbanized areas must be part of the Metropolitan Planning organization's endorsed Transportation Improvement Program has been deleted since it was considered to be an unnecessary limitation. A statement has been added to highlight the need for input from bicycle users during project development.

Submission Date (§ 663.15)

This section provides the dates for submitting proposals to the FHWA. Several comments were received which expressed concern over the time schedule specified. The dates mentioned in the regulation are intended to allow sufficient time for the development and selection of proposals for subsequent fiscal years. During this fiscal year, the FHWA Regional Administrators have the authority to establish alternate submittal dates which will reflect the current time frame for obligating funds.

Project Selection Criteria (§ 663.17)

This section describes the criteria that will be used in selecting proposals. Several comments were received suggesting that bike path gaps, bicycle parking devices, or projects not selected under the Bikeway Demonstration Program be funded first. One comment was received stating that bike path construction should have the least emphasis. Other comments were received recommending that nonconstruction programs, such as mapping and education programs, receive the highest priority for funding.

A comprehensive approach to improving bicycle travel involves both construction and nonconstruction projects. In some areas construction improvements are of major importance, whereas, in other areas nonconstruction programs are of highest priority. The FHWA does not desire to favor nonconstruction programs over construction projects or vice versa. Priorities should be decided at the State and local levels in order to reflect their bicycling needs. The project selection criteria are general enough to allow applicants to develop proposals based on such needs, and reflect the significant latitude allowed in the use of the funds.

A comment was received concerning the difficulties involved in determining the cost effectivenes of a bicycle project. The FHWA agrees that accurately determining cost effectiveness would be extremely difficult, and has therefore deleted the reference to cost effectiveness from the project selection criteria. Also several commenters

suggested that it is important to involve bicyclists in developing the bicycle projects. The FHWA agrees that this is an important concern and has incorporated it in the regulation. As noted above, the requirement that a bikeway construction project be on an urbanized area's Transportation Improvement Program has been deleted.

Fiscal Procedures (§ 663.19)

This section specifies that the fiscal procedures for projects selected for funding under this regulation will generally be the same as those for Federal-aid highway projects. Comments were received which suggested that the fiscal procedures should be abbreviated or streamlined for low-cost bicycle projects. Normal Federal-aid highway fiscal procedures are sufficiently flexible to allow for streamlined procedures. Several items of information required for inclusion in the fiscal documents are not pertinent to bicycle projects. This concern can be handled best on a project by project basis and is not addressed further in this rule.

Appendix

This section provides a listing of examples of eligible projects and is provided to show the diversity of projects that can be funded. Several comments were received suggesting additions to the list. Since the list is only for informational purposes and is not intended to indicate every project which would be eligible for funding, additional examples were not considered necessary.

Note.—The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Tom Jennings of the program office at the address specified above.

Accordingly, Part 663 of Title 23, Code of Federal Regulations is revised to read as set forth below.

Issued on April 25, 1980.

R. D. Morgan,

Associate Administrator for Engineering and Traffic Operations, Federal Highway Administration.

PART 663—BICYCLE GRANT PROGRAM

Sec.

663.1 Purpose.
663.3 Definitions.
663.5 General provisions.
663.7 Construction criteria.
663.9 Federal participation.
663.11 Application procedures.
663.13 Content of proposals.
663.15 Submission date.
663.17 Project selection criteria.
663.19 Fiscal procedures.

Appendix: Examples of projects eligible for funding under the Bicycle Grant Program.

Authority: Section 141, Pub. L. 95–599, 92 Stat. 2711; 23 U.S.C. 315; 49 CFR 1.48(c)(1).

§ 663.1 Purpose.

To prescribe the policies and procedures for administering the Bicycle Grant Program.

§ 663.3 Definitions.

The definitions contained in 23 U.S.C. 101(a), as well as the following definitions, apply to terms used herein:

(a) *Applicant*—a State, county, city or other political subdivision of a State.

(b) *Bikeway project*—an undertaking to construct a new or improved lane, path, or shoulder for bicycles; traffic control devices; lighting; a shelter or parking facility for bicycles; or other physical improvements which enhance bicycle travel.

(c) *Bike path*—a bikeway physically separate from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way.

(d) *Nonconstruction project*—a project not involving physical construction which enhances the safety of bicyclists or the use of bicycles.

(e) *Moped*—a motor-driven cycle both with pedals to permit propulsion by human power and with a motor which produces not to exceed two-brake horsepower and which is not capable of propelling the vehicle at a speed in excees of 48.3 km/h (30 m.p.h.) on level ground.

§ 663.5 General provisions.

(a) Grants may be made under this regulation for the construction of bikeway projects, nonconstruction projects, or a combination construction project and nonconstruction project (see Appendix for examples). Bikeway construction projects do not have to be related to Federal-aid highway routes.

(b) No motorized vehicles are to be permitted on bike paths funded under this regulation except those vehicles necessary for maintenance or enforcement purposes and snowmobiles where permitted by State or local law. Mopeds shall also be prohibited unless the Federal Highway Administration (FHWA) Division Administrator is assured that their use will not constitute a safety hazard and they are permitted by State or local law.

(c) After a project proposal has been approved for FHWA funding in accordance with § 663.11(c), the FHWA shall enter into a project agreement with the State highway agency (SHA). This agreement should be similar to that required on Federal-aid highway projects and should include the provisions contained in 23 U.S.C 110. In addition to those provisions the SHA shall be responsible for:

(1) Receiving all proposals from political subdivisions within the State and transmitting all proposals including the SHA's to the FHWA Division Administrator.

(2) Certifying that any proposed bikeway project in an urbanized area has been developed in accordance with 23 U.S.C. 134.

(3) Ensuring that projects are completed in a timely fashion and in substantial conformance with the details outlined in the applicant's proposal.

(d) Many bikeway projects will not have a significant impact on the human environment and are normally considered categorical exclusions as defined in 23 CFR 771. The Section 4(f) Determination portion of the Final Negative Declaration/Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects dated May 23, 1977,[1] is applicable to construction projects authorized under this regulation.

(e) Funds made available for projects under this regulation shall be in addition to and not in lieu of funds made available for bikeway projects under 23 CFR Part 652 or for bicycle safety projects under 23 U.S.C. 402.

(f) Bikeway projects currently advanced to the "authorized to proceed" stage for any phase of work (23 CFR 630.114) are *not* eligible for funding of that phase under this regulation.

§ 663.7 Construction criteria.

(a) Current FHWA design and construction criteria for bikeways contained in "A Guide for Bicycle Routes" or equivalent criteria approved by the FHWA Division Administrator shall apply.

(b) The booklet entitled "A Guide for Bicycle Routes," AASHTO, 1974, was approved for incorporation by reference by the Acting Director of the Office of the Federal Register on April 30, 1980, and is on file in the Federal Register Library. A copy may be examined during normal business hours at the FHWA division office in each State, FHWA regional offices, and at FHWA

[1] Available for inspection and copying at the Environmental Review Branch, Office of Environmental Policy, FHWA, Room 3232, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–0106).

Washington Headquarters located at 400 Seventh Street, SW., Washington, D.C. 20590. The addresses of those document inspection facilities are set forth in 49 CFR Part 7, Appendix D. Copies are also available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.

§ 663.9 Federal participation.

(a) The Federal share of any project funded under this regulation shall not exceed 75 percent of the total eligible cost of such a project.

(b) The Federal share may include the costs of preliminary engineering, right-of-way, construction, and project evaluations.

§ 663.11 Application procedures.

(a) Applicants other than SHA's shall submit their proposals to the appropriate SHA. The SHA shall transmit one copy of each proposal to the FHWA Division Administrator.

(b) The Division Administrator shall review the proposals. Using the project selection criteria contained in § 663.17, a specified number of proposals as determined by the FHWA Regional Administrator shall be forwarded to the FHWA regional office. Each applicant whose proposal is not forwarded to the FHWA regional office will be notified of this action by the FHWA Division Administrator.

(c) The Regional Administrator shall review the proposals and the division office comments. Using the project selection criteria contained in § 663.17, the Regional Administrator shall select and approve the proposals for funding. Each applicant will be notified of the action taken on its proposal by the FHWA. Funds may be withdrawn for redistribution by the Regional Administrator if a selected proposal is not undertaken within a reasonable time. Funds will be allocated to each region at the beginning of each fiscal year by the FHWA Washington Headquarters.

§ 663.13 Content of proposals.

(a) All proposals should contain general information pertinent to the proposed project. This information may include such items as: a description of the project; a discussion of the need for the project; what the project is intended to accomplish; how the project would relate to other community efforts to improve bicycle transportation; a description of coordination which may be necessary for successful completion of the project and the extent of participation by bicyclists and other citizens in project development; an estimate of the time necessary to complete the project; and the estimated cost of the project and the Federal share.

(b) For those proposals which involve bikeway projects, information should be included in the proposals which adequately describes the scope of the project. This information may include such items as: project length, width, cross section, and number of parking devices; for projects within urbanized areas, an indication that the project is supported by the Metropolitan Planning Organization and is part of an overall bicycle plan; any energy or environmental savings which may be realized due to a shift from other forms of transportation to bicycles; and a determination that a public agency will be responsible for maintenance of the project.

(c) For those proposals which involve nonconstruction projects, information should be included in the proposals which adequately describes the nature of the project. This information may include such items as: the extent, coverage and intended recipients of the nonconstruction project; a description of how the the project would be implemented and by whom; and an indication of how the project would enhance the safety and use of bicycles.

§ 663.15 Submission date.

Unless otherwise directed by the FHWA Regional Administrator, proposals shall be submitted to the FHWA division offices by January 15 of each fiscal year for which funds have been appropriated by Congress. Proposals should be received in the FHWA regional offices by March 15 of each fiscal year for which funds have been appropriated.

§ 663.17 Project selection criteria.

(a) Emphasis will be on those projects which will promote the use of bicycles for transportation and enhance access, mobility or safety for bicyclists and will most benefit the community.

(b) The following general selection criteria will be applied by the FHWA for all types of projects:

(1) A demonstrated need for the project.

(2) Probability of successful implementation and completion of the project.

(3) Evidence of support and participation by bicyclists and other citizens in the project.

(4) The estimated cost of the project and the Federal share of that cost.

(5) A determination that the project can reasonably be expected to enhance the safety of bicyclists or the use of bicycles for saving energy.

(c) In addition to the general criteria, the following selection criteria will be applied to bikeway construction projects:

(1) Compliance with the current FHWA design and construction criteria for bicycle facilities contained in "A Guide for Bicycle Routes" or equivalent criteria approved by the FHWA Division Administrator.

(2) For projects in urbanized areas, evidence that the project is part of the planning process specified in 23 U.S.C. 134 and is endorsed by the Metropolitan Planning Organization.

§ 663.19 Fiscal procedures.

Project authorization and development shall be in accordance with the fiscal procedures applicable to Federal-aid highway projects, unless otherwise prescribed by FHWA.

Appendix—Examples of Projects Eligible for Funding Under the Bicycle Grant Program

Construction

1. Eligible projects which would result in support facilities for bicycling could include:

a. Bicycle parking facilities, or

b. Bicycle racks on buses and other facilities to interface bicycles with transit.

2. Eligible projects which would result in the modification or spot improvement of existing highways could include:

a. Widening of an existing roadway, shoulder or structure for the purpose of accommodating bicycle travel,

b. Replacing existing unsafe drainage grates with "bicycle safe" grate inlets,

c. Restriping pavement to provide bicycle lanes or wider curb lanes,

d. Curb-cut ramps on new or existing bikeways,

e. Grade separations where necessary,

f. Treatment of railroad crossings to make them bicycle safe,

g. Traffic control devices, or

h. Lighting.

3. Eligible projects which would result in new facilities could include construction of a bike path adjacent to or independent of an existing highway or Federal-aid route (grading, drainage, paving, barriers, landscaping, signs, structures, right-of-way, etc.).

Nonconstruction

1. Eligible projects which would result in public information and encouragement programs could include:

a. Mapping of bicycle routes, or

b. Bicycle use promotion and encouragement campaigns.

2. Eligible projects which educate and train the public could include:

a. Bicycle safety education and training courses, or

b. Education programs which teach motorists how to safely share the road with bicyclists.

[FR Doc. 80-13307 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CGD 80-17]

Drawbridge Operation Regulations; Clear Creek, Tex.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the cities of Seabrook and Kemah, Texas, the Coast Guard is changing the regulations governing the State Highway 146 drawbridge across Clear Creek, mile 1.0, at Seabrook, Texas, to require that on Saturdays, Sundays and holidays, from 8 a.m. to 8 p.m., the draw need open only every other 10 minutes if any vessels are waiting to pass. The present regulation for the bridge limits these restrictive openings to the period from Memorial Day through Labor Day. The change is being made to improve bridge vehicular traffic flow for all weekends throughout the year, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph Irico, Chief, Bridge Administration Branch, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130 (504-589-2965).

SUPPLEMENTARY INFORMATION: On 14 February 1980, the Coast Guard published a proposed rule (45 FR 9951) concerning this amendment. The Eighth Coast Guard District also published this proposal as a Public Notice dated 15 February 1980. Interested persons were given until 18 March 1980 to submit comments.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Joseph Irico, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of Commments

Four comments were received, one in support of the proposal and three offering no objection.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.552 to read as follows:

§ 117.552 Clear Creek, Tex., S-146 bridge.

The draw shall open on signal, except that on Saturdays, Sundays and holidays, from 8 a.m. to 8 p.m., the draw need open only every other 10 minutes if any vessels are waiting to pass.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655 (g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3)).

Dated: April 14, 1980.

P. A. Yost,

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

[FR Doc. 80-13127 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGDFIVE-80-08R]

Chesapeake Bay, Hampton Roads, James River, Newport News, Va., Safety Zone Regulation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations establishes a safety zone surrounding the Lift Span of the James River Bridge, James River, Newport News, Virginia for all water-borne traffic. The Coast Guard has determined this safety zone is required for the protection of the James River Bridge and vessels transiting this area. The special regulations for this safety zone will minimize hazards in transiting the bridge. The Coast Guard invites comments on this regulation.

EFFECTIVE DATE: The amendment is effective beginning at 2:30 P.M. March 19, 1980 and terminating at 2:30 P.M. June 19, 1980.

ADDRESSES: Comments should be mailed to: USCG Marine Safety Office, Hampton Roads, Norfolk Federal Building, 200 Granby Mall, Norfolk, Virginia 23510.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. F. Hirsh III, Chief, Port Operations Department, USCG Marine Safety Office, Hampton Roads, Norfolk Federal Building, 200 Granby Mall, Norfolk, Virginia, 23510, Tel: (804) 441-3298, FTS: 827-3298.

SUPPLEMENTARY INFORMATION: This safety zone is imposed as a result of a collision of a tug and tow with the James River Bridge on 16 February 1980. This collision resulted in damage to the Northeast fendering system, resulting in debris and projections extending into the bridge opening.

To prevent the possibility of further damage, all vessels whose beam exceeds 105 feet and any towed vessel with a large wind area, such as a dead ship, will not be permitted to transit this safety zone unless specifically authorized by the Coast Guard Captain of the Port, Hampton Roads, Virginia.

Mariners transiting the safety zone must give wide clearance to the northeast side of the bridge opening to prevent the possibility of damage. This amendment is issued without publication of a notice of proposed rule making, and this amendment is effective less than 30 days from the date of publication because public procedures on this amendment are impractical due to the emergency nature of the situation existing at the bridge and there is not sufficient time to allow for public comment. Although this safety zone is published as a final rule, public comment is nevertheless desirable to ensure that the requirements concerning this safety zone are workable and reasonable. Accordingly, persons wishing to comment may do so by submitting written comments to the address stated above. Commenters should include their names and addresses, identify the docket number for this safety zone (CCGDFIVE-80-08R), and give their reasons for the comments. Based upon comments received, this regulation may be revised.

A draft evaluation of this action has been prepared in accordance with DOT Notice, Regulatory Policies and Procedures, 44 FR 11034 (1979), as amended and is available for inspection with the public docket at USCG Marine Safety Office, Hampton Roads, Norfolk Federal Building, 200 Granby Mall, Norfolk, Virginia, 23510.

DRAFTING INFORMATION: The principal person involved in the drafting of this rule is Lieutenant Commander H. F. HIRSH III, Chief, Port Operations Department, USCG Marine Safety Office, Hampton Roads, Federal Building, 200 Granby Mall, Norfolk, Virginia, 23510. The project attorney is Lieutenant Mark GOODWIN, c/o/ Commander, Fifth Coast Guard District (d1), Federal Building, 431 Crawford St., Portsmouth, Virginia, 23705.

In consideration of the above, Part 165, of Title 33, Code of Federal Regulations, is amended by adding a new § 165.522 to read as follows:

§ 165.522 Hampton Roads, James River Bridge, James River, Newport News, Va.

(a) The area enclosed by the following boundary is a safety zone: A line beginning at 37-00-19N Latitude 76-27-10W Longitude thence to 37-00-46N Latitude 76-28-15W Longitude thence to 37-00-04N Latitude 76-29-09W Longitude thence to 36-59-36N Latitude 76-28-04W Longitude thence to the point of the beginning. This safety zone

is effective beginning at 2:30 P.M. 19 March 1980 and terminating at 2:30 P.M. 19 June 1980.

(b) Special Regulations: (1) No vessel whose beam exceeds 105 feet in width or any towed vessel with a large wind area, such as a dead ship, may transit this safety zone, unless specifically authorized by the Coast Guard Captain of the Port, Hampton Roads, Virginia. (2) Mariners transiting the safety zone must give a wide clearance to the northeast side of the bridge opening.

(92 Stat. 1475 (33 U.S.C. 1225); 49 CFR 1.46(n)(4))

Dated: March 18, 1980.

C. R. Thompson,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads, USCG Marine Safety Office, Norfolk Federal Building, 200 Granby Mall, Norfolk, Va. 23510.

[FR Doc. 80-13428 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5719

[A 9131]

Arizona; Withdrawal of National Forest Lands for Historic Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 351 acres of national forest lands in the Coconino National Forest from operation of the mining laws only.

EFFECTIVE DATE: May 1, 1980.

FOR FURTHER INFORMATION CONTACT: Evelyn Tauber, 202-343-6486 or Mario L. Lopez, Chief, Branch of Lands and Mineral Operations, 2400 Valley Bank Center, Phoenix, Arizona 85073, Telephone No. 602-261-4774.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from entry or location under the mining laws (30 U.S.C., Ch. 2), and reserved for preservation of significant archeological and historical value.

Coconino National Forest

Gila and Salt River Meridian

Elden Pueblo

T. 22 N., R. 8 E.,
Sec. 32, SE¼NE¼SW¼, N½N½NE¼SE¼SW¼, N½N½NW¼SW¼SE¼, and that part of the SW¼NW¼SE¼ not included in the area withdrawn by Public Land Order No. 3584 for U.S. Highways 89 and 89A roadside zones.

Medicine Fort

T. 23 N., R. 8 E.,
Sec. 7, S½SE¼NW¼SE¼, E½SW¼SE¼, and those parts of the S½SW¼NE¼SE¼ and W½SE¼SE¼ not included in the area withdrawn by Public Land Order No. 3584 for U.S. Highways 89 and 89A roadside zones.

Ridge Ruin

T. 21 N., R. 10 E.,
Sec. 7, SE¼;
Sec. 18, N½NE¼.

Le Barron Ruin

T. 22 N., R. 10 E.,
Sec. 33, SW¼NE¼.

The areas described aggregate approximately 351 acres in Coconino County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistant Secretary of the Interior.

April 23, 1980.

[FR Doc. 80-13312 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 5812]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATE: The effective date shown at the top right of the table or 30 days after the date of this **Federal Register** publication, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line 800-424-8872, Room 5150, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234) requires the purchases of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood-prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquistion and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood-prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 65 of Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001-4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

State, county, community name, and No. of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Kentucky, Carter, city of Grayson, 01, 02	210051B	E-12	I	F	Feb. 1, 1974, Nov. 12, 1976.	Mar. 14, 1980	Robert Newland, Mayor, City of Grayson, 302 East Main Street, Grayson, KY 41143, (606) 474-5120.
Pennsylvania, Carbon, township of Kidder, 0001A-0005A.	421453	E-11, 12, 14	I	F	Dec. 13, 1974	May 2, 1980	Kenneth McGeeham, Chairman, Township Board of Supervisors, Albrightsville, PA 18210, phone: (717) 722-0944.
Pennsylvania, Fayette, township of Wharton, 0003A-0005A only.	421642	E-11, 12, 14	I	F	Jan. 24, 1975	May 2, 1980	John Myers, Chairman, Box 137, Markleysburg, PA 15459, phone: (412) 329-5614.
South Carolina, Marion, town of Sellers, 01	450145B	N-11, 12	I	F	June 7, 1974, July 23, 1976.	May 2, 1980	Mayor Hopkins, Town of Sellers, P.O. Box 116, Sellers, South Carolina 29592, (803) 752-5165.
Iowa, Black Hawk, city of Waterloo, 0001C-0004C.	190025C	E-8, 11, 12	I	F	June 28, 1974, Sept. 19, 1975, Sept. 13, 1977.	May 6, 1980	Mr. Dale Mercer, City Administrator, Waterloo City Hall, 715 Mulberry Street, Waterloo, IA 50705, (319) 291-4429.
Texas, Navarro, town of Angus, 0001A	481547A	N-5	I	F	May 6, 1980	May 6, 1980	Honorable Eben D. Stover, Mayor, Angus City Hall, Route 3, Corsicana, TX 75110, (214) 872-4238.
Texas, Navarro, town of Mustang, 0001A	481554A	N-5	I	F	May 6, 1980	May 6, 1980	Honorable Gene Hobdy, Mayor, Mustang Town Hall, P.O. Box 325, Corsicana, TX 75110, (214) 872-5151.
Pennsylvania, Warren, township of Deerfield, 0001B.	422118	E-11, 12, 14	I	F	Nov. 15, 1974, Jan. 27, 1978.	May 9, 1980	George Sveda, Chairman, Twp. Board of Supervisors, R.D. No. 1, Box 252, Tidioute, PA 16351, phone: (814) 484-3268.
Pennsylvania, Sullivan, township of Hillsgrove, 0001A-0003A.	422064	E-11, 12, 14	I	F	Dec. 13, 1974	May 9, 1980	John Steele, Chairman, Twp. Board of Supervisors, R.D. No. 1, Forksville, PA 18619, phone: (717) 924-3705.
Pennsylvania, Union, township of Lewis, 0002A-0004A only.	422104	E-11, 12, 14	I	F	July 11, 1975	May 9, 1980	Harold Kuhns, Chairman, Twp. Board of Supervisors, R.D. No. 1, Millmont, PA 17842, phone: (717) 922-1259.
Pennsylvania, Columbia, township of Madison, 0001A-0003A.	421553	E-11, 12, 14	I	F	Feb. 7, 1975	May 9, 1980	Leon Zeisloft, Chairman, Twp. Board of Supervisors, R.D. No. 1, Bloomsburg, PA 17815, phone: (717) 437-3365.
Pennsylvania, Snyder, township of West Perry, 0003A-0004A only.	422042	E-11, 12, 14	I	F	Nov. 1, 1974	May 9, 1980	Howard Benner, Chairman, Twp. Board of Supervisors, R.D. No. 2, Mt. Pleasant Mills, PA 17853, phone: (717) 539-8125.
South Carolina, Jasper, town of Ridgeland, 0001.	450114A	E-8, 11	I	F	Mar. 3, 1976	May 9, 1980	Frank T. Wingo, Mayor, Town of Ecru, Box 526, Hector, MS 38841, (601) 869-3881.
Mississippi, Pontotoc, town of Ecru, 01	280133B	E-12	I	F	Feb. 1, 1974, Feb. 13, 1976.	May 9, 1980	Wyman D. Nettles, Mayor, P.O. Box B, Ridgland, SC 29936, (803) 726-3351.
Wisconsin, Pierce, village of Plum City, 01	550328B	E-11	I	F	July 19, 1974, June 4, 1976.	May 9, 1980	James Glaus, Village President, Village Hall, Plum City, WI 54761, phone: (715) 647-2651.
New York, Monroe, village of Churchville, 01	360999B	E-11, 12	I	F	June 28, 1974, June 11, 1976.	May 9, 1980	Clerk's Office, Village of Churchville, P.O. Box M, 9 East Buffalo Street, Churchville, NY 14428.
South Dakota, Shannon, town of Batesland, 0001A.	460305A	N-5	I	F	May 13, 1980	May 13, 1980	Mr. Norman Davis, Town President, Batesland Town Hall, P.O. Box 626, Batesland, SD 57716, (605) 288-1929.
Pennsylvania, Clarion, township of Highland, 0001A-0002A.	421508	E-11, 12, 14	I	F	Dec. 6, 1974	May 16, 1980	Arthur Henry, Chairman, Township Board of Supervisors, R.D. No. 1, Lucinda, PA 16235, phone: (814) 744-8521.
Mississippi, Wilkinson and Amite Counties, town of Crosby, 01.	280003B	E-11	I	F	Aug. 2, 1974, July 30, 1976.	May 16, 1980	Mr. Albert Case, Mayor, Town Hall, Town of Crosby, Crosby, MS 39633, (601) 639-4516.
Pennsylvania, Clarion, township of Beaver, 0001A-0003A.	422362	E-11, 12, 14	I	F	Jan. 24, 1975	May 23, 1980	K. E. Cope, Chairman, Twp. Board of Supervisors, R.D. No. 1, Knox, PA 16232, phone: (814) 797-1474.
Pennsylvania, Tioga, township of Union, 0001A-0004A.	421184	E-11, 12, 14	I	F	Jan. 17, 1975	May 23, 1980	Lawrence Herman, Chairman, Twp. Board of Supervisors, R.D. No. 2, Roaring Branch, PA 17765, phone: (717) 673-8281.
Pennsylvania, Allegheny, township of Upper St. Clair, 0001B.	421119	E-8, 11, 12, 14	I	F	May 31, 1974, June 18, 1976.	May 23, 1980	Michael Bova, Acting Twp. Manager, 1820 McLaughlin Run Road, Upper St. Clair, PA 15241, phone: (412) 831-9000.
Pennsylvania, Bedford, township of West St. Clair, 0001A-0003A.	421354	E-11, 12, 14	I	F	Jan. 17, 1975	May 23, 1980	Wayne Lehman, Chairman, Twp. Board of Supervisors, R.D. No. 1, New Paris, PA 15554, phone: (814) 839-4247.

State, county, community name, and No. of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Texas, unincorporated area, Throckmorton County, 0001A–0012A.	481021A	N–5	I	F	May 27, 1980	May 27, 1980	Honorable W. T. Lindsey, County Judge, Throckmorton County Courthouse, Throckmorton, TX 76083, (817) 849–3081.
Pennsylvania, Cambria, township of Chest, 0001A–0002A.	422604	N–11, 12, 14	I	F	Jan. 10, 1975	May 30, 1980	Bernard Neibauer, Chairman, Twp. Board of Supervisors, R.D. No. 1, Patton, PA 16668, phone: (814) 674–8513.
Pennsylvania, Adams, township of Cumberland, 0001A–0003A.	421249	E–11, 12, 14	I	F	Feb. 7, 1975	May 30, 1980	H. Wayne Cluck, Chairman, Twp. Board of Supervisors, R.D. No. 3, Gettysburg, PA 17325, phone: (717) 334–2683.
Pennsylvania, Cambria, township of Dean, 0001A–0002A.	421440	E–11, 12, 14	I	F	Nov. 8, 1974	May 30, 1980	William Naylor, Chairman, Twp. Board of Supervisors, P.O. Box 2, Dysart, PA 16636, phone: (814) 944–2264.
Pennsylvania, Franklin, township of Metal, 0001A, 0003A–0005A only.	421653	E–11, 12, 14	I	F	Jan. 24, 1975	May 30, 1980	Charles Swailes, Chairman, Twp. Board of Supervisors, Willow Hill, PA 17271, phone: (717) 349–2491.

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

Issued: April 21, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–13381 Filed 4–30–80; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[Docket No. 21039; FCC 80–152]

Public Mobile Radio Service; Reflecting the Availability of Land Mobile Channels in the 470–512 MHz Band in 13 Urbanized Areas of the United States

AGENCY: Federal Communications Commission.

ACTION: Partial reconsideration of final rule.

SUMMARY: The FCC previously amended its rule to reflect the availability of public (or common carrier) mobile telephone service in the 470–512 MHz band. In this order, the FCC denied reconsideration concerning the portion of the previous order allowing an applicant to file after the 60-day cutoff period for filing applications, provided that the applicant's system is technically compatible with already existing systems. However, the FCC modified some technical requirements in its rule and decided to allow a plurality of applicants to determine the technical method of operation for sharing the frequencies in the event that the parties do not reach a unanimous agreement on technical coordination.

EFFECTIVE DATE: June 2, 1980.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eliot J. Greenwald, Common Carrier Bureau (202) 632–6312.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: March 27, 1980.

Released: April 23, 1980.

By the Commission: Commissioner Lee absent.

In the matter of amendment of Part 21 (now part 22) of the Rules to reflect the availability of land mobile channels in the 470–512 MHz band in 13 urbanized areas of the United States.

1. Presently before the Commission is a Petition for Partial Reconsideration filed by Metropolitan RCC Corporation (Metropolitan) on November 24, 1978, in which Metropolitan asks us to clarify and modify aspects of our *Memorandum Opinion and Order* in the above-captioned proceeding released on October 16, 1978 (69 FCC 2d 1555). The petition was not opposed or commented on by any party. However, prior to the time when Metropolitan filed its petition, there was an oral *ex parte* contact between the Chief, Common Carrier Bureau plus members of his staff and two attorneys representing Telocator Network of America (Telocator). Memoranda conveying the substance of the *ex parte* contact are included in the official file. Rydax, Inc. filed comments opposing Telocator's arguments. This order will also include our response to Telocator's *ex parte* contact.[1] In this regard, we note that Telocator filed a notice of appeal with the United States Court of Appeals for the District of Columbia Circuit on November 27, 1978, case no. 78–2218.

I. Background

2. This proceeding was initiated as Docket No. 18261 by a *Notice of Proposed Rule Making* on July 17, 1968 (14 FCC 2d 297), in which we considered means for providing additional spectrum space to meet the needs of land mobile radio services in major population centers. That notice was followed by our *First Report and Order* (23 FCC 2d 325 (1970)) in which we adopted rules to provide for use of a maximum of two of the lower seven UHF TV channels, on a shared basis with television broadcasting, by land mobile stations within 50 miles of the center of the 10 largest urbanized areas.

[1] By Public Notice of December 14, 1978, Mimeo 10598, the Commission explained that a notice cutting off all *ex parte* presentations should have been issued prior to the decision date of October 5, 1978. However, due to administrative oversight, no such notice was issued. Because *ex parte* contacts are normally not allowed from the time of the *ex parte* cutoff date until after the decision is no longer subject to judicial review, or responding to an *ex parte* presentation in an order concerning a petition for reconsideration is unique to this set of circumstances.

3. However, we left open assignment principles and specific frequencies to be designated for each of the land mobile services. Subsequently, in a *Notice of Proposed Rule Making*, released January 28, 1971 (27 FCC 2d 371), we proposed decisions on those matters, and rules to implement the decisions. With respect to the Domestic Public Land Mobile Radio Service (DPLMRS), we proposed 12 frequency pairs (for each television channel to be shared), for use by non-wireline common carriers (more commonly called Radio Common Carriers or RCCs). We further stated that use of the frequencies was to be limited to those licensees authorized at that time to serve the areas involved.

4. After comments and reply comments were received, we issued our *Second Report and Order* (30 FCC 2d 221) on June 22, 1971. In that document we assigned frequencies, adopted rules, and set out in § 21.501(k)(1) (now § 22.501(k)(1)), as well as related sections, provisions for the DPLMRS. However, we also concluded that there was no support in the record for the conclusion that ruinous competition would result from allowing new carriers to enter these markets, and so we decided in favor of "open entry," that is, the frequencies would not be limited to existing carriers.

5. After release of that document we received Petitions for Partial Reconsideration from the National Association of Radiotelephone Systems (NARS)[2] and from a group of RCCs, directed against our "open entry" decisions in the DPLMRS. Both petitioners also requested a stay of that portion of the order to allow them to make a showing that would justify "closed entry," that is, eligibility limited to existing licensees. On August 9, 1971, we issued a *Memorandum Opinion and Order* (31 FCC 2d 48) granting the Petition for Stay of Effective Date and the Petition for Partial Stay, and postponing the effective date of allocation of frequencies to the DPLMRS pending action on the petitions for partial reconsideration.

6. On March 15, 1974, we proposed to extend the land mobile UHF TV sharing to Houston, Dallas/Fort Worth, and Miami. *Four Further Notice of Proposed Rule Making* (45 FCC 2d 1093). By our *Fifth Report and Order* issued July 17, 1974 (48 FCC 2d 360), this was done, including provisions for DPLMRS operations. Docket No. 18261 was terminated at that time, except with respect to disposing of petitions for reconsideration.

[2] NARS is presently known as Telocator Network of America.

7. In our *Memorandum Opinion and Order and Notice of Proposed Rule Making* issued on January 31, 1977 (63 FCC 2d 126), we denied the petitions for reconsideration seeking "closed entry" and reaffirmed our policy of permitting "open entry" to these new frequencies, thus terminating the proceedings for Docket No. 18261. In order to avoid protracted comparative hearings that could involve numerous parties and 24 frequency pairs in each of the metropolitan areas, we proposed to make the frequencies available on a joint-use basis, that is, any user could "seize" an idle channel and use it exclusively for the duration of a call. At the end of the call, the channel would be released and available to the next user. Where a "group" of 12 such channels is trunked, greater use can be made of the individual radio channels than if each carrier had fewer "exclusive" channels. Implementation of this concept could be accomplished by carriers either sharing a common terminal or using wireline or "off-the-air" monitoring to "seize" a channel if operating through separate terminals.

8. Because each licensee would not be obtaining the exclusive use of these channel frequencies, applicants would not be required to submit a showing of public need for the proposed facilities. There would be no "cutoff" dates because applications would not be mutually exclusive. We proposed that a system of 12 trunked channels would be considered loaded when there were 100 mobile subscriber units per channel. No further market entry would be authorized at that point. Finally, we proposed that frequency assignments in cities where two television channels were allocated to DPLMRS would consist of the base station frequencies on one TV channel and the mobile frequencies on the other TV channel.

9. After receiving comments and reply comments, we issued a *Memorandum Opinion and Order* on October 16, 1978 (69 FCC 2d 1555), in which we adopted the licensing plan proposed in our January 31, 1977 order with some changes. In order to allow for expeditious implementation of the use of the frequencies, we ordered that all carriers who wish to negotiate and formulate the method of technical coordination for carriers sharing the group of channels in each market area must file their applications within 60 days of the public notice of the first filed application for those frequencies in the market area involved. Any carrier filing its application subsequent to the 60-day period must abide by the method of technical coordination adopted by those who file within the 60-day period.

10. We also changed the channel loading criteria. Instead of predetermining that a channel would be fully loaded when there were 100 mobile subscriber units per channel, we decided to initially authorize 40 mobile units per channel. Licensees would apply to increase this number until the actual channel usage for each group of 12 trunked channels in a metropolitan area reaches an average of 85 percent during the busy hour. We also decided that we would review the 85 percent maximum average busy hour channel utilization figure as experience from new systems becomes available, keeping in mind possible differences among individual localities.

II. The Petition for Partial Reconsideration

11. In its petition, Metropolitan requests that we—

(a) Increase the number of mobile units initially authorized to operate and increase the maximum traffic loading permissible;

(b) Reinstate a time cutoff rule for filing applications; and

(c) Modify some technical requirements mandated by the rules that were promulgated in our October 16, 1978 order.

Based upon our careful consideration of the above proposals, we have decided to increase the number of mobile units initially authorized to operate from 40 to 60 but we will not increase the maximum traffic loading permissible. We will not reinstate a traditional time cutoff rule for filing applications. However, we will modify the rules to require that all parties who file within the initial 60-day filing period and become eligible for negotiating technical coordination, reach an agreement within 60 days of the end of the initial 60-day filing period. If unanimous agreement is not reached within 60 days, but a plurality of the parties reach an agreement, this plurality agreement shall govern the technical method of operation of all other applicants, subject to Commission approval.[3] If a plurality agreement does not exist, then a random selection among all applicants whose technical methods of operation have not previously been found to be unacceptable will determine the technical method of operation. Additionally, we will grant in part and

[3] By plurality we mean the largest group of applicants that reach an agreement. *See, Webster's New Twentieth Century Dictionary Unabridged*, 1975 which defines plurality as "the number of votes in an election that the leading candidate obtains over his nearest rival."

deny in part Metropolitan's request for modification of certain technical requirements. Finally, we will respond to Telocator' primary *ex parte* argument, that is, that the licensing scheme adopted in our October 16, 1978 order is "bizarre" and unsupported by the record.

III. The Forty Mobile Unit Limitation and Channel Loading Criteria

12. Metropolitan argues that the Commission's decision to initially authorize a maximum total of 40 mobile units per channel does not comport with economic reality in that it claims that a greater number of mobile units per channel would be needed to recover costs. It claims that it needs to place 60 mobiles per channel on its system in order to break even; thus 40 mobiles per channel would result in a loss. Metropolitan requests that we increase the number of initially authorized mobile units to 80, and if not 80, at least 60.

13. We find that Metropolitan confuses the number of mobile units we proposed to authorize initially with channel loading, that is, the percent of time the channel is occupied with traffic during the busy hour (or peak hour). Each station authorization normally lists the number of mobile units that are licensed to the associated base station. It is an administrative value and is only related in an indirect way to channel loading. Thus the number 40 we selected has no direct relationship to grade of service as does channel loading.

14. We believed 40 units a good value for the initial authorization but fully expected that licensees would apply for higher numbers once operational. Applicants would then be authorized additional numbers of mobiles up until channel loading criteria had been met. We find that Metropolitan has failed to present any data in support of its statement that 60 mobile units per channel would be needed to break even financially.

15. Nevertheless, we consider it worthwhile to reexamine whether an initial maximum of 40 mobile units per channel would be appropriate. We first note that in our January 31, 1977 *Notice of Proposed Rule Making*, we proposed a maximum of 100 mobile units per channel. The comments concerning this proposal were generally critical of a maximum of 100. Motorola, Inc. suggested a limit in a range of 30 to 40 mobiles per channel, depending on waiting time assumptions; Rydax, Inc. proposed 75 mobiles per channel, based on queuing and camp-on; and Airsignal International, Inc. suggested 58 mobiles per channel, basing its proposal on its consultation with major equipment manufacturers, with call-waiting assumptions unspecified.

16. Thus, it appeared that no one figure for "mobiles per channel" was widely accepted. In giving their proposals, the parties all seemed to make different assumptions concerning call rates and holding times. As a result, we considered it useful to consider actural channel usage, that is average holding time per call multiplied by the number of calls in determining the criteria we would use in setting maximum loading standards for the channels used. This was the substance of the suggestion of the Association of Maximum Service Telecasters, Inc., which pointed out, correctly, that the Commission has been on record previously expressing its doubts on frequency assignments based solely on the number of mobiles.

17. In our October 16, 1978 order, we decided that each authorization would initially allow each carrier to operate 40 mobile units per channel provided that the total number of mobile units for all carriers operating on a 12-channel group of frequency pairs within a given metropolitan area does not exceed 40 mobile units per channel. Prior to Commission authorization, the carriers would be required to submit to the Commission an agreement containing a method of informing each other of how many mobile units are on each of their systems in order that the total number of units on the 12-channel group of frequency pairs within their metropolitan area does not exceed 40 mobile units per channel.

18. We realized that 40 mobile units per channel was a conservative figure; however, we stated that we would increase the number of authorized mobile units per channel, based upon the actual channel usage for each system. It was thus our goal to alter the number of mobile units authorized until optimum channel usage is attained.

19. In reexamining the situation, we find that a maximum of 40 mobile units per channel may be too conservative a figure. Although Metropolitan does not provide any substantiation of its claim that it needs to place at least 60 mobiles per channel on a system in order to receive a favorable return on investment, we recognize that by initially allowing a higher number of mobiles per channel, we are encouraging more carriers and potential carriers to apply for use of the spectrum. An additional 20 mobiles per channel or 240 mobiles on a system of 12 trunked channel pairs may make a difference between a potential applicant perceiving the situation as economically viable or not. Thus, by raising the initial authorization from 40 to 60 mobiles per channel, we are encouraging competition between carriers, and competition in this case will result in a greater choice of service to the public.

20. Although Metropolitan requests that we raise the initial authorization of mobiles per channel to as high as 80, we nevertheless prefer to retain a conservative approach to the problem. As we have already stated, grade of service is more directly related to channel loading than number of mobiles. We have every intention of raising the number of mobiles per channel authorized until the maximum channel loading standards are reached. Obviously, it is a simpler process to allow a carrier to place more mobiles on a system than to require that the number of mobiles be reduced, a situation that would occur if a system were loading beyond the saturation point for a reasonable grade of service. Recognizing that Motorola suggested 30 to 40 mobiles per channel, Airsignal suggested 58, and Rydax 75, we conclude that the 80 mobiles per channel proposed by Metropolitan may be too close to the 100 mobiles per channel that we were criticized for proposing. Accordingly, each authorization will initially allow each carrier to operate 60 mobile units per channel provided that the total number of mobile units for all carriers operating on a 12-channel group of frequency pairs within a given metropolitan area does not exceed 60 mobile units per channel.

21. In our January 31, 1978 order, we decided that once the initial authorization of mobile units per channel has been attained, any carrier would be able to apply for an increase in the number of authorized units. The proposed new number of authorized units should be based on an estimate of the number of units that would result in 85 percent average channel usage during the busy hour. This estimate should be calculated based on traffic load studies. The traffic load studies as well as the method of calculation should accompany the application.

22. Metropolitan criticized our decision to limit to 85 percent the average channel usage during the busy hour for a trunked 12-channel pair system. Instead, it suggested that we adopt a figure of 100 percent average busy hour channel usage, based on the comments filed by Rydax. However, neither Rydax nor Metropolitan has substantiated that an acceptable grade of service would be attained with 100 percent average busy hour channel usage.

23. On the other hand, Motorola suggested an initial busy hour level of 80 percent average usage, which may reach 90 percent as a practical limit, and Airsignal suggested 80 percent average busy hour channel usage. As we stated in our January 31, 1977 order, we believe that a figure for maximum channel usage for 12 channels should be on the conservative side, though still within the range recommended. A maximum of 85 percent average channel usage during the busy hour is conservative, yet fits within the range recommended.

24. We recognize the paucity of hard data concerning optimum channel usage. However, as with the number of mobiles, we find that we are better off taking a conservative approach because it would be easier to raise the maximum channel usage figures than to lower them if our estimates are incorrect. It is our intention to review the 85 percent maximum average busy hour utilization figure as experience from new systems becomes available, keeping in mind possible differences among individual localities. We also note that the rules allow for variations of the 85 percent figure if good cause is shown.

25. The rules adopted in our October 16, 1978 order require that the carriers submit channel usage data at least once every three months. Metropolitan suggests that these measurements should be required at most only once per year, or preferably, only when licensees request authority for additional mobile units. At this time, we do not find that Metropolitan's request should be granted. We have already discussed the paucity of data concerning optimum channel usage. An important reason for gathering the data we request would be to fill in this informational gap. Because the carriers are the only ones who have such data, we must request them to provide it. Furthermore, the receipt of this data will allow us to monitor the channel sharing system to see if it is working. Admittedly, there are many new aspects to this licensing scheme, and channel loading data will help us evaluate the efficacy of such a scheme.

IV. Cutoff Rules

26. In its petition, Metropolitan requests that we reconsider and reverse our decision to eliminate the usual "cutoff" provisions of § 21.31(b)(2) (now Section 22.31(b)(2)) of the Rules.[4] Metropolitan argues that the Commission's decision does not provide a basis for the policy and that individual licensees and their investors could not determine the risk of investment in enterprises with a built-in prospect of sharing with persons and entities unknown to them. Metropolitan claims that the burden is on the Commission to show that a change in policy is needed and not on the parties to show that the cutoff rule is needed.

27. We have reexamined whether a traditional cutoff rule would be appropriate under the circumstances and cannot find sufficient public interest considerations to favor altering our October 16, 1978 order. We instituted the cutoff rule that we now follow for DPLMRS applications in 1968 with our *Report and Order*, 13 FCC 2d 415 (1968). Prior to that time, any party could file an application and be entitled to comparative consideration with previously filed mutually exclusive applications provided that the application was filed at least one day before the day on which the previously filed application or applications were designated for hearing. This led to considerable administrative delays in that the prior applications could be processed and ready for grant or designation for hearing when a new mutually exclusive application was filed. Then the previous applications would wait for the new application to be processed, and the same thing could happen several times. The cutoff rule was thus instituted for sound administrative reasons. It was not instituted for the purpose of providing economic protection to the parties who filed within the cutoff period.

28. We thus must question whether there exist administrative or other reasons to retain the usual cutoff rule in the situation presently before us. Because we are providing for joint use of the spectrum, the problem that was created by the need for a comparative hearing for mutually exclusive applications to determine which applicant is to use the spectrum no longer exists.[5] In other words, grant of one application does not preclude the grant of another. Thus, we need not process all of the applications before we grant the earlier filed applications. Because the lack of the usual cutoff rule will not cause the type of delays that made it necessary for us to adopt a cutoff rule for applications that may be mutually exclusive, we do not find sound reasons for applying a traditional cutoff rule to the frequencies in question.

29. Nevertheless, another type of delay may occur if we have no cutoff rule at all. In our October 16, 1978 order we discussed our concept of frequency assignment which requires the system to "search and seize" an idle channel when traffic is presented to it. Technically this is quite simply done when there is one system operator, manager or terminal. While we suggested the possibility of multiple carriers operating through a single common control terminal, we also recognized that they may choose not to do so. In this event, technical coordination between separate systems becomes necessary. We suggested two possibilities, wireline ties between systems and off-the-air monitoring, to accomplish this.

30. For this and other technical arrangements we recognized that it was essential for each party to be able to identify other participants in order that technical design arrangements can be made to insure that users will have exclusive interference free use of the channel during calls. Section 22.501(1)(8) requires that applicants in a single market area submit plans to the Commission to demonstrate interference free operation with each other. We realized that in order for applicants to know with whom to work out technical arrangements to provide for interference free operation, some type of "cutoff" rule was needed. Otherwise, rather than work out technical arrangements, applicants either would wait indefinitely to see who else would file or would waste considerable time renegotiating a new arrangement every time someone filed for the frequencies prior to the time any of the earlier filed applications might be granted. This would defeat any possibility of promptly implementing service for the public. Also, a cutoff rule provides incentives for applicants to file early and work out technical arrangements so that they will be in the first group to operate. An early resolution means that the public is served sooner.

31. Recognizing that retention of a cutoff rule that would prohibit new entrants from entering a market subsequent to the cutoff period was contrary to our "open entry" policy and was not needed for the purpose of facilitating technical arrangements, we adopted a much more limited rule that would serve the purpose of expediting technical coordination and licensing of the frequencies. We decided that for any given market area, all applicants who file within 60 days of the public notice announcing the filing of the first

[4] Section 22.31(b)(2) of the Commission's Rules provides for cutoff dates for mutually exclusive applications.

[5] There still exists the possibility that the applicants in a particular market area will not reach a unanimous agreement as to how to share the spectrum. If this occurs, we are proposing to allow a plurality agreement, and in the event of no plurality, random selection to determine the technical method of operation for all of the other parties. *See* Paras. 44–57 below.

application for that market area would be required to work out technical arrangements with each other as required by § 21.501(1)(8) (now § 22.501(1)(8)) of the Rules. Any entity filing subsequent to this 60-day period must conform its application to be technically compatible with whatever technical arrangements are worked out by those who filed within the 60-day period. For the purposes of this proceeding, a market area was considered to be the territory within a 50-mile radius of the center of each of the 13 cities under discussion.

32. In other words, full open entry will prevail, but those applicants who file within the initial 60-day period will be able to identify other potential participants and participate in establishing the necessary technical arrangements for workable systems so they can begin serving the public. They will then be able to modify their applications to reflect these arrangements. Those that are found to be legally, technically, financially [6] and otherwise qualified will be granted authorizations.

33. For those who file subsequent to the cutoff, open entry will also apply provided the proposal is technically compatible or technical compatibility can be worked out with the systems of those who filed prior to the cutoff. Obviously, those who file subsequent to the cutoff, but prior to the implementation of the proposals filed prior to the cutoff, will be given a reasonable opportunity to amend their applications to comply with the technical sharing arrangements adopted by the initial applicants.

34. We also emphasized that the technical compatibility required must not operate as a means of stifling competition. Thus, we stated that we would entertain complaints and take whatever actions are necessary, including revocation of licenses, should the technical compatibility requirement prove to be a barrier to entry to new competitors. *Cf. South Central Bell Telephone Co.*, FCC 79-593, released Oct. 22, 1979; *Illinois Bell Telephone Co.*, 69 FCC 2d 1199 (1978).

35. Even though our traditional cutoff rule was adopted for administrative reasons, and not for the purpose of providing economic protection to those who file within the cutoff period, Metropolitan nevertheless argues that there are important economic reasons for retaining the usual type of cutoff rule. It argues that the risk of investment is made less by a cutoff rule, and thus a cutoff rule would encourage parties to apply for and use the spectrum.

36. We acknowledge Metropolitan's argument that a traditional type cutoff rule may lessen the risk of investment. Obviously, if no new entrants can enter the market after a cutoff period, then the competition is limited, and fewer carriers are around to compete for business. It may even be easier for some carriers to obtain financing if it can be explained to a financial institution that no new market entrants will be allowed.

37. Nevertheless, we find that Metropolitan overstates the problem. Those who file earlier and are granted applications earlier have an advantage over those who file late. They will have the advantage of being the first to market their systems. New entrants who file later will find their prospects diminished if the earlier entering carriers are serving the public well. The probability of success will be reduced even further if the more established carriers have attained saturated channel loading, since the newcomer's potential customer base is effectively limited to those already receiving service. Thus, the newcomer would have to offer a far superior combination of price and quality in order to divert business from the systems already existing.

38. Furthermore, licensing a newcomer who is planning on offering a superior system will serve the public interest. In *Commonwealth Telephone Co.*, 61 FCC 2d 246 (1976), we stated:

> That an existing carrier might be affected adversely by the entry of a competing carrier is not our chief concern. Injury to the overall public interest and the public's ability to receive adequate communications services are the circumstances to be avoided.

61 FCC 2d at 253. In the situation portrayed, service to the public will not be diminished; rather, the hypothesis of the newcomer's success implies that the public will receive superior service. Our proper concerns lie with the benefits to the public, and not with the degree of success or failure of individual vendors.

39. As indicated in paragraph 37, we do not consider it likely that the success of a newcomer will be so overwhelming as to drive an earlier entrant out of business. Nevertheless, a perpetual open entry policy establishes an environment of potential, if not actual, competition. The strategy of an existing supplier of service would be to maintain a quality of service sufficient to discourage potential market entrants. If this situation does not obtain, then the public interest will be served by the new entry, since such marketplace action indicates fuller satisfaction of public needs. A cutoff rule that prevents such occurrences would be contrary to the public interest.

40. On balance we find the arguments in favor of perpetual open entry outweigh the arguments in favor of a complete cutoff rule. The public benefits from the threat of competition because such a threat encourages a supplier to render top quality service. Or, if the supplier does not render such service, perpetual open entry allows a new entrant to come in and provide the needed service. Accordingly, we reject the petitioner's argument that a complete cutoff rule should prevail, and we find that any qualified entity may enter the market subsequent to the 60-day cutoff rule provided that the proposed new system is or can be made technically compatible with the already existing systems.

41. Metropolitan asked us, in the event that we deny reconsideration concerning the cutoff rule, that we clarify or modify § 21.501(l)(9)(ii) (now § 22.501(l)(9)(ii)) of the Rules which requires that later applicants conform their applications to be compatible with whatever technical arrangements are implemented by the earlier applicants. It requests that when we review the later-filed applications, we take into account any workable system authorized to the initial applicants and assess the extent to which the later applicant would conform to that system.

42. Metropolitan's concerns involve the situation where the initial applicants agree upon a single integrated terminal arrangement through a single carrier. In such a situation, the initial carriers and the new applicant may either work out an arrangement for the new applicant to buy into the common system or the new applicant may set up its own system, provided that the two systems are technically coordinated. In either case, we will review the new application to be sure that the applicant is legally, financially,[7] technically, and otherwise qualified to operate. The fact that the channels are saturated with mobile units will not preclude grant of an application. However, the newcomer must realize that it may not place any mobiles on the system until there is room for additional mobiles as defined by our channel loading criteria.

43. We do add one note of caution. When an already authorized carrier negotiates arrangements with a new applicant, it may not use the negotiation process as a method of unreasonably delaying a newcomer from entering the market. Obviously, we cannot require

[6] This may change if we adopt our proposal, *Elimination of Financial Qualifications in the Public Mobile Radio Services*, CC Docket 80-55, Order FCC 80-59, released February 19, 1980, 45 FR 12446, February 26, 1980.

[7] *See* note 6 above.

that established carriers allow all newcommers to buy into their systems. On the other hand, we will not allow established carriers to refuse to accept reasonable proposals for technical coordination. We will entertain complaints, and take whatever actions are necessary, including revocation of licenses should such negotiations be used for dilatory purposes.

V. Technical Coordination

44. Before leaving the topic of technical coordination, we consider it appropriate to take a fresh look at the question of what would happen should there be a deadlock concerning the technical coordination negotiations among those who file within the 60 day period. At first we thought that parties would be eager to reach a consensus so that they could construct and operate. After all, carriers do not make any money if they do not operate, and we presumed that an interest in operating would be a sufficient incentive to bring about coordination agreements.

45. Experience has proved us wrong. We have had a number of applications on file for over a year, and there has yet to be a consensus on technical coordination in any of the cities where multiple applications have been filed. In other words, our theory was that a consensus would be reached in most cities, and where it was not reached, we would hold a comparative hearing on the issue of technical method of operation. However, because of the lack of cooperation, we would be obligated to hold many hearings under the present rules. As a result, another approach is advisable.

46. As previously stated, § 22.501(1)(9)(i) presently requires that all applicants who file within 60 days of the public notice date of the first application for a particular 12-channel group of frequency pairs within a metropolitan area be jointly responsible for working out the technical arrangements of § 22.501(1)(8). The rules as written presume unanimous agreement on technical arrangements. Nevertheless, it is the requirement of unanimous agreement that has obstructed the licensing process, and upon further reflection, we do not believe that unanimous agreement is necessary. We will thus modify the rules to allow us to approve technical methods of operation that do not received unanimous agreement. A description of our modification follows.

47. We still hope that all parties who file within the 60 day period mentioned above, that is, the "initial 60 day filing period," reach agreement on technical coordination. To encourage a speedy agreement we will impose a 60 day deadline, calling this next period the "coordination period."[8] If a unanimous agreement is not reached, then each party will be required to submit whatever agreements it may have reached.

48. The Chief, Common Carrier Bureau will then examine these agreements to determine whether a plurality exists. (In ascertaining a plurality, each party in a prearranged consortium shall be counted as a separate party.[9]). The plurality agreement will then be announced by public notice, and all parties shall be given 30 days to file comments on the technical method of operation specified in the agreement.[10]

49. After all comments and responses are filed, the Chief, Common Carrier Bureau will make a determination as to whether the proposal is acceptable, that is, whether it is non-discriminatory, satisfies the public interest in other respects, and is in compliance with the Communications Act of 1934 (as amended) and the Commission's Rules, in particular §§ 22.501 (k) and (1). Once a technical method of operation is approved, all parties are free to amend their applications to comply with the method. This will allow all parties to participate in the shared use of the spectrum.

50. In the event that the plurality proposal is not approved, the Chief, Common Carrier Bureau shall select the next largest plurality and again follow the procedures outlined in paragraphs 48 and 49. This procedure may be repeated until there do not exist any more pluralities. At this point, the Chief, Common Carrier Bureau shall randomly select, from among all applicants whose technical methods of operation have not previously been found to be unacceptable, the technical method of operation. The procedures in paragraphs 48 and 49 will then be followed with respect to the randomly selected proposal. If the proposal is not approved, another random selection will be held. This process will continue until all proposals are rejected, at which time, all applications will be returned to the applicants without prejudice.[11]

51. We find a considerable advantage to this approach. As already mentioned, the deadlocks over the technical aspects that presently exist will be resolved without a hearing by using the above procedures. By providing for Commission review of the proposal, we avoid the potential problem of any particular applicant or group of applicants from discriminating against the other applicants. The ability to resolve problems without a formal hearing will benefit the public by providing it with service on a more timely basis.

52. In adopting this plan, we have given considerable thought to *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945), in which the Supreme Court ruled that Section 309 of the Communications Act requires that "where two bona fide applications are mutually exclusive the grant of one without a hearing to both deprives the loser of the opportunity which Congress chose to give him."[12] Nevertheless, we find the present situation far different from *Ashbacker* for a number of reasons.

53. First, the approval of one technical coordination method does not preclude the grant of any particular application because all parties will be free to amend their applications to comply with the technical plan. Furthermore, the approval of a technical plan does not even constitute the grant of the associated application. All applications will be acted on later.

54. Second, although it can be argued that approval of one technical method of operation precludes approval of another which may arguably be better, we must remember that the technical plan will be reviewed to determine whether it will satisfy the public interest. Thus, these procedures preclude implementation of a plan that does not satisfy minimum technical and other public interest standards. As far as the argument that another plan may be better is concerned, we do not consider the types of differences that would exist in technical coordination plans[13] significant enough to warrant a formal hearing, and courts have never required

[8] For those applications already filed during the initial 60-day filing period, the 60-day coordination period will commence on the effective date of the Order.

[9] In ascertaining separate parties, we will, of course, "pierce the corporate veil" when appropriate. *See Capital Telephone Company, Inc.* v. *FCC*, 498 F. 2d 734 (D.C. Cir. 1974).

[10] If no plurality exists, such as in the case of a tie, the Chief, Common Carrier Bureau will randomly select a proposal as discussed in para. 50 below.

[11] In adopting the plurality approach we recognize that is purpose is to deal with the special need for technical coordination resulting from shared use of the spectrum under these circumstances. Therefore, we are not, at this time, suggesting that a plurality approach is adaptable to resolving other licensing problems.

[12] 326 U.S. at 333. In *Ashbacker* the Commission granted one of two electrically mutually exclusive applications without hearing and set the other for hearing.

[13] Some examples of differences would be whether wireline or off-the-air monitoring ought to be used, differences in manufacturer's equipment, and whether there should be one terminal directing all systems or whether there shall be several coordinated terminals.

the Commission to make findings concerning differences "* * * which are frivolous or wholly unsubstantial * * *." [14]

55. Third, courts have recognized that evidentiary hearings take time, and time often works to the advantage of one party over another. *See, e.g. U.S.* v. *FCC (Satellite Business Systems* or *SBS*) at 40, No 77–1249 (D.C. Cir. March 7, 1980). "[T]he relative urgency of a decision is a thoroughly appropriate factor for an agency to consider when crafting its procedures." *Id.* at 51. Thus, our concern of expeditiously providing service at the expense of resolving relatively unimportant differences is not at odds with judicial precedent. *See also WBEN, Inc.* v. *U.S., 396 F.2d 602, 619 (2nd Cir.), cert. denied,* 393 U.S. 914 (1968), where the Court indicated that a hearing is not warranted when the Commission justifiably determines in a rule making proceeding that a hearing would serve no useful purpose.

56. As a result, we do not consider *Ashbacker* and its progeny to present a legal barrier to adoption of the above rule modifications. However,we are still left with the question as to whether the above changes can be made without a further notice of proposed rulemaking. To resolve this question we look to the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, and the January 31, 1977 *Notice of Proposed Rule making.*

57. Section 553(b)(3) of the APA requires that a notice of proposed rule making include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." Thus, if the changes fit within the subjects and issues described in our notice, then we have complied with the APA. *See, e.g., Logansport Broadcasting Corp.* v. *U.S.*, 210 F.2d 24, 28 (D.C. Cir. 1954). *See also, Wilson & Co. Inc.* v. *U.S.*, 335 F.2d 788, 795 (7th Cir. 1964), *remanded on other grounds,* 382 U.S. 454 (1966). In paragraphs 20–24 of our January 31, 1977 notice, 63 FCC 2d at 133–34, we discussed our proposal of setting minimum technical standards and allowing the parties to work out technical coordination. The rule changes that we are adopting today clearly fit within the subject of technical coordination. Thus, we do not find that a further notice of proposed rule making is necessary or desirable. [15]

IV. Technical Requirements

58. With its petition, Metropolitan included a statement by Arthur K. Peters, Consulting Engineer, in which Mr. Peters commented on some of the technical requirements adopted in our October 16, 1978 order. [16] Before discussing Mr. Peters' comments, some background information is in order.

59. As previously stated, we hope that applicants who file within the initial 60-day cutoff period will agree upon the same method of technical operation. If, however, negotiations result in more than one method of technical operation being proposed for the same block of frequencies in the same market area, § 22.501(1)(8)(ii) becomes operative. This section sets out the signalling requirements for coordination between different base stations and mobile units.

60. In his comments, Mr. Peters states that even if a majority of a group not wishing to operate a common system wishes to use a signalling scheme that does not conform to this section, one dissenter can force the entire group to use a signalling scheme not of their choosing, that is, the scheme mandated by § 22.501(1)(8)(ii). He requests that the rule be changed to allow a majority to decide upon the signalling scheme. As discussed in paragraphs 44–57 above, we will allow a plurality to decide upon a signalling scheme where the same technical method of operation is used. Nevertheless, this rule was designed specifically to ensure high speed signalling in order to improve channel utilization and thus spectrum efficiency. Thus, we will continue to require that § 22.501(1)(8)(ii) be complied with when the same method of technical operation is not used by all parties.

61. Mr. Peters points out that all three systems currently on the market, that is Rydax, Secode and IMTS, presently fail in some respects to meet our rule provisions. He further indicates a belief that a "speeded up" version of IMTS would meet our requirements on the mobile-to-base call (0.3 seconds) but would fail to do so on the base-to-mobile call (1.9 seconds). He states that based upon his experience that 75 percent of all calls are mobile-to-base, the average signalling time would be 0.7 seconds, which exceeds the 500 milliseconds specified in the rules. He further states that Rydax meets the speed requirements but fails to meet the rule because it signals on all channels simultaneously, and that Secode fails because of the signalling speed limitations. He adds that RCCs make effective use of the spectrum and that the same practice would continue, irrespective of the signalling format. Thus, he requests that the rule be deleted.

62. The manner in which we make these few channels available is unique. It requires that individual RCCs share a common right-of-way (the channel) rather than obtain exclusive use as in the past. Thus we have a situation similar to airlines, buses and motor carriers. Certain "rules of the road" are required to protect the rights of all who share the "right-of-way" that are not required when the "right-of-way" is exclusive to the operator. Thus we reject the suggestion that this rule be deleted. On the other hand, we do not wish to impose a hardship by requiring equipment of new designs or to incur the delay in implementation that would result therefrom. We hope that all initial applicants in a market will be able to agree on the same method of technical operation in which case § 22.501(1)(8)(ii) will not apply. [17] Failing this, should the applicants wish to propose systems which approach but do not precisely meet our signalling speed requirements, we will consider a waiver of this rule upon proper showing.

63. Mr. Peters also commented on § 21.501(1)(8)(iii) (now § 22.501(1)(8)(iii)). This rule has as its purpose the prevention of harmful interference by mobiles when beyond range of their base stations. He argues that the rule should be amended by striking the requirement that it be impossible for the operator of a mobile unit "to transmit when beyond range of its base station." Mr. Peters explains that either a signal-level threshold method or a signal-to-noise threshold method can be used to prevent a mobile unit from transmitting. In other words, the mobile would be unable to transmit if its signal level or its signal-to-noise ratio is below a certain level. He claims that in either case a mobile can be operating within the base station service contour, but due to a local obstruction, the mobile would be rejected from the system because of an unacceptable signal level or signal-to-noise ratio.

64. In view of Mr. Peters' comments, we find that we should clarify

[14] *Johnston Broadcasting Co.* v. *FCC*, 175 F.2d 351, 357 (D.C. Cir. 1949). The *Johnston* case also stated that "[w]hen the minimum qualifications of both applicants have been established, the public interest will be protected no matter which applicant is chosen." *Id*, at 357. *See also Citizens Communication Center* v. *FCC*, 447 F.2d 1201, (D.C. Cir. 1971). Again, no applicant is ever chosen to the exclusion of another under our new rules.

[15] This proceeding was initiated in 1968 to deal with an immediate and pressing need for additional spectrum for land mobile use, 14 FCC 2d 297. Any further delay in implementation of this allocation is clearly unwarranted.

[16] The requirements discussed here include minimum standards that must be met in developing the technical method of operation discussed earlier.

[17] We will modify § 22.501(1)(8) to make it clear that paragraphs (i) and (ii) are applicable only when the same method of technical operation is not used.

§ 22.501(1)(8)(iii). When promulgating the rule, we did not contemplate the signal-level threshold or signal-to-noise threshold schemes outlined by Mr. Peters. Rather, we presumed that the mobile would first transmit a signal to request service. Then, it would be unable to transmit a voice message unless it received a channel assignment from the base station. We will clarify the rule by deleting the requirement that it be impossible for the operator of a mobile unit "to transmit when beyond the range of its base station," and change a later sentence in the rule to read that "it shall be impossible to activate the mobile transmitter for voice communication unless the mobile unit has received an enabling signal from a base station in response to its request for service." This will meet Mr. Peters' concern yet still prevent harmful interference from mobiles.

VII. The Licensing Scheme in General

65. In its *ex parte* contact, Telocator claims that our licensing scheme is "bizarre" and unsupported by the record. Although we disagree with Telocator's choice of the word "bizarre," we do agree that our scheme is unique. It is unique because it deals with a unique situation. Docket No. 18261 was initiated in 1968 to deal with a pressing need for spectrum for land mobile services. It was supposed to provide immediate use of frequencies as opposed to Docket No. 18262, 14 FCC 2d 311 (1968), which was supposed to deal with long-term spectrum needs.

66. The licensing scheme grew around our concern that numerous parties would be interested in 24 channel pairs in each of the market areas. We envisioned a problem where the application filing process would result in a mutually exclusive hearing involving many parties and all 24 channel pairs for each market area. Such a hearing would be so complicated that it would take many years to resolve. Furthermore, the result would probably so balkanize the spectrum that no carrier would end up with enough channels to be able realize the advantages of trunking together several channels. The spectral efficiencies resulting from 12 trunked channels benefit the public by providing spectrum space for many more mobile units. Thus, we recognized the tremendous public benefit of the carriers sharing the spectrum and trunking the channels. Given this plan, we developed rules to implement it, resulting in a unique licensing approach.

67. Telocator also raises a number of specific issues in its *ex parte* presentation. It claims that "closed entry" is justified in that with closed entry, parties would be more likely to cooperate in developing a plan to serve the public than if additional competition were allowed. Even if this is true, our proposal for a plurality, and in the event of no plurality, random selection resolves the problem of parties refusing to cooperate to develop a method of technical coordination. In addition, Telocator has failed to explain why a carrier already in a market should receive preference over a potential new carrier merely because the already existent carrier was there first. *Cf. MCI Telecommunications Corporation* v. *FCC*, 561 F.2d 365, 380 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978).

68. Telocator objects to our use of the Form L data in drawing our conclusion that there is insufficient support in the record for initiating a policy of closed entry. However, Telocator's procedural objections do not have any sound legal basis. Contrary to Telocator's claim, the hearsay rules do not apply to notice and comment rule making, and furthermore, we may take official notice of any relevant information in our public files. *See also* paragraph 30 of our January 31, 1977 *Notice of Proposed Rulemaking*, 63 FCC 2d 126, 135 (1977).[18]

69. In analyzing the Form L data, we took into consideration its weaknesses. We have used it simply to show that there is no support in the record for the hypothesis that we once proposed that open entry would lead to ruinous competition. As we stated in paragraph 38, our concern is not whether a carrier may be affected adversely by open entry. Rather, injury to the overall public interest and the public's ability to receive adequate communications services are the circumstances to be avoided. *Commonwealth Telephone Co.*, 61 FCC 2d 246, 253 (1976). Neither Telocator nor any other party has presented sufficient data to support the hypothesis of ruinous competition. In the absence of data to the contrary, the Form L data can be used to conclude that the record does not support closed entry.

70. Telocator criticizes us for including Cleveland and Detroit in our Form L analysis because the frequencies will not be available in those cities. However, the hypothesis of ruinous competition was raised for these cities, and thus, they must be considered. In any event, the average rate of return calculation did not include Detroit because the data was skewed, and the average rate of return for Cleveland was 0.286, close to the overall average of 0.2719.

71. Telocator criticizes us for not including Miami, Houston, and Dallas-Fort Worth in our analysis. However, the hypothesis of ruinous competition was advanced prior to the inclusion of these cities in the Docket. Furthermore, Telocator has failed to present sufficient evidence to substantiate its claim that ruinous competition would result from an open entry policy for these cities.

72. Telocator criticizes us for stating that an average profit of $34,227 per annum describes a "mature, profitable business." However, the quoted average profit is quite healthy when the average rate of return on investment is 27 percent for those call signs showing a profit. Additionally, we already explained in paragraph 30 of our October 16, 1978 order, 69 FCC 2d at 1564, that on the average, those companies showing losses have been in business for seven years. This would indicate that they are either not losing money, or, perhaps, showing a loss for tax or other purposes.

73. Telocator claims that our analysis is inaccurate because RCCs show profits for paging but do not show profits for two-way service. However, Telocator has not presented any factual data in support of this proposition. In any event, the hypothesis presented in 1971 was that ruinous competition would result from open entry. Even if one-way service is more profitable than two-way service, Telocator has still not presented any factual evidence in support of the ruinous competition hypothesis.

74. In its *ex parte* presentation Telocator claims that channel sharing will not work and disagrees with our conclusion that the sharing of the *Guardband*[19] frequencies has worked. However, since the inauguration of such systems in the early 1970's, we have received very few complaints from the licensees or customers, indicating general satisfaction. In addition, during the 1979 renewal period, none of the licensees sharing frequencies requested termination of the arrangements.

75. We have also done a spot check of some of the shared *Guardband* channels in cities covered by Docket No. 21039, using data from Form L's for the year

[18] Even if the hearsay rules did apply, Telocator's claim that the Form L data is inadmissible hearsay does not withstand judicial precedent. Although some cases do support Telocator's claim of inadmissible hearsay, the vast majority of courts, especially federal courts, have found survey evidence to be admissible and have weighed the evidence in accordance with its reliability. *See, e.g., Randy's Studebaker Sales, Inc.* v. *Nissan Motor Corp.*, 533 F.2d 510 (10th Cir. 1976); *Porter* v. *United States*, 409 F. Supp. 757 (Customs Ct. 1976); *Annotation*, 76 A.L.R. 2d 619 (1961).

[19] *See Docket No. 16788*, 12 FCC 2d 841, *recon. denied*, 14 FCC 2d 269, *aff'd sub nom. Radio Relay Corporation* v. *FCC*, 409 F.2d 322 (2d Cir. 1968).

ending December 31, 1977, and data from 1979 renewal applications. (The data from Los Angeles comes from a monthly report submitted by the Los Angeles carriers and is for January, 1979.) The following chart shows the number of one-way paging units in use in four cities where the *Guardband* channels are shared:

City	Channel	Call signs	Units
Boston	1	KSV954 and KSV955	2,110
Baltimore-Washington.	2	KUO649, KUO650, KUO651, KUO652 and KUO653.	3,252
Los Angeles	1	KSV926, KSV927, KSV928, and KSV975.	44,696
San Francisco	2	KQZ714, KQZ715, KQZ717, KQZ718, and KRM983.	7,405

(KRM983 in San Francisco has not filed a renewal application in 1979 or a Form L for the year ending December 31, 1977. We thus assumed that it no longer has units operating on the system.)

This data indicates that a significant number of customers are being served on shared *Guardband* channels, and Telocator has not presented any substantial evidence demonstrating that the *Guardband* sharing is not working.

76. Telocator questions whether off-the-air monitoring will work. In particular, Telocator is concerned that harmful interference between mobile units cannot be eliminated. However, interference between mobiles is avoided by Section 22.501(1)(8)(iii) which requires that "it shall be impossible to activate the mobile transmitter for voice communication unless the mobile unit has received an enabling signal from a base station in response to its request for service." Furthermore, Rydax, Inc. has indicated that it is willing and able to manufacture equipment that substantially complies with our rules. Other manufacturers are free to do the same.

77. In any event, even if it happens that off-the-air monitoring is too expensive or in other ways not feasible, this would not alter the viability of our new rules because off-the-air monitoring is only one of several approaches that carriers can use to comply with the rules. In other words, the viability of off-the-air monitoring is irrelevant because carriers can use wireline monitoring, a common terminal, or any other approach they can agree on to avoid harmful interference. We will examine any approach proposed by the carriers to see if it is technically feasible and complies with the rules as a part of our licensing process.

78. Telocator objects to our perpetual open entry policy. These issues are addressed earlier in our discussion concerning the cutoff rule. *See* paras. 26–43. Telocator also argues that our licensing scheme is so "bizarre" that carriers will not apply for use of the frequencies involved. This argument is unsupported by the evidence. As of January 10, 1980, we have received 103 applications for ten market areas.

79. Telocator refers to a number of specific paragraphs in its original comments where it claims that it pointed out defects in the feasibility of our proposal and complains that we did not address these issues.[20] We do not agree with Telocator. The paragraphs referred to by Telocator are no more than a long series of conclusory allegations. To list them here would be counterproductive, the point being that Telocator has not submitted any factual data substantiated by any engineering or other experts to support its allegations. For Telocator to expect us to spend many pages refuting what is no more than a shotgun approach to identifying unsubstantiated issues would be an undue burden on the Commission's processes. *See Consumers Union of United States* v. *Consumer Products Safety Commission*, 491 F. 2d 810, 812 (2d Cir. 1974).

80. Accordingly, It is ordered, That, pursuant to the provisions of Sections 4(i) and 303 of the Communications Act of 1934 (as amended), 47 USC §§ 154(i) and 303, Section 22.501(1) of the FCC's Rules and Regulations, 47 CFR § 22.501(1), IS AMENDED as specified in the attached Appendix. These amendments shall become effective June 2, 1980.

81. It is further ordered, That the Petition for Partial Reconsideration filed by Metropolitan RCC Corporation IS GRANTED to the extent indicated above and in the Appendix, and in all other respects, it is denied.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 22—Public Mobile Radio Services Subpart G is amended to as follows:

Existing § 22.501 is amended by revising the introductory text of paragraphs (l)(8), and by revising paragraphs (l)(8)(iii) and (iv), (l)(9)(i) and (ii) and (l)(10)(i) and (iii); also, subparagraphs (iii) through (vii) are added to paragraph (l)(9) to read as follows:

§ 22.501 Frequencies.

* * * * *

(l) * * *

(8) Each applicant shall submit to the Commission copies of agreements, if any, and system diagrams and plans illustrating how interference-free operation will be accomplished. All submitted agreements, diagrams, and plans must contain as a minimum the provisions specified in paragraph (l)(8)(iii) of this section, and in the case of more than one applicant the provisions specified paragraph (l)(8)(iv) of this section. Paragraphs (l)(8)(i) and (ii) shall be applicable where in ps paragraph more than one method of technical operation is proposed for the same block of frequencies in the same urbanized area.

* * * * *

(iii) a means whereby it will be impossible for the operator of a mobile unit to key his transmitter in such a way as to cause harmful interference or to obstruct the communications of other stations. Each mobile unit shall be so configured as to provide automatic station identification when initiating a request for service; that such request can only be transmitted on an idle channel, and further, that it shall be impossible to activate the mobile transmitter for voice communication unless the mobile unit has received an enabling signal from a base station in response to its request for service.

(iv) a means whereby the total number of mobile units, as determined in subsection 10, operating within a metropolitan area on a 12-channel group of frequency pairs, as listed in 22.501(k), does not exceed the total authorized number of mobile units.

* * * * *

(9) Notwithstanding other provisions of this part, applications for any of the frequencies listed in paragraph 22.501(k), hereof will be processed under the following procedure.

(i) All applicants who file within 60 days after the public notice date of the first application that requests assignment of a particular 12-channel group of frequency pairs substantially in the same metropolitan area for which the first application is submitted (hereinafter known as the "initial 60-day filing period") shall be jointly responsible for compliance with paragraph 22.501(l)(8). The method of compliance must be agreed upon within 60 days of the completion of the initial 60 day filing period (hereinafter known as the "coordination period").

(ii) If compliance with paragraph 22.501(l)(8) is not achieved by unanimous agreement before the termination of the coordination period, then each applicant who filed during the initial 60-day filing period shall submit to the Commission whatever agreements have been reached.

[20] *See, e.g.*, paras. 23–24, 37–41 on pages 16–17, 25–35 of Telocator's comments.

(iii) The Chief, common Carrier Bureau shall examine the agreements discussed in paragraphs (l)(9)(ii) of this section to determine whether a plurality agreement exists. (in ascertaining a plurality, each party in a prearranged consortium shall be counted as a separate party.) The plurality shall be announced by public notice, and all parties shall be given 30 days to file comments on the technical method of operation specified in the plurality agreement.

(iv) Once all comments and replies have been filed, the Chief, Common Carrier Bureau shall make a determination as to whether the proposal is acceptable, that is, whether it is non-discriminatory, satisfies the public interest in other respects, and is in compliance with the Commission's Rules, in particular Sections 22.501(k) and (l).

(v) If the plurality proposal is found to be acceptable, the Chief, Common Carrier Bureau shall approve the proposal, and all other applicants shall be given an opportunity to conform their applications to the approved plan.

(vi) If the plurality proposal is found to be unacceptable, the Chief, Common Carrier Bureau shall again examine the agreements discussed in paragraph (l)(9)(ii) of this section to determine whether a second largest plurality exists. The procedures in paragraph (l)(9) (iii) through (v) of this section shall be followed with respect to the second largest plurality. This process shall continue until no more pluralities exist.

(vii) If there do not exist any plurality agreements, the Chief, Common Carrier Bureau shall randomly select, from among all applicants whose technical methods of operation have not previously been found to be unacceptable, the technical method of operation. The procedures in paragraph (l)(9)(iii) through (v) of this section shall be followed with respect to the randomly selected proposal. If the proposal is not approved, another random selection shall be held. This process shall continue until all proposals are rejected, at which time, all applications shall be returned to the applicants without prejudice.

* * * * *

(10)* * *

(i) A total of 60 mobile units per channel will initially be authorized. The Commission will authorize additional mobile units if the applicant can demonstrate, as indicated in subsection (b) below, that the average busy-hour channel usage is below 85%.

* * * * *

(iii) If the average busy-hour channel usage of the 12-channel group of frequency pairs is in excess of 85% the Commission may order a reduction in the authorized number of mobile units, provided that a minimum of 60 mobile units per channel are in service for a 12-channel pair system. This reduction shall be implemented by the carriers through normal attrition of system users.

* * * * *

[FR Doc. 80-13236 filed 4-30-80; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 510

[Docket No. 78-01; Notice 3]

Information Gathering Powers

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice establishes a final rule governing the issuance and use of compulsory process by the National Highway Traffic Safety Administration (NHTSA) in carrying out its duties under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, (the Safety Act), and the Motor Vehicle Information and Cost Savings Act, as amended, (the Cost Savings Act). This final rule was preceded by an interim final rule, which set forth the procedures the agency would use in exercising its information gathering powers, and solicited comments on those procedures. This rule informs the public of those procedures, and of the rights which the public has with respect to those procedures.

EFFECTIVE DATE: This rule will become effective June 16, 1980.

FOR FURTHER INFORMATION CONTACT: Steve Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2992).

SUPPLEMENTARY INFORMATION: A. *Background.* At 42 FR 64628, December 27, 1977, NHTSA published an interim final rule establishing 49 CFR Part 510, *Information gathering powers.* That regulation set forth the procedures to be followed by NHTSA in exercising its information gathering powers. It was issued as an interim final rule without prior notice or opportunity for comment. This is permitted by 5 U.S.C. 553(b)(3)(A), which allows rules which are strictly procedural to be issued without the normally required notice and opportunity for comment. However, because of this agency's policy of encouraging public participation in all agency activities, Part 510 was issued as an interim rule, and comments from interested members of the public were solicited. On February 2, 1978, the comment period was extended for an additional 20 days in response to a petition requesting such an extension; see 43 FR 5516, February 9, 1978. The agency received many comments on Part 510 from members of the automotive industry, automotive associations both large and small, associations of automobile users and consumers, and at least one private citizen who did not indicate any affiliation. All comments were considered and the most significant ones are addressed below.

In response to the comments received, several changes have been made to the interim rule. However, most of these changes are for the purpose of clarification or to make explicit what had been implicit in the interim rule. The most significant changes are outlined below.

B. *Most significant changes.* The following are the most significant differences between the interim rule and this final rule:

1. The final rule reorganizes the category of "investigational hearing" contained in the interim rule into two smaller categories. The first reorganized category is the "information gathering hearing", in which the agency can compel a witness to appear and answer questions under oath. The agency's rulemaking meetings are the most common example of this type of proceeding. Generally, these hearings will be public, and questioning of the witness will be limited to the presiding officer and any other members of a panel. The other reorganized category, which is derived from the interim rule's investigational hearing, is the "administrative deposition". This is used in investigations and is modeled after a deposition under the Federal Rules of Civil Procedure.

2. The final rule requires that any process issued under it recite the statutory authority under which the process is issued.

3. The final rule requires that any process issued under it contain a brief

description of the investigation or inquiry in connection with which it is being issued.

4. The final rule adds a form of compulsory process, the written request for the production of documents and things. This was implicit in the concept of the general or special order established in the interim rule, but has been made explicit in this final rule to avoid any confusion as to the availability and proper uses of this form of process.

5. The final rule expands the right to counsel by deleting the authority for the agency to exclude a person as counsel if such person were counsel for a number of other witnesses in the same investigation or if such person had personally been subpoenaed to testify.

6. The interim rule had not specified any time limitations on the duty to supplement responses to compulsory process. This final rule includes the following limitations: with respect to process issued in connection with a rulemaking action, the duty to supplement terminates when a final rule is issued or the action is otherwise ended. With respect to process issued in connection with an enforcement investigation, the duty to supplement responses terminates when the defect investigation is closed. Finally, with respect to process not issued in connection with a specific rulemaking action or enforcement investigation, the duty to supplement terminates 18 months after the date of the original response to the process.

C. *Discussion of comments.* 1. *Comments on the procedure followed for issuing this rule.* One commenter suggested that the interim rule may be void because it was issued without a prior notice of proposed rulemaking and opportunity for public comment. Moreover, this defect might not be cured by the publication of a final rule after consideration of comments received, according to this commenter, in which case the final rule would also be void.

The commenter asserted that any rule which substantially affects the rights of persons subject to the authority of an agency must be promulgated with notice and opportunity for comment, no matter whether the rule is labeled substantive or procedural. However, the authority cited by the commenter does not support that assertion. Instead, the cases suggest that when it is difficult to determine whether a rule is substantive or procedural, the court will consider the impact on the regulated parties. If that impact is significant, it is likely that the rule is substantive. Thus, in *Pickus* v. *United States Board of Parole*, 507 F. 2d 1107 (D.C. Cir. 1974), the board of parole argued that its regulation was procedural, but the regulation also established some criteria for parole eligibility. In *Pharmaceutical Manufacturers Association* v. *Finch*, 307 F. Supp. 858 (D. Delaware 1970), the FDA established procedural regulations which also set up the requirements with which drug manufacturers would have to comply to establish that a new drug was safe and effective. And in *National Motor Freight Traffic Association* v. *United States*, 268 F. Supp. 90 (D.D.C. 1967), *aff'd*, 393 U.S. 18 (1968), the Interstate Commerce Commission's procedural regulations also established a remedy for the recovery of overcharges. In none of these cases did the court find the regulation to be purely procedural.

Numerous cases have upheld the validity of procedural rules issued without notice and opportunity for comment, even when the rules had a major impact on the parties. *See Eastern Kentucky Welfare Rights Organization* v. *Simon*, 506 F. 2d 1278 (D.C. Cir. 1974) *vacated on other grounds*, 436 U.S. 26 (1976); *Shell Oil Co.* v. *Federal Power Commission*, 491 F. 2d 82 (5th Cir. 1974); *Buckeye Cablevision, Inc.* v. *United States*, 438 F. 2d 948 (6th Cir. 1971). The agency believes that Part 510 is purely procedural, since it does not even arguably establish any criteria for obtaining favorable consideration by the agency, nor does it establish any remedies for violations of substantive agency rules. Indeed, it appears to NHTSA that the regulation does not substantially affect the rights of any parties, since Part 510 only implements information gathering powers and remedies for violations of those powers granted to NHTSA in various statutes, without adding to or deleting from those powers and remedies in any way.

Furthermore, even if NHTSA accepts *arguendo* the commenter's claim that the interim rule should have been preceded by notice and opportunity for comment, that failure would be cured by the agency's solicitation of comments on the interim rule and the issuance of this final rule in response to the comments received. The commenter's position that no "cure" is possible is based on four cited cases. Three of those cases involved a situation where the agency involved never issued a notice indicating that there had been any consideration of the comments received and no modifications of the rule were ever made. Hence, the courts in *Community Nutrition Institute* v. *Butz*, 420 F. Supp. 751 (D.D.C. 1976), *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969), and *National Motor Freight Traffic Association* v. *United States, supra*, were not presented with the issue of whether a defectively issued rule can be cured by soliciting and considering comments.

The other case cited by the commenter for the position that no cure is possible was *City of New York* v. *Diamond*, 379 F. Supp. 503 (S.D.N.Y. 1974). In that case, the Department of Labor published a rule as final without any prior notice or opportunity for comment. There was a statement in the rule that any comments received in response thereto would be acted upon as though the rule were a notice of proposed rulemaking. No final rule showing some consideration of comments was ever published.

The court held that this rule was void for failure to comply with the requirements of the Administrative Procedure Act. The rationale for the decision is explained at 379 F. Supp. 517, where the court said, "Permitting the submission of views after the effective date is no substitute for the right of interested persons to make their views known in time to influence the rulemaking process in a meaningful way." The court expressed doubts that an after-the-fact opportunity to comment would be meaningful since people would be unlikely to submit comments and the agency would be unlikely to consider changes after a *fait accompli*.

This reasoning is inapposite in the instant situation. There has been no claim by this or any other commenter that they were not allowed to make their views known in time to influence the rulemaking process. The doubts that comments would be submitted can be allayed with regard to this interim rule. A total of 26 written comments were submitted in response to the invitation for comments in the interim rule, and many of these were long and detailed. The comments have been considered at length. Changes outlined above have been made to the interim rule in response to the comments received.

Further, the remedy for a defectively issued rule is that the invalidly issued rule is void and the agency must follow the notice and comment procedures before promulgating any new rule on the subject. In this case, voiding the permanent rule and requiring the agency to solicit comments is unnecessary. Detailed comments have already been submitted by representatives of many different segments of the interested public. Reissuance of a proposal identical to the interim rule would serve no useful purpose.

2. *General comments.* Several commenters expressed concern that the issuance of Part 510 signalled an end to

a relatively cooperative relationship concerning the agency's information gathering needs, and a beginning of a new, more adversarial relationship. NHTSA believes this concern is unfounded. The agency has always had the power to compel the production of information, and has in fact made numerous mandatory requests for information before the issuance of Part 510. Part 510 is simply an effort by the agency to state its authority with regard to information gathering, and set forth the procedures it will follow in exercising that authority, as well as setting forth the rights parties have when confronted with compulsory process by this agency.

The existence of this rule will not change the agency's general reliance on the voluntary submission of information. For its part, the agency will continue where feasible to rely on persons and entities to voluntarily provide the agency with information if the party will do so. NHTSA believes that most parties will continue to do so, since it is in the interest of those persons, as well as that of the agency and the public, for NHTSA to be well informed in its activities.

There were also repeated concerns that the information gathering powers in Part 520 are potentially oppressive, and could violate the right to privacy. The information gathering authority of this agency has been used and will continue to be used in a responsible manner.

Persons subject to the agency's information gathering powers have protections more secure than this agency's assurances of good intent. Under the provision of Part 510, persons may informally protest the exercise of the information gathering powers and seek to informally negotiate terms of compliance that would not be oppressive. If the party chooses, there are more formal ways of protesting at the administrative level, such as filing motions to quash or modify the process before the Deputy Administrator. Finally, a person who has been served with compulsory process and exhausted the available administrative remedies may raise any available defense in an action brought by NHTSA to enforce the process in the appropriate United States District Court.

A number of commenters, particularly those representing small businesses, stated that additional Federal paperwork requirements would be unbearable. This agency is aware of the problems caused business, especially smaller businesses, by requirements which cause the business to prepare more paperwork. As explained above, issuance of this rule will not lead to a significant change in the information gathering practices of this agency.

One commenter inquired whether the agency would seek out differing opinions in the information gathering process. NHTSA has always tried to obtain a variety of views in its information gathering activities, particularly in the area of rulemaking, where the policy issues involved are best considered in the light of contrasting opinion. The agency has in the past sought information and views from various persons and entities. Typically, voluntary requests and compulsory process are sent to manufacturers, since they are most likely to possess the type of information needed by the agency. To inform the public of these information gathering efforts, copies of the process and requests are placed in the dockets. This information gathering has been supplemented at the notice and comment stage of rulemaking by such means as inviting public participation to ensure that a wide range of views is represented.

Several commenters expressed the view that the information gathering powers discussed in Part 510 were unnecessary, duplicative of the authority of the National Transportation Safety Board, and not contemplated by Congress. It is clear that Congress has given the agency broad information gathering powers. Before the 1974 amendments to the Safety Act, NHTSA's investigative and information gathering authority under that Act was relatively circumscribed. In 1974, the Congress amended the Safety Act to give the agency broad authority similar to the authority it already prossessed under Title I of the Cost Savings Act. With respect to the 1974 amendments, the House Committee stated that the amendments authorize:

> the Secretary to conduct informational hearings and to obtain evidence from any person who has information relevant to the implementation of the Act. *Despite the vital importance of information gathering to successful implementation of the Act, the Secretary does not possess general authority for this purpose.* This lack is anomalous in view of the extensive information gathering authority in the property damage reduction provisions of the Motor Vehicle Information and Cost Savings Act. *This paragraph would give the Secretary similar broad authority in the more important pursuit of preventing highway deaths and injuries.* (emphasis added) H. Rep. 93–1191, 93rd Cong., 2d Sess. at 36–37.

In connection with the agency's duties under Title V of the Cost Savings Act, dealing with automotive fuel economy, Congress granted similar broad information gathering authority in section 505. To assist NHTSA in its duties to prevent odometer fraud, Congress also granted the agency broad information gathering powers in Title IV of the Cost Savings Act at section 414.

NHTSA's information gathering powers complement, but do not duplicate those of the National Transportation Safety Board (NTSB). The functions and information needs of the two agencies, even in the safety area, differ significantly. The function of the NTSB is to investigate significant transportation accidents, whether on the highways, rails, sea, or air, to determine the cause of those accidents. NTSB then publicly reports the results of these investigations. It also issues general recommendations for reducing the risks of accidents and publishes reports on the general transportation safety consciousness of other government agencies.

The functions of NHTSA include issuing specific rules to prevent highway deaths and injuries, reduce property damage in the event of an accident, increase the average fuel economy of automobiles, and prevent odometer fraud. Any validly issued rule which is violated subjects the violator to civil penalties. These differing functions illustrate why the two agencies have differing information needs. Further NTSB does not obtain any information which could be used to assist NHTSA in its fuel economy, damageability, or odometer fraud activities. With respect to NHTSA's safety activities, this agency is concerned with more than just the cause of an accident. NHTSA must also obtain information which could support the establishment of safety standards in the area, establish that there has been some noncompliance with such standards, or show the existence of a safety-related defect.

3. *Specific comments.* a. *Recitation of authority.* A commenter suggested that Part 510 require that any process issued thereunder indicate the statute that authorizes the particular process. The agency agrees that this is a reasonable requirement, and § 510.3(b)(2) of the final rule includes this requirement. The agency would like to note that the practice under the interim rule has been to indicate the statutory basis for the process issued thereunder, although the interim rule did not require this.

b. *Statement of purpose.* There were also a number of comments suggesting that Part 510 should be amended to require that any compulsory process contain a brief description of the purpose and scope of the investigation in connection with which the process is issued, so that a respondent or a reviewing court would have a basis for

determining whether the process is reasonably relevant to that investigation. This agency agrees to change the interim rule to add a requirement in § 510.3(b)(4) of the final rule that compulsory process contain a brief description of the purpose and scope of the agency's investigation. Again, the agency notes that process issued under the interim rule has routinely carried a brief description of the purpose of the agency's investigation.

It must be kept firmly in mind that the agency need not and will not go into a detailed and specific discourse about any investigation to support compulsory process. As stated by the Court of Appeals for the District of Columbia Circuit in *Federal Trade Commission v. Texaco*, 555 F.2d 864 (D.C. Cir.); *cert. den.*, 431 U.S. 974 (1977):

> * * * an investigating agency is under no obligation to propound a narrowly focused theory of a *possible* future case. Accordingly, the relevance of the agency's subpoena requests may be measured only against the general purposes of its investigation. 555 F.2d at 874 (emphasis in original)

More recently, the District Court for the District of Columbia decided a case dealing specifically with the information gathering powers of NHTSA in *United States v. Firestone Tire and Rubber Co.*, 455 F. Supp. 1072 (D.D.C. 1978). The court there addressed this issue saying:

> The agency need not narrow its focus from the beginning, and it is not for this court to determine whether the information sought is relevant to whatever eventual action the agency might take. This court may look only to the *general* purpose of the investigation and determine if the information sought, however broad, is relevant to that purpose. 455 F. Supp. at 1083 (emphasis in original)

One commenter suggested that Part 510 be amended to require that compulsory process inform the respondent of the identity of the person or entity under investigation. In most enforcement investigations the agency now identifies the persons subject to the investigation in its information requests and compulsory process. The agency must be free, however, to gather information relevant to the general purpose of investigations which are not yet focused on potential violations and violators. There may also be investigations in which nondisclosure of the identity of those under investigation will be necessary to prevent harm to the outcome of the investigations or harm to informants. The Supreme Court has said that it is a proper purpose for an administrative subpoena "to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the Administrator's judgment, the facts thus discovered should justify doing so." *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, at 201 (1946). In other words, agency investigations and compulsory process issued in connection with those investigations need not be focused on a limited number of persons or entities, but can be intended simply to determine if there are violations of any standards; *United States v. Morton Salt Co.*, 338 U.S. 632 (1950). Adoption of the requirement urged by this commenter in all cases would unduly hamper NHTSA's ability to conduct these authorized and proper types of investigations and the comment is, therefore, rejected.

C. *Production of documents.* Interim Part 510 listed a subpoena *duces tecum* as the only form of compulsory process through which this agency could compel the production of documents. Although it was not specifically identified as such, the authority to issue general or special orders includes the authority to compel the production of documents.

The agency's authority to issue a type of compulsory process that required the production of documents outside the context of a hearing, in which a subpoena would be issued, was upheld in *United States v. Firestone Tire and Rubber Co., supra.* In that case, NHTSA issued a special order to Firestone commanding the company to produce and provide information about a group of documents. Firestone specifically challenged the agency's authority to compel the production of documents outside the context of a hearing. NHTSA argued that section 112(c)(2) of the Safety Act (15 U.S.C. 1401(c)(2)) gave the agency this authority. The court analyzed the legislative history of this section and found that Congress had intended to give the agency broad investigatory powers. In conclusion, the court said:

> Following Firestone's argument would emasculate these newly-granted investigatory powers. As such, the court must read the requirements of this Act within the context of Congressional intent. The Secretary's investigative power is broad enough to compel the production of documents and the analysis thereof. 455 F. Supp. at 1082.

It is clear from this analysis that NHTSA has the power to compel the production of documents by the use of general or special orders under the Safety Act. Sections 104(a)(2), 204(b), 414(c)(2), and 505(b)(1)(B) of the Cost Savings Act (15 U.S.C. 1914(a)(2), 1944(b), 1990d(c)(2), and 2005(b)(1)(B)) use language identical to that used in section 112(c)(2) of the Safety Act. The use of identical language shows the same intent to give NHTSA broad authority and necessarily grants that broad authority.

To make it explicit in this final rule that the agency may exercise this authority, a form of compulsory process not specifically set forth in the interim rule has been added to this rule. The process is called a written request for the production of documents and things. This process may be issued alone or as a part of a general or special order. A written request for the production of documents and things is the functional equivalent of a subpoena *duces tecum.*

d. *Service of process; when and where returnable.* One commenter argued that service of compulsory process should be effected only by personal service, rather than allowing the agency the option of mail service, as is permitted by section 510.3(c). The reason offered for this requested change is that personal service is the only permissible service for process issued by the courts of the United States in civil matters, as set forth in Rule 45(c) of the Federal Rules of Civil Procedure. Personal service, of course, offers the greatest certainty that the person named in the process received actual notice thereof. However, a requirement of personal service would add a great deal of cost, time, and burden for the agency in connection with the issuance of compulsory process.

The commenter cited no authority which would prohibit the agency from effecting service by mail, nor is the agency aware of any such authority. In fact, many Federal agencies use mail service for their compulsory process. *See, e.g.*, 16 CFR 4.4(a) (Federal Trade Commission); 17 CFR 201.4(b)(3) (Securities and Exchange Commission). The judgment made by these agencies is that the possibility of a party not receiving notice my mail service is so slight that the additional expenditure of taxpayers' money required to effect personal service would not be justified. This agency concurs with that determination and will, therefore, permit service by registered or certified mail. If the respondent does not receive the process when it is served by mail, NHTSA will give that fact due consideration when determining the appropriate action to be taken in response to the respondent's failure to comply.

The same commenter raised the question of issuing compulsory process to foreign citizens or nationals of foreign countries residing abroad who are not served with process in the United States, or who have not appointed an agent for the service of process in the United States. The commenter argued

that subpoenas to such persons whould have to be considered requests, rather than commands, because such persons would by beyond the jurisdiction of the United States. The agency's compulsory process is bounded by the jurisdictional limits of the United States courts where the process is enforceable. The agency has no doubt, however, that a corporation or person amenable to service can be required to produce records located outside the territorial limits of the United States.

Several commenters suggested that when service is effected by mail, the date of service should be the date the respondent receives the process, rather than the date on which the service is mailed, with three additional days allowed to perform the required act, as is required by § 510.3(d). One commenter urged that the agency could easily determine the date of receipt by using return receipt mailing methods. The provision in the interim rule was adopted directly from Rule 6(e) of the Federal Rules of Civil Procedure. This provision has not led to any difficulties or unfairness in the Federal courts such as some commenters suggested would result from this provision in Part 510.

Return receipt mail would add costs for the agency and could add delay and cause other difficulties in delivering process. These burdens would not be outweighed by being able to ensure absolutely that the respondents actually had available to them the period to respond to the process which was stated in the process. The agency will always entertain motions to extend the return date of its process, if the respondent can show that the period available to it was inadequate. Since these motions can be filed for all process issued by the agency, the benefit of using return receipt mailing would be insubstantial.

One commenter suggested that Part 510 should allow service of compulsory process to a business to be made upon an agent designated to receive service, as an alternative to the agent-in-charge. NHTSA agrees with this suggestion, and the rule has been modified to reflect this new provision.

Many commenters addressed the issue of the amount of time which should be permitted to respond to compulsory process. Generally, the commenters indicated that compulsory process should be returnable in a reasonable amount of time. Although this was not specifically required by the interim rule, NHTSA intends to continue its policy of requiring that process be returnable in a reasonable amount of time. Further, NHTSA believes that the requirement for a reasonable amount of time to respond to compulsory process is so fundamental that it need not be explicitly stated in the final rule.

Some commenters suggested that a certain period of time, such as 30 days, be presumed by the agency to be a minimum reasonable time. Other commenters noted special factors which should lengthen the amount of time that could be considered reasonable. Examples of these special factors were language differences and the size of the companies to which the process was directed.

NHTSA concurs with the implicit statement in these latter comments that the determination of what is a reasonable period of time to respond must necessarily be an *ad hoc* one, which will of necessity consider the facts involved in each individual case. The agency notes that, in addition to the burden imposed on the respondents, the determination of what is a reasonable time period in which to respond must also consider the agency's need for the information so that it can perform its functions in a timely manner. However, the fact that a determination of what is a reasonable period of time must, almost by definition, be made on a case-by-case basis leads the agency to conclude that the establishment of even a presumptively reasonable amount of time in which to respond would unnecessarily limit the ability to consider the particular facts of each case. In the past, NHTSA has been willing to grant extensions of time for responses to compulsory process where it appeared that such extensions were necessary and consistent with the public interest. No departure from that policy is contemplated.

One commenter inquired where NHTSA's compulsory process would be returnable. Although most compulsory process will be returnable at the offices of NHTSA, situations may arise where the process would be returned at some other place. This question of where process must be returned should also be considered on a case-by-case basis.

e. *Investigational hearings.* The interim rule set forth one section which was intended to cover all agency hearings and which referred to all hearings as investigational hearings. These hearings were structured to be a mechanism with which to gather facts, opinions, or other data relevant to an agency investigation, inquiry or rulemaking and were not adjudicative or quasi-adjudicative procedures. The presiding officer at these hearings would have had the authority to rule on objections, "unless an immediate ruling would be unwarranted, and except where a refusal to answer was based upon the privilege against self-incrimination." This limitation was necessary because the presiding officer would not be a judicial officer, and so would not rule on any legal points.

The problem which became apparent with this formulation was that the differences between hearings in connection with rulemaking and hearings in connection with enforcement proceedings make it impossible to describe both hearings in one section. Although the section in the interim rule dealing with investigational hearings did set forth all fundamental points of the two types of hearings which the agency will hold, it was not an entirely accurate description of either hearing.

In this final rule, § 510.5 sets forth the procedures for hearings in connection with rulemaking, which are called "information gathering hearings." Section 510.6 sets forth the procedures for hearings held in connection with enforcement investigations, and these are now called "administrative depositions." By separating these types of hearings, this final rule provides a more accurate description of each.

The information gathering hearings will generally be open to the public. Information gathering hearings include hearings in connection with pending rulemaking actions, hearings on an initial determination by the agency of a safety-related defect or noncompliance with an applicable Federal motor vehicle safety standard, held pursuant to the authority of section 152 of the Safety Act (15 U.S.C. 1412), and hearings on whether a manufacturer has reasonably met its obligation to notify and remedy a defect or failure to comply, which hearings are held pursuant to the authority of section 156 of the Safety Act (15 U.S.C. 1416). In addition to the presiding officer, one or more other persons may be designated as members of the panel. The members of the panel may question any witness. If any person not a member of the panel wishes to pose a question to a witness, that person may write down the question and submit it to the panel. Any member of the panel may then pose the question if that member feels it appropriate to do so. The presiding officer at an information gathering hearing runs the hearing, and ensures that it proceeds in an orderly fashion.

The administrative deposition, which is held in connection with enforcement investigations, will generally be closed to the public. This proceeding has been adapted from the procedures for deposition procedures set forth in the Federal Rules of Civil Procedure. An officer authorized to administer oaths will put the deponent under oath and record the person's testimony. NHTSA

will examine the witness first and then the witness' attorney may examine the witness.

A number of commenters argued that the right to counsel provided in interim Part 510 was too restrictive. One commenter stated that the provisions of the interim rule, which allowed any witness at an investigational hearing to be accompanied by counsel, to confer with counsel, and to allow counsel to raise and explain any objections to any question asked of the witness was a limitation on the right to counsel guaranteed in the Administrative Procedure Act at 5 U.S.C. 555, where a person compelled to appear in person before an agency is entitled to be "accompanied, represented and advised" by counsel. This commenter stated that the words "accompanied", "represented," and "advised" have different shades of meaning signifying varying rights under the law. NHTSA agrees with this latter statement. It is not clear to this agency, however, what the words "accompanied, represented and advised" mean in addition to the rights to have counsel present, to confer with that counsel, and to have that counsel raise and explain objections, which were granted in the interim rule. Notwithstanding this point, NHTSA has no objections to modifying the language of Part 510 in this final rule to track the language of the Administrative Procedure Act.

Another commenter suggested that the rights of counsel to state and argue objections should be expanded. The interim rule provided that counsel could object to any question and state the basis for that objection on the record. This commenter believes that the right to counsel consists of, at a minimum, the right to make objections on the record and argue briefly the basis for the objections. NHTSA does not believe that it would be appropriate to modify the final rule to permit counsel to argue objections. In the information gathering hearings, the presiding officer will not be ruling on legal points, so no useful purpose would be served by airing legal points at length during the course of the hearing. With respect to the administrative depositions, the presiding officer as set forth in the interim rule has been replaced in this final rule by an officer authorized to administer oaths, and this officer will not rule on any objections. Accordingly, once the objection has been stated and the basis therefor explained, no purpose, other than delaying the deposition, would be served by arguing the objection.

Several commenters urged that the final rule should allow cross-examination of witnesses at investigational hearings. Since the investigational hearings in the interim rule have been divided into information gathering hearings and administrative depositions in this final rule, the comment has been considered with respect to both forms of hearings. At an information gathering hearing, there will be more than one witness, and these witnesses will be expressing differing views and opinions. If each of these witnesses could be cross-examined the hearing would be lengthened considerably. Especially since interested persons may submit questions to be asked by the presiding panel and are typically permitted a chance to supplement their comments after these hearings, the agency concludes that the rule should not be amended to permit cross-examination of witnesses.

Administrative depositions will focus on one witness, and the testimony of that witness will be considered by NHTSA in determining whether an enforcement action is necessary. If the agency decides to pursue an enforcement action it will be important that the testimony of the witness be as probative and accurate as possible. In this context, examination of the witnesses will generally be more administratively workable, because there will be only a single witness. The final rule has been accordingly modified to allow the witness's attorney or representative to examine the witness after NHTSA finishes its examination of the witness. Following this examination, NHTSA may reexamine the witness, and the witness's attorney may then reexamine the witness, and so forth, as appropriate.

Many objections were raised to the provision in the interim rule which excluded persons who were subpoenaed to testify at an investigational hearing from acting as counsel or representative for any other witnesses at that investigational hearing. One commenter argues that this provision could easily be abused by NHTSA to improperly exclude a counsel or representative. After a consideration of these comments and a reexamination of the exclusion, the agency has determined that the final rule should be modified.

The reason for including this authority was to prevent a situation where a counsel or representative advising a number of persons in the same proceeding could interfere with the investigation by, either consciously or subconsciously, tailoring testimony to conform with testimony already given. Several courts have stated that this general purpose is legitimate, and could support a decision to exclude a counsel or representative in these circumstances. *SEC* v. *Csapo*, 553 F.2d 7 (D.C. Cir. 1976); *SEC* v. *Higashi*, 359 F.2d 550 (9th Cir. 1966). However, both these cases indicate that authority to exclude counsel must be kept within permissible limits. The automatic exclusion of counsel has been deleted for both the information gathering hearings and the administrative depositions. For information gathering hearings § 510.5(e) of this final rule retains authority for the Administrator to take appropriate action if a counsel or representative refuses to comply with the presiding officer's directions or to adhere to reasonable standards of orderly and ethical conduct. Appropriate actions could include the exclusion of that counsel or representative from the hearing.

For an administrative deposition, the rule does not specifically provide for any exclusion, regardless of the behavior or conduct of a counsel or representative. In the event that it becomes necessary to prevent annoyance, embarrassment, oppression, or undue expense or delay to the witness or the agency, NHTSA will file an action in a United States District Court to seek an order to enforce the subpoena and to end the annoyance, embarrassment, oppression, or undue expense or delay, pursuant to the provision of § 510.6(c)(5). This motion would be analogous to a motion for a protective order, which could be filed under Rule 26(c) of the Federal Rules of Civil Procedure.

As an adjunct to this modification, the agency is changing the requirements of § 510.6(f) to provide that NHTSA may, in a nonpublic investigation and for good cause shown, decline to provide a copy of the transcript of his or her testimony to the witness. In those cases, the witness will be limited to an inspection of the transcript of the deposition. Such a limitation is explicitly authorized by the Administrative Procedure Act; 5 U.S.C. 555(c). The purpose of this change is to prevent witnesses from tailoring their testimony to conform to testimony given by previous witnesses.

One commenter suggested that the provision in Part 510 regarding the time in which a witness is allowed to sign the transcript of his or her testimony be made more flexible. The 30-day period included in the interim rule was drawn directly from Rule 30(e) of the Federal Rules of Civil Procedure, where experience has not shown it to be inadequate. Nonetheless, the language in § 510.6(d) has been modified to allow the agency to designate some period

other than 30 days as the period by which the testimony must be signed. The agency will allow a longer or shorter period as appropriate in particular circumstances.

A section has been added to the final rule which would also permit the agency to correct errors in the transcript of the deposition. Upon receiving a copy of the testimony given at the deposition, NHTSA would note any errors it believed had occurred in the transcription of the deposition, and forward notice of the alleged errors to the witness at the deposition, along with the transcript of the deposition. The notice would ask the witness to stipulate that the errors had occurred and agree to the corrections. If the witness would not make this stipulation, NHTSA would ask the presiding officer to have the record of the testimony reflect the dispute and show the NHTSA's version of the testimony as well as the version signed by the witness. The parties could then attempt to get an affidavit from the stenographer as to which version was most accurate, or take other steps to try to verify their version as the most accurate.

f. *Subsequent use of testimony.* Several commenters objected to the interim rule insofar as it provided that testimony obtained pursuant to NHTSA's information gathering authority may be "used in any investigation or administrative or judicial adjudicative proceeding." It was claimed that that agency could not and should not attempt to control what a Federal judge or an administrative law judge would admit into evidence in a proceeding before the judge. It was further stated that the absence of certain procedural rights in the investigational hearings, such as the right to cross-examine witnesses, would automatically preclude the use of the testimony in a subsequent adjudicative proceeding.

NHTSA obviously cannot control, nor did it seek to control, what a presiding judge will admit into the record of the proceeding over which he or she presides. The reason that this language appeared in the interim rule was to put respondents on notice that any information obtained under Part 510 could be considered and used by NHTSA in the manner it deems most appropriate, including *offering* such information into the record of an administrative or judicial proceeding. Whether such information would be allowed into the record is, of course, a decision which must be made by the presiding judge, in accordance with the applicable rules of evidence.

g. *Motions to modify, limit, or quash process.* A number of comments were received addressing motions to quash compulsory process. After a review of these comments, the agency has determined that the interim rule's provisions should be retained almost in their entirety.

Many commenters argued that the agency should expand the availability of these motions, so that a recipient of a general or special order could file a motion to modify, limit, or quash that process. Some of these commenters argued that NHTSA was required to permit these motions for general and special orders, if it chose to permit them for subpoenas. This issue was before the court in *United States* v. *Firestone Tire and Rubber Co., supra,* and the court held that the interim rule's provisions allowing motions to modify, limit, or quash subpoenas, but not allowing such motions for general or special orders, were legally acceptable. 455 F. Supp. at 1080.

As a practical matter, NHTSA issues general and special orders and written requests for the production of documents and things far more frequently than it does subpoenas. To require the Deputy Administrator to consider all of the possible objections to each of these forms of compulsory process would place an overwhelming burden on that office. Furthermore, the practice under interim Part 510 and before of not allowing formal objections to be filed to these types of compulsory process has worked very satisfactorily for both the agency and the respondents to its compulsory process. Given the acceptability of the present procedures and the fact that expansion of motions to quash to include all forms of compulsory process could readily be abused to delay compliance for frivolous and insubstantial reasons, the agency has determined that only subpoenas should be the subject of motions to modify, limit, or quash.

One commenter stated that respondents to the agency's compulsory process should be permitted to informally negotiate the terms of compliance with that process. NHTSA believed that the opportunity for informal negotiation of the terms of compliance with process was implicit in the interim rule. However, the agency has no objection to modifying the final rule to state explicitly that informal negotiations as to the terms of compliance are permissible, so § 510.3(f) now states that the Chief Counsel is authorized to negotiate the terms of compliance with any process issued under Part 510.

As set forth in this final rule, motions requesting some change to the terms of process will be decided by the Deputy Administrator. If the Deputy Administrator is not available, these motions will be decided by the Associate Administrator for Administration. In response to a comment, the final rule makes explicit what the agency had considered to be implicit in the interim rule; i.e., the Deputy Administrator is free to structure relief, through modifications or limitations of the subpoena, to achieve the resolution he or she believes is most appropriate. The final rule has also been modified to require that any motions to modify, limit, or quash process be filed not later than 15 days after service of the process or five days before the return date of that process, whichever is earlier, except in the rare event that the return date is less than five days after the service of the process. This requirement, similar to time limitations on these motions suggested in several comments, will eliminate last minute filings of these motions. The elimination of last minute filings will serve two important purposes. First, these motions will not be subject to abuse as a means of delaying compliance. Second, the prompt filing of these motions will facilitate more reasoned responses by the NHTSA to such motions.

It was suggested by many commenters that the filing of a motion to modify, limit, or quash should automatically toll the return date of the process. NHTSA has not adopted that suggestion, since any automatic tolling provision would be easily subject to abuse as a dilatory tactic. However, the agency will entertain requests to extend the return date of any process, and will consider such requests on the basis of the individual set of circumstances. The pendency of a good faith objection would be given due consideration.

One commenter suggested that the agency catalog the grounds upon which process can be modified, limited, or quashed. The rule has not been changed in this way, since the agency does not wish to foreclose any legitimate grounds for protesting some process. NHTSA will state that it believes that most objections will be based upon the alleged burdensomeness of the process, some assertion of privilege, or a question of the relevance of the information. However, this is not an exhaustive list of the possible objections, and any objections will be considered on their merits.

Many commenters objected to the provision that would have the Deputy Administrator deciding motions to quash. These commenters believed that the Deputy Administrator could not impartially decide these motions,

because the process would have been issued by that individual, or with the concurrence of that individual or a superior, such as the Administrator. This situation was said to establish an institutional bias in favor of the validity of the process which, according to those commenters, violates the due process requirements of the Fifth Amendment.

NHTSA believes that this comment reflects a serious misunderstanding of the purpose of this agency level mechanism for considering objections to the compulsory process. This mechanism will not be and is not intended to be an adjudication of the rights of the affected parties. The due process rights to an impartial decisionmaker do not apply outside the context of a determination of the rights of the affected parties. The sole purpose of having an agency review of any objections is to provide a respondent with a means which guarantees that senior agency officials will consider any objections raised by respondents to compulsory process issued by this agency. This ensures that any position taken on the motion or objection is the final agency position. Given this purpose, it is perfectly proper to have an official as senior as the Deputy Administrator personally consider the respondent's objections and decide the validity thereof. Any respondent desiring a hearing which comports with the due process requirements and determines the rights of the respective parties can obtain this by resisting compulsory process and raising its objections in an enforcement action in a United States District Court.

h. *Duty to supplement responses to process.* Several comments were received relating to the duty to supplement responses to compulsory process based on after-acquired information. The language in the interim rule which imposed the duty to supplement responses was taken almost verbatim from Rule 26(e) of the Federal Rules of Civil Procedure, which requires that a response be supplemented when after-acquired information shows that the response was incorrect when made or the response, though correct when made, is no longer correct, and the failure to amend the response is a knowing concealment. Two basic objections were raised to this requirement. First, it was asserted that the duty to supplement was not limited by any time period, and would therefore impose a perpetual duty to provide the agency with information. The commenters stated that this result would be extremely burdensome to respondents while yielding minimal benefits to the agency, since much of the amended information would concern investigations which had been ended. These commenters pointed out that the duty imposed by the Federal Rules ends when the litigation ends.

NHTSA agrees with the commenters that the duty to supplement should not be open-ended. Accordingly, the final rule has modified the requirements of the interim rule to specify a limitation on the duty to supplement. If process is issued in connection with a rulemaking action or enforcement investigation, the duty to supplement terminates with the issuance of a final rule or termination of the rulemaking or with the closing of the investigation, respectively. In the case of process not issued in connection with a specific rulemaking action or enforcement investigation, the duty to supplement expires 18 months after the date of the response.

It should be noted that this amendment does not in any way diminish the agency's authority to specifically require a respondent to update some response after the duty under this part to supplement has expired. Further, the authority of the agency to require specific supplementation of responses while the general duty to supplement is in effect is not limited by that general duty.

The second basic objection to the duty to supplement as set forth in the interim rule concerned the burden imposed on respondents to correct "trivial" or "minor" errors. One commenter urged that the duty to supplement should be limited to instances where there is a "significant" change in the information originally given to NHTSA. The agency has not adopted this suggestion. Respondents are under a duty to give accurate responses to compulsory process. Errors which appear to be trivial or minor to a respondent exercising the utmost good faith may not be so judged by the agency in the context of all the information gathered by the agency. NHTSA believes that it must determine whether a change is trivial. This requirement does not impose any significant added burden on respondents, because it should typically be easier for a respondent to write down the changed information and send it to NHTSA than to inform a responsible agency official of the change and have him or her examine the change to determine whether it can properly be deemed trivial. Since there is little additional burden imposed in requiring the change to be submitted to the agency and the information is necessary for NHTSA to properly perform its function of evaluating the significance of the change, the final rule does not limit the duty to supplement as suggested.

One frequent comment on the duty to supplement was that it would be extremely burdensome for the respondents to constantly check their responses for accuracy, even if the requirement were not open-ended. NHTSA disagrees with this assertion. The duty to supplement can be wholly satisfied by checking on a periodic basis with the sources within respondent having knowledge of the area to determine whether any new facts or information have arisen which might trigger a duty to supplement. If there are such new facts or information, the respondent promptly informs the agency about them. NHTSA agrees that this creates some burden for respondents, but does not agree that the burden is excessive or substantial. Moreover, NHTSA notes that much of the factual information which is subject to change, such as reports of warranty claims, is compiled for the respondents' own purposes on a regular basis. In those cases, the duty to supplement will be readily satisfied by making the update promptly available to the agency.

i. *Confidentiality of information.* Great concern was expressed over the confidentiality of alleged trade secret and confidential business information obtained by the agency by using its information gathering powers. NHTSA has published a notice of proposed rulemaking on this general subject entitled Part 512, *Confidential business information;* 43 FR 22412, May 25, 1978. That notice proposes a detailed scheme for the treatment of confidential business information received by NHTSA. The agency anticipates that the final rule on this subject will soon be published. When Part 512 is published, its requirements will supersede those set forth in § 510.3(e). Until that time, however, NHTSA will follow the procedures set forth in § 510.3(e) for handling and evaluating allegedly confidential information obtained by the use of compulsory process. That paragraph provides that any claims for confidentiality must be made in writing, that information for which confidential treatment is requested will be kept confidential until the confidentiality claim is evaluated, and that the agency will afford reasonable advance notice to the submitter of the information of the contemplated release of any information for which the submitter requested confidential treatment.

j. *Fees.* Several comments were received addressing the issue of compensation by NHTSA of persons or

entities for expenses incurred in connection with the responses to the agency's compulsory process. One commenter suggested that the agency make explicit that the term "person", as used in the section which provides reimbursement for the travel expenses of "persons" subpoenaed to testify at hearings, includes officers, agents, and employees of corporations. NHTSA has amended the rule to state that the term "person" as used in this and all other sections of the rule includes agents, officers, and employees of corporations in their individual capacities.

One commenter stated that a witness compelled to testify orally before the agency should not be required to pay for a copy of his or her testimony. The agency still finds it reasonable to require a person who wishes to retain a copy of his or her testimony at either an information gathering hearing or an administrative deposition to pay for that copy in most circumstances.

Copies of transcripts will be furnished without charge or at a reduced charge if the Associate Administrator for Administration determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

Any witness has the right to inspect the transcript of his or her testimony at no charge, and a provision is made in connection with administrative depositions for the submission of a copy of the witness' testimony to that witness for his or her signature. Hence, NHTSA does not believe that there is any financial barrier to the opportunity of any witness to thoroughly review his or her testimony.

Several commenters stated that respondents to compulsory process should be reimbursed completely for their expenses incurred in complying with the process. The agency does not believe that complete reimbursement is appropriate. First, it must be noted that the provision for reimbursement contained in NHTSA's authorizing statutes allows the agency to pay witnesses the same mileage and fees that can be paid witnesses in the courts of the United States. *See* section 112(c)(5) of the Safety Act, 15 U.S.C. 1401(c)(5) and sections 104(a)(5), 204(e), 414(c)(5), and 505(b)(3) of the Cost Savings Act, 15 U.S.C. 1914(a)(5), 1944(e), 1990d(c)(5), and 2005(b)(3). Part 510.11 of this rule expressly authorizes the payment of these fees.

NHTSA recognizes that the expense associated with complying with compulsory process is a major component of the burdensomeness of that process. The question, however, is whether an *undue* burden is imposed. If respondents believe the burden to be undue, they can file a motion with NHTSA to quash the process and can litigate this issue if the agency does not resolve it to their satisfaction.

k. *Remedies for failure to comply with compulsory process.* Several commenters made strenuous objection to the provision of the interim rule which allows the agency to seek civil penalties against a respondent which fails to comply with NHTSA's compulsory process. The arguments made were basically that the availability of civil penalties for failure to comply was not contemplated or authorized by the Cost Savings Act or the Safety Act, and that if the penalties were authorized, that authorization would be unconstitutional. NHTSA rejects these contentions for the reasons set forth below.

There were two primary arguments raised to support the view that the agency does not have the authority to seek the imposition of civil penalties for a failure to comply with compulsory process. First, it was asserted that the authorizing statutes provide judicial enforcement of compulsory process in a United States District Court as an exclusive remedy for the failure to comply with compulsory process. With respect to Titles I, II, and IV of the Cost Savings Act, this assertion is plainly inaccurate. Sections 106(a)(3), 206(1), and 416 of the Cost Savings Act (15 U.S.C. 1916(a)(3), 1946(1), and 1990(f)) state that no person shall fail to provide the information requested by the agency. A violation of this prohibition subjects the violator to civil penalties, which shall be assessed by the agency. Sections 107(a), 208(a), and 412(a) of the Cost Savings Act; 15 U.S.C. 1917(a), 1948(a) and 1990b(a).

The commenters specifically pointed to the fact that the Safety Act at section 112(c)(4), 15 U.S.C. 1401(c)(4), and Title V of the Cost Savings Act at section 505(c)(2), 15 U.S.C. 2005(c)(2), provide that the agency may seek judicial enforcement in the case of a failure to respond to compulsory process. However, the commenters did not point out that the respective Acts also authorize the agency to impose civil penalties for a failure to comply with any "rule, regulation, or order" issued under the information gathering authority contained in that title; section 108(a)(1)(E) and 109(a) of the Safety Act, 15 U.S.C. 1397(a)(4) and 1398(a), and section 507(3) and 508 of the Cost Savings Act, 15 U.S.C. 2007(3) and 2008. No commenter cited any language in the statutes themselves or the relevant legislative history which states that judicial enforcement was intended to be the exclusive remedy for a failure to comply.

NHTSA believes that the availability of civil penalties for a failure to comply with compulsory process is a necessary complement to judicial enforcement. If judicial enforcement were the sole remedy for failure to comply with the agency's compulsory process, a respondent could always fail to comply with the agency's compulsory process until such time as the agency began a judicial enforcement proceeding. Then, at any time before the court entered its order compelling compliance with agency process, the respondent could comply with the order, thereby mooting the enforcement action. Any respondent would have available to it a penalty-free machanism for delaying compliance with NHTSA's compulsory process. There is no indication that Congress intended or sanctioned such a mechanism. Considering "the vital importance of information gathering to the successful implementation of the Act," H.R. Rep. 93–1191, 93 Cong., 2d Sess. at 37, and the absence of any indication whatsoever that judicial enforcement was to be the sole remedy, NHTSA is not persuaded by this argument.

The second argument raised to support the view that the agency lacks authority to impose civil penalties was that subpoenas and general and special orders were not "orders" within the meaning of section 108(a)(1)(E) of the Safety Act and section 507(3) of the Cost Savings Act, the violation of which can give rise to civil penalties. The argument is that subpoenas are not "orders", because both statutes discuss "order" and "subpoena" in the disjunctive. Since a subpoena is not an order, the argument concludes that general and special orders are not "orders" either, because general and special orders are the functional equivalent of subpoenas.

This argument is not convincing. It is a well established and accepted rule of statutory construction that the words of a statute are to be given their common meaning, absent some indication of a contrary legislative intent. 2A Sutherland, Statutory Construction, § 47.28 and the cases cited therein (4th ed. 1973). The word "order" is defined in *Webster's Second International Dictionary* as "a rule or regulation made by competent authority; also a command; mandate; precept; direction". The *Oxford English Dictionary* defines "order" as "an authoritative direction, injunction, mandate; a command, oral or written; an instruction." It is obvious

that both subpoenas and general and special orders fall within this common meaning of the word "order", and that the Acts must be construed in that manner unless there is a contrary legislative intent.

The only authority which has been cited by a commenter to show a contrary intent is the language in Section 112(c)(4) of the Safety Act, and section 505(b)(2) of the Cost Savings (called "the judicial enforcement sections" for the rest of this discussion) giving the district courts of the United States authority to compel compliance with any subpoena or order issued by NHTSA. General and special orders are specifically referred to as "orders" in these judicial enforcement sections. Sections 108(a)(1)(E) and 109 of the Safety Act and 507(3) and 508 of the Cost Savings Act (called the civil penalty sections for the rest of this discussion) give NHTSA authority to impose civil penalties for the violation of any "rule, regulation, or order". There is no reason to believe that the "order" referred to in the civil penalty sections does not include the forms of process included within the meaning of "order" in the judicial enforcement sections. Congress has shown its intent that the violation of general and special orders issued by NHTSA would subject the violator to possible civil penalties.

The reference to subpoenas and orders in the disjunctive occurs in the judicial enforcement sections, which provide that compliance with a subpoena or an order can be mandated by a court. NHTSA's authority to issue subpoenas and general and special orders comes from two different grants of authority, and so it is grammatically necessary to use the disjunctive to indicate that compliance with either can be mandated by a court. There is, however, no indication in the Acts or the legislative history that Congress intended for subpoenas and general and special orders to be enforced differently. Indeed, the judicial enforcement sections treat these forms of process identically for enforcement purposes. Accordingly, the agency concludes that the use of the disjunctive in the judicial enforcement sections is not by itself a sufficient showing of a Congressional intent that subpoenas not be included within the meaning of "order" as that term is used in the civil penalty section, and so Congress intended that the word "order" as used in the civil penalty sections have its common meaning. The common meaning embraces all compulsory process issued by NHTSA, whether general or special orders, subpoenas, or written requests for the production of documents and things.

The commenters raised two Constitutional arguments in support of the position that the civil penalties could not be imposed for failure to comply with the agency's compulsory process. The first argument was that the agency could not constitutionally impose civil penalties, since this self-enforcement would give judicial power to NHTSA, a grant Congress could not make. One commenter was concerned that NHTSA was trying to set up a procedure where the agency could hold a respondent in contempt. NHTSA has never intended to hold a non-complying respondent in contempt of the agency, and the interim rule contained no such provision. To enforce and collect any civil penalty will require the agency to bring an action in a United States District Court, requesting the court to enforce the penalty. No question of self-enforcement arises in connection with this procedure.

A more complex issue was raised by commenters in the second Constitutional argument, which was that a party desiring to mount a good faith challenge to the validity of compulsory process issued by the agency could do so only by refusing to comply with that process. If the agency were to impose a penalty for this refusal, the argument runs, the respondent would have had a penalty imposed on it for exercising its right to have a judicial review of the validity of the process.

NHTSA agrees with the commenters' assertion that there is a due process right to contest the validity of a legislative or administrative order without having to pay substantial penalties if the suit is lost. However, this right does not mean that penalties begin to accrue only upon a final judgment in NHTSA's favor. In *St. Regis Paper Co. v. United States*, 368 U.S. 208 (1961), the FTC had ordered a company to file special reports with that agency. Section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, specified a penalty of $100 for each day a special report was overdue. The company challenged this provision of the Act, alleging that it had been denied its day in court to challenge the validity of the underlying order to file special reports. The company alleged that, in effect, the order was not judicially reviewable except if the company paid the civil penalty, and that this scheme violated the due process requirements.

The Supreme Court found this penalty scheme to be consistent with due process, because the petitioner had an opportunity for judicial review without having to pay the penalty. Specifically, the Court found that the company could have filed an action for declaratory judgment and a concurrent motion to stay the effective date of the FTC order pending a ruling by the court on the validity of the order. This opportunity for review is sufficient to satisfy the requirements of due process. 368 U.S. at 225–227.

This reasoning has been applied to the civil penalty provisions for failure to comply with an NHTSA order requiring a manufacturer to furnish notification of a defect to owners, purchasers, and dealers, and to remedy the defect without charge, as specified in section 152 of the Safety Act (15 U.S.C. 1412). In *Ford Motor Co. v. Coleman*, 402 F. Supp. 475 (D.D.C. 1975) *aff'd*, 425 U.S. 927 (1976); it was asserted that this statutory provision violated the due process rights of the manufacturer by forcing the manufacturer to either comply with an erroneous order or risk a substantial civil penalty if it lost its challenge to the order. The court stated that this statutory provision did not offend due process rights, since a manufacturer which could present a substantial, nonfrivolous challenge to the validity of NHTSA's determination could obtain a preliminary injunction against the enforcement of the order. The court would have jurisdiction to issue a temporary order restraining the imposition of the penalties pending its determination of the motion for preliminary injunction, and to issue a preliminary injunction that would stay the accrual of penalties until the completion of the *de novo* enforcement proceedings in district court on the underlying order. The civil penalties would begin accumulating against the manufacturer only if the manufacturer could not convince the court to issue a preliminary injunction, i.e., if the manufacturer could not show that it had reasonable and substantial grounds for contesting the order. According to the opinion, the due process right to a judicial determination of the validity of the order does not require that a manufacturer be permitted to press a frivolous or insubstantial objection without risk of a penalty.

Several commenters cited *Reisman v. Caplin*, 375 U.S. 440 (1964) as authority for the proposition that the civil penalty scheme as set forth in the interim rule would violate due process rights. That case involved an order by the Commissioner of Internal Revenue to a taxpayer to furnish certain documents. The taxpayer contended that since he had to risk a large fine and imprisonment for not complying with the order, he had been effectively denied the due process right to a judicial review

of the validity of the order. The Court disagreed with this contention, stating that the statute authorizing civil and criminal penalties for failure to comply with an order must be read so as not to apply while a respondent is making a good faith challenge to the validity of the order. In this agency's opinion, this reasoning is identical to that used in *St. Regis, supra,* and *Ford Motor Co. v. Coleman, supra.* The civil penalty provisions in the interim rule do not restrict the right of a respondent to process to obtain a judicial review of the validity of that process without a civil penalty, if the challenge is not insubstantial. Since this complies with the requirements of due process, no change has been made to the civil penalty section of this rule from what set forth in the interim rule.

In consideration of the foregoing, Chapter V of Title 49, Code of Federal Regulations is amended by revising Part 510, *Information Gathering Powers,* to read as set forth below.

The attorney principally responsible for the development of this final rule is Stephen Kratzke.

Authority: Sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act 1966, as amended, 15 U.S.C. 1401 and 1407, and sections 104, 204, 414, and 505 of the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1914, 1944, 1990d, and 2005; delegation of authority at 49 CFR 1.51.

Issued on April 28, 1980.

Joan Claybrook,

Administrator.

PART 510—INFORMATION GATHERING POWERS

Sec.

510.1 Scope and purpose.
510.2 Definitions.
510.3 Compulsory process, the service thereof, claims for confidential treatment, and terms of compliance.
510.4 Subpoenas generally.
510.5 Information gathering hearings.
510.6 Administrative depositions.
510.7 General or special orders.
510.8 Written requests for the production of documents and things.
510.9 Motions to modify, limit, or quash process.
510.10 Supplementation of responses to process.
510.11 Fees.
510.12 Remedies for failure to comply with compulsory process.

Authority: Secs. 112 and 119 of the National Traffic and Motor Vehicle Safety Act 1966, as amended (15 U.S.C. 1401 and 1407); secs. 104, 204, 414, and 505 of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1914, 1944, 1990d, and 2005); delegation of authority (49 CFR 1.51).

§ 510.1 Scope and purpose.

This rule governs the use of the information gathering powers of the National Highway Traffic Safety Administration contained in section 112 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended 15 U.S.C. 1401, and sections 104, 204, 414, and 505 of the Motor Vehicle Information and Cost Savings Act, as amended 15 U.S.C. 1914, 1944, 1990d, and 2005.

§ 510.2 Definitions.

(a) "NGTSA" means the National Highway Traffic Safety Administration.

(b) "Administrator" means the Administrator of the National Highway Traffic Safety Administration.

(c) "Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

(d) "Deputy Administrator" means the Deputy Administrator of the National Highway Traffic Safety Administration.

(e) "Person" includes agents, officers, and employees of sole proprietorships, partnerships, corporations, and other entities.

§ 510.3 Compulsory process, the service thereof, claims for confidential treatment, and terms of compliance.

(a) NHTSA may use any of the following means to conduct investigations, inspections, or inquiries to obtain information to carry out its functions under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381 *et seq.,* and the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 *et seq.:*

(1) Subpoenas;

(2) Information gathering hearings;

(3) Administrative depositions;

(4) General or special orders; and

(5) Written requests for the production of documents and things.

(b) A person, sole proprietorship, partnership, corporation, or other entity served with compulsory process under this part shall be provided with the following information at the time of the service—

(1) The name of the person, sole proprietorship, partnership, corporation, or other entity to which the process is addressed;

(2) The statutory provision under which the compulsory process is issued;

(3) The date, time, and place of return;

(4) A brief statement of the subject matter of the investigation, inspection, or inquiry; and

(5) In the case of a subpoena *duces tecum* or a written request for the production of documents and things, a reasonably specific description of the documents or things to be produced.

(c) Service of the compulsory processes specified in paragraph (a) of this section is effected:

(1) By personal service upon the person, agent-in-charge, or agent designated to receive process under 15 U.S.C. 1399(e) of the sole proprietorship, partnership, corporation or other entity being investigated, inspected, or inquired of; or

(2) By mail (registered or certified) or delivery to the last known residence or business address of such person or agent.

(d) The date of service of any compulsory process specified in paragraph (a) of this section is the date on which the process is mailed by the agency, or delivered in person, as the case may be. Whenever a period is prescribed for compliance with compulsory process, and the process is served upon the party by mail, 3 days are added to the period.

(e)(1) Any person, sole proprietorship, partnership, corporation, or other entity submitting information or producing documents or things in response to any compulsory process issued under this part may request confidential treatment for all or part of that information or for those documents or things.

(2)(i) Except as provided in paragraph (e)(2)(ii) of this section, requests for confidentiality shall be in writing, and addressed to the Chief Counsel.

(ii) Requests for confidentiality made during an information gathering hearing or an administrative deposition may be made orally to the presiding officer. Any oral request for confidentiality shall be supplemented by a written request, and this written request must be addressed to the Chief Counsel and received by NHTSA within five days of the date of the oral request.

(iii) A written request for confidentiality under paragraph (e) of this section shall specify the information, documents, or things which are to be kept confidential, specify the grounds upon which the claim is based, provide such information as may be necessary to permit the NHTSA to determine whether the claim is valid, and specify the period of time for which confidential treatment is requested.

(f) The Chief Counsel, or his or her delegate, is authorized to negotiate and approve the terms of satisfactory compliance with any compulsory process issued under this part.

§ 510.4 Subpoenas, generally.

NHTSA may issue to any person, sole proprietorship, partnership, corporation, or other entity a subpoena requiring the

production of documents or things (subpoena *duces tecum*) the testimony of witnesses (subpoena *ad testificandum*), or both, relating to any matter under investigation or the subject of an inquiry. Subpoenas are issued by the Executive Secretary. When a person, sole proprietorship, partnership, corporation, or other entity is served with a subpoena *ad testificandum* under this part, the subpoena will describe with reasonable particularity the matters on which the testimony is required. In response to a subpoena *ad testificandum*, the sole proprietorship, partnership, corporation, or other entity so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and set forth, for each person designated, the matters on which he or she will testify. The person so designated shall testify as to matters known or reasonably available to the entity.

§ 510.5 Information gathering hearings.

(a) NHTSA may issue a subpoena to compel any person, sole proprietorship, partnership, corporation, or other entity to provide information at an information gathering hearing. The subpoenas are used for the purpose of obtaining testimony from a witness under oath and obtaining relevant documents and things. The Administrator, or a NHTSA employee designated by the Administrator, presides at the hearing. Information gathering hearings are open to the public unless the presiding officer rules otherwise, and the hearings are stenographically reported.

(b) In addition to the presiding officer, one or more other persons may comprise the panel. Each member of the panel may question any witness at the hearing. No person who is not a member of the panel may ask questions of a witness. However, any person may submit to the panel, in writing, proposed questions to be asked of a witness. A member of the panel may pose these questions to the witness if that member deems the questions useful and appropriate. Proposed questions may be submitted to the panel at any time before or during the course of the hearing.

(c) The stenographic record of each witness's testimony will be available to the public, unless the testimony was not given publicly and the witness requests confidential treatment for some or all of his or her testimony. When an oral request for confidential treatment is made during the course of a witness's testimony, the presiding officer may order the hearing closed to the public at that point and continue the questioning of the witness, or may note the request for confidentiality and direct the witness not to answer the question at that time, but require the witness to answer the question in writing within some specified period, or take such other action as the presiding officer deems appropriate. If a request for confidential treatment is made, the release of the record is governed by the applicable laws or regulations relating to the handling of allegedly confidential information. To the extent that some or all of a witness's testimony is not publicly available, that witness may procure a copy of his or her testimony as recorded upon payment of lawfully prescribed costs.

(d)(1) Any person who is required by subpoena or designated by an entity that is required by subpoena to provide information at an information gathering hearing conducted under this section may be accompanied, represented, and advised by counsel. Any member of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, and any representative, official, or employee of the sole proprietorship, partnership, corporation or other entity under subpoena may act as counsel.

(2) A witness appearing in response to subpoena may confer in confidence with his or her counsel or representative concerning any questions asked of the witness. If such witness, counsel, or representative objects to a question, he or she shall state the objection and basis therefor on the record.

(e) The presiding officer at an information gathering hearing takes all necessary action to regulate the course of the hearing, to avoid delay, and to assure that reasonable standards of orderly and ethical conduct are maintained. In any case in which counsel for or a representative of a witness has refused to comply with the presiding officer's directions, or to adhere to reasonable standards of orderly and ethical conduct in the course of a hearing, the presiding officer states on the record the reasons given, if any, for the refusal and, if the presiding officer is someone other than the Administrator, immediately reports the refusal to the Administrator. The Administrator thereupon takes such action as the circumstances warrant.

(f) Where appropriate, the procedures established in this subsection may be utilized in informal hearings conducted by NHTSA pursuant to its authority under sections 152 and 156 of the Safety Act (15 U.S.C. 1412, 1416) to receive data, views and arguments concerning alleged safety-related defects. The rights accorded to witnesses in this subsection may also be accorded to witnesses who appear voluntarily at such hearings.

§ 510.6 Administrative depositions.

(a) NHTSA may issue a subpoena to compel any person, sole proprietorship, partnership, corporation, or other entity to provide information as a witness at an administrative deposition. These depositions are for the purpose of obtaining information from the witness under oath and receiving documents and things relevant to an agency investigation. These depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the deposition is taken. Unless otherwise ordered by the Administrator, administrative depositions are closed to the public.

(b) Any person who is required by subpoena or designated by an entity that is required by subpoena to produce documents or things or to give testimony as a witness at an administrative deposition conducted under this section may be accompanied, represented, and advised by counsel. Any member of the bar or a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia and any representative, official, or employee of the person, sole proprietorship, partnership, corporation, or other entity under subpoena may act as counsel.

(c) During an administrative deposition:

(1) The presiding officer before whom the deposition is to be taken puts the witness on oath and personally, or by someone acting under his or her direction and in his or her presence, records the testimony of the witness. The testimony is stenographically reported.

(2) After NHTSA has examined the witness at the deposition, that witness' counsel or representative may examine the witness. NHTSA may then reexamine the witness and the witnesses' counsel or representative may reexamine the witness and so forth, as appropriate.

(3) A witness appearing in response to a subpoena may confer in confidence with his or her counsel or representative concerning any questions asked of the witness. If such witness, counsel, or representative objects to a question, he or she shall state the objection and the basis therefor on the record.

(4) Objections to the qualifications of the officer taking the deposition, or to the manner of taking it, or, to the evidence presented, and any other objection to the proceedings shall be

noted by the officer on the record, and shall be treated as continuing. Evidence objected to shall be taken subject to the objections. Errors and irregularities occurring at a deposition in the manner of the taking of the deposition, in the form of questions or answers, or in the oath or affirmation, and errors of any kind which might be obviated, removed, or cured if promptly presented shall be deemed to be waived unless reasonable objection is made thereto at the taking of the deposition.

(5) If the witness refuses to answer any question or answers evasively, or if the witness or his or her counsel engages in conduct likely to delay or obstruct the administrative deposition, such refusal, evasive answer or conduct shall be a failure to comply with the subpoena issued to the witness.

(6) Upon completion of the examination of a witness, the witness may clarify on the record any of his or her answers.

(d) the transcript of the testimony of a witness who testified in response to a subpoena at an administrative deposition is submitted to the witness for signature, unless the witness waives the right to sign the transcript. If a witness desires to make any changes in the form or substance contained in the transcript, the witness shall submit, together with the transcript, a separate document setting forth the changes and stating the reasons for such changes. If the deposition is not signed by the witness within 30 days of its submission to the witness, or such other period as the NHTSA may designate, the officer before whom the deposition was taken or a NHTSA employee signs the transcript and states on the record the fact of the waiver of the right to sign or the fact of the witness' unavailability or inability or refusal to sign together with the reasons, if any, given therefor.

(e) The transcript of the testimony of a witness will be inspected by NHTSA to determine if there are any errors in the transcription of the questions posed to the witness and the testimony in response to those questions. If NHTSA discovers any errors, it notes that fact and forwards the notation of errors together with the transcript to the witness, requesting the witness to stipulate that the transcript is in error and that the corrections made by NHTSA are accurate. If the witness will not make this stipulation, NHTSA may make a motion to the presiding officer to include its notation of error and its corrections in the record along with the version of the testimony signed by the witness.

(f)(1) Upon payment of lawfully prescribed costs, any person who is required by subpoena or designated by a sole proprietorship, partnership, corporation, or other entity that is required by subpoena to appear as a witness at an administrative deposition may procure a copy of the deposition as recorded, except that in a nonpublic investigatory proceeding, the witness may, for good cause, be limited to an inspection of the record of the deposition.

(2) A copy of the record of the deposition may be furnished to the witness without charge or at a reduced charge if the Associate Administrator for Administration determines that waiver of the fee is in the public interest because furnishing the copy can be considered as primarily benefitting the general public. Any witness who seeks a waiver of the copying charge may apply in writing to the Associate Administrator for Administration, and shall state the reasons justifying waiver of the fee in the application.

(g) The testimony obtained in an adminstrative deposition may be used or considered by the NHTSA in any of its activities, and may be used or offered into evidence in any administrative proceeding in accordance with the provisions of 5 U.S.C. 554, or in any judicial proceeding.

§ 510.7 General or special orders.

The NHTSA may require by the issuance of general or special orders any person, sole proprietorship, partnership, corporation, or other entity to file with the NHTSA, in such form as NHTSA may prescribe, periodic or special reports or answers in writing to specific questions. The responses to general or special orders will provide NHTSA with such information as it may require, including, but not limited to, information relating to the organization of that person, sole proprietorship, partnership, corporation, or other entity, its business, conduct, practices, management, and relation to any other person or entity. General or special orders which are required to be answered under oath are issued by the Chief Counsel. Any general or special order issued under this section contains the information specified in section 510.3(b). Reports and answers filed in response to general or special orders must be made under oath, or otherwise, as NHTSA may prescribe.

§ 510.8 Written requests for the production of documents and things.

The NHTSA may, by the issuance of a written request for the production of documents and things, require any person, sole proprietorship, partnership, corporation, or other entity to produce documents or things. A written request for the production of documents and things may be issued alone, or as a part of a general or special order issued under section 510.7. Written requests for the production of documents and things are issued by the Chief Counsel. Any written request for the production of documents and things issued under this section shall contain the information specified in section 510.3(b)

§ 510.9 Motions to modify, limit, or quash process.

(a)(1) Any person, sole proprietorship, partnership, corporation, or other entity served with a subpoena issued under section 510.4 may file with the Deputy Administrator a motion to modify, limit, or quash that subpoena. If there is no Deputy Administrator, or the Deputy Administrator is not available, such motions shall be filed with and decided by the Associate Administrator for Administration. A motion to modify, limit, or quash must be filed not later than 15 days after the service of the process or five days before the return date specified in the process, whichever is earlier, except that, if the process is served within five days of its return date, such motion may be filed at any time before the return date. Any motion must set forth the grounds and theories of why and how the party believes the process should be modified, limited, or quashed and must contain all facts and arguments which support those grounds and theories.

(2) The Deputy Administrator may, upon receiving a motion filed pursuant to paragraph (a)(1) of this section—

(i) Deny the motion;

(ii) Modify the return date of the subpoena;

(iii) Modify, limit or quash the subpoena;

(iv) Condition granting the motion upon certain requirements; or

(v) Take any other action he or she believes to be appropriate in the circumstances.

(3) The Office of the Deputy Administrator serves the decision on the motion on the moving party or the counsel or representative of the moving party. This service may be made by personal service, by registered or certified mail, or by reading a copy of the decision to the moving party or the counsel or representative of the moving party.

(4) A denial of any motion properly filed under this section shall be in writing, and shall contain a brief statement of the facts involved and the conclusions drawn from those facts by the Deputy Administrator.

(b) The Deputy Administrator's decision on the motion to modify, limit,

or quash, filed under paragraph (a) of this section is not subject to reconsideration by NHTSA.

§ 510.10 Supplementation of responses to process.

(a) A person, sole proprietorship, partnership, corporation, or other entity which has provided NHTSA with information under this part, which information was complete and accurate at the time the information was given to NHTSA, is not required to supplement that information in the light of after acquired information, except:

(1) The person or entity to whom the process is addressed shall supplement the response with respect to any question directly addressed to the identity and location of persons having knowledge of information obtainable under this part.

(2) The person or entity to whom the process is addressed shall seasonably amend a prior response if that person or entity obtains information upon the basis of which the person or entity knows that the response was incorrect when made or the person or entity knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(b) The requirement to supplement information set forth in paragraph (a) of this section terminates when:

(1) The compulsory process stated that it was issued in connection with a contemplated rulemaking action, and a final rule is issued on that subject or a notice is issued announcing that the rulemaking action has been suspended or terminated.

(2) The compulsory process stated that it was issued in connection with an enforcement investigation, and the investigation is closed.

(3) The compulsory process does not state that it is issued in connection with a specific rulemaking action or enforcement investigation, and 18 months have passed since the date of the original response.

(c) This section in no way limits NHTSA's authority to obtain supplemental information by specific demands through the means specified in section 510.3.

§ 510.11 Fees.

Any person compelled to appear in person in response to a subpoena issued under this part at an information gathering hearing or an administrative deposition is paid the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, Section 1821.

§ 510.12 Remedies for failure to comply with compulsory process.

Any failure to comply with compulsory process authorized by law and issued under this part is a violation of this part. In the event of such failure to comply, NHTSA may take appropriate action pursuant to the authority conferred by the National Traffic and Motor Vehicle Safety Act or the Motor Vehicle Information and Cost Savings Act, as appropriate, including institution of judicial proceedings to enforce the order and to collect civil penalties.

[FR Doc. 80-13444 Filed 4-29-80; 10:00 am]
BILLING CODE 4910-59-M

---

49 CFR Part 571

[Docket No. 74-9; Notice 7]

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to five petitions for reconsideration and petitions for rulemaking concerning Standard No. 213, *Child Restraint Systems.* In response to the petitions, the agency is changing the labeling requirements to permit the use of alternative language, modifying the minimum radius of curvature requirement for restraint system surfaces and extending the effective date of the standard from June 1, 1980, to January 1, 1981. In addition, several typographical errors are corrected in Standard No. 209, *Seat Belt Assemblies.*

DATES: The amendments are effective on May 1, 1980. The effective date of the standard is changed from June 1, 1980, to January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: On December 13, 1979 (44 FR 72131) NHTSA published in the **Federal Register** a final rule establishing Standard No. 213, *Child Restraint Systems,* and making certain amendments to Standard No. 209, *Seat Belt Assemblies and Anchorages.* Subsequently, petitions for reconsideration were timely filed with the agency by Cosco, General Motors, Juvenile Products Manufacturers Association, and Strolee. Subsequent to the time for filing petitions for reconsideration, Strolee also filed a petition for rulemaking to amend the standard. After evaluating the petitions, the agency has decided to modify, as fully explained below, some of the requirements of Standard No. 213. All other requests for modification are denied. The agency is also correcting several minor typographical errors in the text of Standard No. 209.

Labeling

Standard No. 213 requires manufacturers to place a permanently mounted label on the restraint to encourage its proper use. General Motors (GM) petitioned for reconsideration of three of the labeling requirements.

Section S5.5.2(f) of the standard requires each child restraint to be labeled with the size and weight ranges of children capable of using the restraint. In its petition, GM said that the requirement could "unnecessarily preclude some children from using the restraint or suggest use by children too large for the restraint." GM also commented that some infant restraints are intended to be used from birth and thus the lower size and weight limitation serves no purpose.

In addition, GM said that stating the upper size limit for infant restraints in terms of seated height rather than in standing height is a more appropriate way to set size limitations for infants. For example, GM said that an infant with a short torso and long legs might be precluded from using the restraint if the limitation is stated in terms of standing height, while an infant with short legs and a torso too long for the restraint would be inappropriately included among ones who could supposedly use the restraint. GM requested that infant restraints be allowed to be labeled with an optional statement limiting use by upper weight and seated height.

NHTSA agrees that specifying a lower weight and size limit is unnecessary for an infant carrier designed to be used from birth and has amended the standard accordingly. The agency has decided not to adopt GM's proposal to state the upper size limit in seating rather than standing height. The purpose of the label is to provide important instructions and warnings in as simple and understandable terms as possible. Standing height, rather than seating height, is a measurement parents are familiar with and which is commonly measured during pediatric examinations. As GM pointed out, it is possible to establish a limit based on

standing height which would exclude any infant whose seating height is too high to properly use the restraint. Therefore, the agency will continue to require the upper size limit to be stated in terms of standing height.

GM also requested that manufacturers be allowed to establish a lower usage limit for restraints used for older children based on the child's ability to sit upright rather than on his or her size and weight. GM said the lower limit "is not as dependent upon the child's size as it is on the child's ability to hold its head up (sit upright) by itself. This important capability is achieved at a wide range of child sizes." NHTSA agrees that the type of label GM proposes can clearly inform parents on which children can safely use a restraint and therefore will permit use of such a label.

Section S5.5.2(g) of the standard requires the use of the word "Warning" preceding the statement that failure to follow the manufacturer's instructions can lead to injury to a child. GM requested that the word "Caution" be permitted as an alternative to "Warning." GM said that since 1975 it has used caution in its labels and owners' and service manuals as a lead or signal word where the message conveys instructions to prevent possible personal injury. GM said that the words caution and warning are generally accepted as synonymous.

The agency believes that the word "Warning", when used in its ordinary dictionary sense, is a stronger term that conveys a greater sense of danger than the word "Caution" and thus will emphasize the importance of following the specified instructions. Therefore, the agency will continue to require the use of the word "Warning."

Section S5.5.2(k) of the standard requires restraints to be labeled that they are to be used in a rear-facing position when used with an infant. GM said that while the requirement is appropriate for so-called convertible child restraints (restraints that can be used by infants in a rear-facing position and by children in a forward-facing position), it is potentially misleading when used with a restraint designed exclusively for infants. GM said the current label might imply that the restraint can be used in forward-facing positions with children. GM recommended that restraints designed only for infants be permitted to have the statement, "Place this infant restraint in a rear-facing position when using it in the vehicle." The agency's purpose for establishing the labeling requirement was to preclude the apparent widespread misuse of restraints designed for infants in a forward-facing rather than rear-facing position. Since GM's recommended label will accomplish that goal, the agency is amending the standard to permit its use.

Radius of Curvature

Section S5.2.2.1(c) of the standard requires surfaces designed to restrain the forward movement of a child's torso to be flat or convex with a radius of curvature of the underlying structure of not less than 3 inches. Ford Motor Co. objected to the three inch limitation on radius of curvature arguing that measuring the radius of curvature of the underlying structure would eliminate designs that have not produced serious injuries in actual crashes. Ford said the shield of its Tot-Guard has a radius of curvature from 2.2 to 2.3 inches and it had no evidence of serious injury being caused by the shield when the restraint has been properly used.

The purpose of the radius of curvature requirement was to prohibit the use of surfaces that might concentrate impact forces on vulnerable portions of a child's body. It was not the agency's intent to prohibit existing designs, such as the Tot-Guard, which have not produced injuries in actual crashes. Since a 2 inch radius of curvature should therefore not produce injury the agency has decided to change the radius of curvature requirement from 3 to 2 inches.

Although the standard sets a minimum radius of curvature for surfaces designed to restrain the forward movement of a child, it does not set a minimum surface area for that surface. Prototypes of new restraints shown to the agency by some manufacturers indicate that they are voluntarily incorporating sufficient surface areas in their designs. The agency encourages all manufacturers to use surface areas at least equivalent to those of the designs used by today's better restraints.

Occupant Excursion

Section S5.1.3.1 of the standard sets a limit on the amount of knee excursion experienced by the test dummy during the simulated crash tests. It specifies that "at the time of maximum knee forward excursion the forward rotation of the dummy's torso from the dummy's initial seating configuration shall be at least 15° measured in the saggital plane along the line connecting the shoulder and hip pivot points."

Ford Motor Co. objected to the requirements that the dummy's torso rotate at least 15 degrees. Ford said that it is impossible to measure the 15 degree angle on restraints such as the Tot-Guard since the test dummy "folds around the shield in such a manner that there is no 'line' from the shoulder to the hip point." In addition, restraints, such as the Tot-Guard, that enclose the lower torso of the child can conceal the test dummy hip pivot point.

The agency established Ted the knee excursion and torso rotation requirements to prevent manufacturers from controlling the amount of test dummy head excursion by allowing the test dummy to submarine excessively during a crash (i.e., allowing the test dummy to slide too far downward underneath the lap belt and forward, legs first). A review of the agency's testing of child restraints shows that current designs that comply with the knee excursion limit do not allow submarining. Since the knee excursion limit apparently will provide sufficient protection to prevent submarining, the agency has decided to drop the torso rotation requirement. If future testing discloses any problems with submarining, the agency will act to establish a new torso rotation requirement as an additional safeguard.

Head Impact Protection

Section 5.2.3 requires that each child restraint designed for use by children under 20 pounds have energy-absorbing material covering "each system surface which is contactable by the dummy head". Strolee petitioned the agency to amend this requirement because it would prohibit the use or unpadded grommets in the child restraint. Strolee explained that some "manufacturers use grommets to support the fabric portions of a car seat where the shoulder belt and lap belt penetrate the upholstery. These grommets retain the fabric in place and give needed support where the strap comes through to the front of the unit." Because of the use of the grommets in positioning the energy-absorbing padding and belts, the agency does not want to prohibit their use. However, to ensure that use of the grommets will not compromise the head impact protection for the child, the agency will only allow grommets or other structures that comply with the protrusion limitations specified in section S5.2.4. That section prohibits protrusions that are more than ⅜ of an inch high and have a radius of less than ¼ inch. Because this amendment makes a minor change in the standard to relieve a restriction, prior notice and a comment period are deemed unnecessary.

Belt Requirements

Strolee petitioned the agency to amend the requirement that all of the belts used in the child restraint system

must be 1½ inches in width. Strolee said that straps used in some restraints to position the upper torso restraints have "'snaps' so that the parent may release this positioning belt conveniently." Strolee argued that such straps should be exempt from the belt width requirement since "the snap would release far before any loads could be experienced."

The agency still believes that any belt that comes into contact with the child should be of a minimum width so as not to concentrate forces on a limited area of the child. This requirement would reduce the possibility of injury in instances where the snap on a positioning strap failed to open. Strolee's petition is therefore denied.

Strolee has also raised a question about the interpretation of section S5.4.3.3 on belt systems. Strolee asked whether the section requires a manufacturer to provide both upper torso belts, a lap belt and a crotch strap or whether a manufacturer can use a "hybrid" system which uses upper torso belts, a shield, in place of a lap belt, and a crotch strap. The agency's intent was to allow the use of hybrid systems. The agency established the minimum radius of curvature requirements of section S5.2.2.1(c) to ensure that any shield used in place of a lap or other belt would not concentrate forces on a limited area of the child's body. NHTSA has amended section S5.4.3.3 to clarify the agency's intent. Because this is an interpretative amendment, which imposes no new restrictions, prior notice and a comment period are deemed unnecessary.

Height Requirements

Strolee asked the agency to reconsider the requirements for seat back surface heights set in section S5.2.1.1. Strolee argued that the higher seat back required by the standard would restrict the driver's rear vision when the child restraint is placed in the rear seat.

The final rule established a new seat back height requirement for restraints recommended for use by children that weigh more than 40 pounds. To provide sufficient protection for those children's heads, the agency required the seat back height to be 22 inches. The agency explained that the 22 inch requirement was based on anthropometric data showing that the seating height of children weighing 40 or more pounds can exceed 23 inches. The agency still believes that 22 inch requirement is necessary for the protection of the largest child for which the restraint is recommended. NHTSA notes that child restraints can be designed to accommodate the higher seat backs without allowing the overall height of the child restraint to unduly hinder the driver's vision.

Padding

In its petition, JPMA claimed that the standard "calls for the application of outdated specifications" for determining the performance of child restraint padding in a 25 percent compression-deflection test. A review of the most recent edition of the American Society for Testing and Materials (ASTM) handbook shows that the compression-deflection test in two of the three ASTM standards referenced by the agency has not changed. The third standard (ASTM D1565) referenced by the agency has been replaced. However, the replacement standard does not contain a 25 percent compression-deflection test. Therefore, the agency will continue to use the three ASTM standards referenced in the December 1979 final rule.

Effective Date

Cosco, Strolee and the Juvenile Products Manufacturers Association (JPMA) petitioned the agency for an extension of the June 1, 1980, effective date. They requested that the effective date be changed to at least January 1, 1981, and Strolee requested a delay until March 1, 1981. They argued that the June 1, 1980, effective date does not allow manufacturers sufficient time to develop, test and tool new child restraints.

Testing done for the agency has shown that many of the better child restraint systems currently on the market can meet the injury criteria and occupant excursion limitation set by the standard. Some of those seats would need changes in their labeling, removal of arm rests and new belt buckles and padding to meet the standard. Such relatively minor changes can be made in the time available before the June 1, 1980, effective date.

Several manufacturers have informed the agency that they are designing new restraints to meet the standard. Based on prototypes of those restraints shown to the agency, NHTSA believes that these new restraints may be more convenient to use, less susceptible to misuse and provide a higher overall level of protection than current restraints. Based on leadtime information provided by individual manufacturers and the JPMA, the agency concludes that extending the standard from June 1, 1980, to January 1, 1981, will provide sufficient leadtime. Providing a year's leadtime is in agreement with the leadtime estimates provided by the manufacturers as to the time necessary for design and testing, tooling and buckle redesign.

Compatibility With Vehicle Belts

On December 12, 1979, NHTSA held a public meeting on child transportation safety. At that meeting, several participants commented about the difficulty, and in some cases the impossibility, of securing some child restraint systems with a vehicle lap belt because the belt will not go around the restraint. Testing done by the agency during the development of the recently proposed comfort and convenience rulemaking also confirms that problem. The agency reminds child restraint manufacturers that Standard No. 213, *Child Restraint Systems*, requires all child restraints to be capable of being restrained by a vehicle lap belt.

Corrections

In the final rule published on Standard No. 209, *Seat Belt Assemblies*, there were a number of typographical errors, such as listing the lower chest circumference of the 5 percentile female as 36.6 inches rather than the correct figure of 26.6 inches. Those errors have been corrected.

In addition, the final rules for Standards No. 209 and No. 213 inadvertently did not include a requirement on belt resistance to buckle abrasion. The notice of proposed rulemaking for both standards included the belt buckle abrasion requirements, which were not opposed by any of the commenters. The standards have therefore been amended to include that requirement.

The principal authors of this notice are Vladislav Radovich, Office of Vehicle Safety Standards, and Stephen Oesch, Office of Chief Counsel.

In consideration of the foregoing, the following amendments are made in Part 571, Title 49 of the Code of Federal Regulations:

§ 571.213 [Amended]

1. Section S5.2.2(c) of Standard No. 213, *Child Restraint Systems* (49 CFR 571.213), is revised to read as follows:

* * * * *

(c) Each horizontal cross section of each system surface designed to restrain forward movement of the child's torso shall be flat or concave and each vertical longitudinal cross section shall be flat or convex with a radius of curvature of the underlying structure of not less than 2 inches.

* * * * *

2. Section S5.2.3.2 of Standard No. 213 is revised to read as follows:

* * * * *

S5.2.3.2 Each system surface, except for protrusions that comply with S5.2.4, which is contactable by the dummy head when the system is tested in accordance with S6.1 shall be covered with slow recovery, energy absorbing material with the following characteristics:

(a) a 25 percent compression-deflection resistance of not less than 0.5 and not more than 10 pounds per square inch when tested in accordance with § 6.3.

(b) a thickness of not less than ½ inch if the material has a 25 percent compression-deflection resistance of not less than 3 and not more than 10 pounds per square inch when tested in accordance with S6.3. If the material has a 25 percent compression-deflection resistance of less than 3 pounds, it shall have a thickness of not less than ¾ inch.

* * * * *

3. Section S5.4.1(a) of Standard No. 213 is revised to read as follows:

* * * * *

(a) After being subjected to abrasion as specified in § 5.1(d) or 5.3(c) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested in accordance with S5.1(b) of FMVSS 209.

* * * * *

4. Section S5.4.3.3 of Standard No. 213 is revised to read as follows:

S5.4.3.3 *Seating Systems.* Except for child restraint systems subject to S5.4.3.4, each child restraint system that is designed for use by a child in a seated position and that has belts designed to restrain the child, shall, with the test dummy specified in S7 positioned in the system in accordance with S6.1.2.3 provide:

(a) upper torso restraint in the form of:

(i) belts passing over each shoulder of the child, or

(ii) a fixed or movable surface that complies with S5.2.2.1(c), and

(b) lower torso restraint in the form of:

(i) a lap belt assembly making an angle between 45° and 90° with the child restraint seating surface at the lap belt attachment points, or

(ii) a fixed or movable surface that complies with S5.2.2.1(c), and

(c) in the case of each seating system recommended for children over 20 pounds, crotch restraint in the form of:

(i) a crotch belt connectable to the lap belt or other device used to restrain the lower torso, or

(ii) a fixed or movable surface that complies with S5.2.2.1(c).

* * * * *

5. Section S5.5.2(f) of Standard No. 213 is revised to read as follows:

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and height of children who can safely occupy the system:

(i) This infant restraint is designed for use by children who weigh ——— pounds or less and whose height is ——— inches or less; or

(ii) This child restraint is designed for use only by children who weigh between ——— and ——— pounds and whose height is ——— inches or less and who are capable of sitting upright alone; or

(iii) This child restraint is designed for use only by children who weigh between ——— and ——— pounds and are between ——— and ——— inches in height.

* * * * *

6. Section S5.5.2(k) of Standard No. 213 is revised to read as follows:

* * * * *

(k) In the case of each child restraint system which can be used in a rear-facing position, one of the following statements:

(i) PLACE THIS CHILD RESTRAINT IN REAR-FACING POSITION WHEN USING IT WITH AN INFANT; or

(ii) PLACE THIS INFANT RESTRAINT IN A REAR-FACING POSITION WHEN USING IT IN THE VEHICLE.

* * * * *

§ 571.209 [Amended]

7. The last line in the chart accompanying section S4.1(g)(3) of Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), is amended to read as follows:

* * * * *

Lower	26.6 in	44.5 in

8. Section S4.2(d) of Standard No. 209 is revised to read as follows:

* * * * *

(d) *Resistance to abrasion.* The webbing of a seat belt assembly, after being subjected to abrasion as specified in S5.1(d) or S5.3(c), shall have a breaking strength of not less than 75 percent of the breaking strength listed in S4.2(b) for that type of belt assembly.

9. The second sentence of section S5.2(g) of Standard No. 209 is amended to read as follows:

* * * * *

(g) * * * Then the buckles shall be clamped or firmly held against a flat surface so as to permit normal movement of buckle part, but with the metal mating plate (metal-to-metal buckles) or of webbing end (metal-to-webbing buckles) withdrawn from the buckle.

* * * * *

10. The second sentence of section S5.2(k) of Standard No. 209 is amended to read as follows:

* * * * *

(k) * * * The retractor shall be examined for ferrous and nonferrous corrosion which may be transferred, either directly or by means of the webbing, to a person or his clothing during use of a seat belt assembly incorporating the retractor, and for ferrous corrosion on significant surfaces if the retractor is part of the attachment hardware.

* * * * *

11. The reference to "Figure 8" in the eighth sentence of S5.2(k) of Standard No. 209 is amended to read as a reference to "Figure 6".

12. The reference to "Figure 9" in the third sentence of section S5.3(c) of Standard No. 209 is amended to read as a reference to "Figure 7".

13. "Figure 8" of Standard No. 209 is amended to read "Figure 6".

14. "Figure 9" of Standard No. 209 is amended to read "Figure 7".

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on April 23, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80-13052 Filed 4-29-80; 4:14 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Illinois Central Gulf Railroad Co. Authorized To Operate Over Tracks Embargoed by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Third Revised Service Order No. 1429.

SUMMARY: This order amends Third Revised Service Order No. 1429, which authorized the Illinois Central Gulf Railroad to operate over embargoed tracks of the Milwaukee, by extending the expiration date until 11:59 p.m., June 15, 1980.

DATES: Effective date: 11:59 p.m., April 30, 1980. Expiration date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840.

Decided: April 24, 1980.

Upon further consideration of Service Order No. 1429, (45 FR 18000, 24893 and 23695), and good cause appearing therefor:

It is ordered,

§ *1033.1429 Third Revised Service Order No. 1429* (Illinois Central Gulf Railroad Company authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company) is amended by substituting the following paragraph (h) for paragraph (h) thereof:

(h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1980.

This action is taken under authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13354 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1033

Seattle & North Coast Railroad Co., Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Second Revised Service Order No. 1430.

SUMMARY: This order changes Revised Service Order No. 1430, which authorized the Seattle and North Coast Railroad to operate over Milwaukee tracks, by extending the expiration date until 11:59 p.m., June 15, 1980, and making paragraph (g) *Employees,* current.

DATES: Effective date: 11:59 p.m., April 30, 1980. Expiration date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: April 24, 1980.

By Order No. 290A, dated February 25, 1980, the United States District Court for the Northern District of Illinois, Eastern Division, authorized the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) to impose an embargo on all operations outside of the MILW "core system" as identified by the Court. The MILW was authorized to place an embargo on inbound traffic as of 11:59 p.m., February 27, 1980, and on originating traffic as of 11:59 p.m., February 29, 1980. The MILW placed Embargo No. 10–80 as directed by the Court, effective on these dates.

The Port Townsend/Port Angeles branch line, including Pier 27 and associated track in Seattle, located in King, Jefferson and Callam Counties, Washington, is included in this embargo. Seattle and North Coast Railroad Company (SNC) has entered into a preliminary agreement with MILW pursuant to which it agreed to purchase the branch line, including Pier 27, in order to assure uninterrupted service on the branch line in the face of the impending embargo.

SNC has also filed with the Commission an application for a certificate of public convenience and necessity pursuant to 49 U.S.C. 10901 which will permit it to acquire and operate the branch line. That application was docketed as Finance No. 29158 and currently is being handled under modified procedure.

It is the opinion of the Commission that an emergency exists requiring the operation by SNC over tracks embargoed by MILW in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days notice.

It is ordered,

§ 1033.1430 Second Revised Service Order No. 1430.

(a) *Seattle and North Coast Railroad Company authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company.* The Seattle and North Coast Railroad Company (SNC) is authorized to operate over tracks embargoed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) located in King, Jefferson, and Callam Counties, Washington, between Port Angeles and Port Townsend, including Pier 27 and associated track in Seattle.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) Nothing herein shall be considered as a prejudgement of the application of SNC seeking authority to operate over these tracks.

(d) Compensation will be on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 11123 (b)(2) of the Interstate Commerce Act.

(e) *Rates applicable.* Inasmuch as this operation by SNC over tracks previously operated by the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed, to, from, or via these lines which were formerly in effect on such traffic when routed via MILW, until tariffs naming rates and routes specifically applicable via SNC become effective.

(f) In transporting traffic over these lines, SNC and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

[1] (g) *Employees.* On March 4, 1980, number of rail carriers and labor unions reached an agreement regarding the proper level of employee protection entitled "*Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association*" (sometimes referred to as the Miami Accords and/or the 13 Principles). We have reviewed the negotiated labor protection agreement and find that it adequately safeguards the interests of affected employees.

Accordingly, if SNC chooses to exercise the authority granted by this decision, it shall afford affected employees the protection contemplated by the negotiated labor protection agreement and any subsequent amendments to it.

(h) We recognize that the order we are extending is pending before the United States Court of Appeals for the District of Columbia Circuit. However, for the reasons set forth in our original order, and in the absence of a stay having been entered by the Court, we believe the extension effectuated by this order is necessary.

[1](i) *Effective date.* This order shall become effective at 11:59 p.m., April 30, 1980.

[1](j) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under authority of 49 U.S.C. 10304–10305 and 11121–11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car servcie and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the **Federal Register.**

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13355 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1033

Norfolk & Western Railway Co., Authorized To Operate Over Tracks of Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Second revised service order No. 1449.

SUMMARY: This order revises Corrected Revised Service Order No. 1449, by changing paragraph (a) to include an additional 2500 feet of track connecting with the Chicago Regional Port District.

EFFECTIVE DATE: 11:59 p.m., April 28, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: April 25, 1980.

The embargo of the lines of Chicago, Rock Island and Pacific Railroad Company (RI) is depriving shippers of essential railroad service. The Norfolk and Western Railway Company (NW) connects with the RI and has consented to operate over its tracks in order to serve the industries located adjacent to those tracks, and to connect with the Chicago Regional Port District.

It is the opinion of the Commission that an emergency exists requiring the operation by NW over tracks formerly operated by RI in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1449 Second Revised Service Order No. 1449.

[1](a) *Norfolk and Western Railway Company authorized to operate over tracks of Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee).* Norfolk and Western Railway Company (NW) is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company (RI) running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four-plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which the RI track connects to Chicago Regional Port District track for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District.

Temporary service authorized in this Order requires the continuation of any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers. These trackage rights extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, and will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) A similar application has been received from Illinois Central Gulf Railroad Company to operate portions of RI tracks herein indicated. The Railroad Service Board has reviewed these applications and considered the recommendations of the Department of Transportation, and has approved the application of the NW to conduct these temporary operations in the public interest as listed in paragraph (a). Nothing herein shall be considered as a prejudgment of any application seeking permanent authority to operate over these tracks.

(d) Compensation will be on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 11123(b)(2) of the Interstate Commerce Act.

(e) *Rate applicable.* Inasmuch as this operation by the NW over tracks previously operated by the RI is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable via NW become effective.

The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(f) In transporting traffic over these lines, NW and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(g) *Employees.* On March 4, 1980, a number of rail carriers and labor unions reached an agreement regarding the proper level of employee protection entitled *"Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations operating through the Railway Labor Executives' Association"* (Negotiated Labor Protection Agreement). We have reviewed the negotiated labor protection agreement and find that it adequately safeguards the interests of affected employees.

Accordingly, if NW chooses to exercise the authority granted by this decision, it shall afford affected employees the protection contemplated by the negotiated labor protection agreement and any subsequent amendments to it.

[1] Changed.

[1] Changed.

[1](h) *Effective date.* This order shall become effective at 11:59 p.m., April 28, 1980.

(i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304–10305 and 11121–11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13359 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1033

Cedar Rapids & Iowa City Railway Co. Authorized To Operate Over Tracks Embargoed by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Second Revised Service Order No. 1431.

SUMMARY: This order changes Revised Service Order No. 1431, which authorized the Cedar Rapids and Iowa City Railway to operate over embargoed tracks of the Milwaukee, by extending the expiration date until 11:59 p.m., June 15, 1980, and by making paragraph (f) *Employees.*, current.

DATES: Effective Date: 11:59 p.m., April 30, 1980. Expiration Date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275–7840.

Decided: April 24, 1980.

By Order No. 290A, dated February 25, 1980, the United States District Court for the Northern District of Illinois, Eastern Division, authorized the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) to impose an embargo on all operations outside of the MILW "core system" as identified by the Court. The MILW was authorized to place an embargo on inbound traffic as of 11:59 p.m., February 27, 1980, and on originating traffic as of 11:59 p.m., February 29, 1980. The MILW placed Embargo No. 10–80 as directed by the Court, effective on these dates.

The Cedar Rapids and Iowa City Railway Company (CIC) requests an emergency service order to operate over embargoed Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) tracks in order to continue service to shippers on these lines.

It is the opinion of the Commission that an emergency exists requiring the operation by CIC over tracks embargoed by MILW in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days notice.

It is ordered,

§ 1033.143 Second Revised Service Order No. 1431.

(a) *Cedar Rapids and Iowa City Railway Company authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company.* The Cedar Rapids and Iowa City Railway Company (CIC), is authorized to operate over tracks embargoed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) between Middle Amana, Iowa, and Cedar Rapids, Iowa; over the Chicago, Rock Island and Pacific Railroad Company 4th Street Corridor in Cedar Rapids where MILW has been operating under trackage rights; and over certain terminal and industry tracks in Cedar Rapids between Milepost 86 and Milepost 87 in order to serve the 6th Street Power Station.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) Compensation will be on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 11123(b)(2) of the Interstate Commerce Act.

(d) *Rates applicable.* Inasmuch as this operation by CIC over tracks previously operated by the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed, to, from, or via these lines which were formerly in effect on such traffic when routed via MILW, until tariffs naming rates and routes specifically applicable via CIC become effective.

(e) In transporting traffic over these lines, CIC and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

[1](f) *Employees.* On March 4, 1980, a number of rail carriers and labor unions reached an agreement regarding the proper level of employee protection entitled *"Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations operating through the Railway Labor Executives' Association"* (sometimes referred to as the Miami Accords and/or the 13 Principles). We have reviewed the negotiated labor protection agreement and find that it adequately safeguards the interests of affected employees.

Accordingly, if CIC chooses to exercise the authority granted by this decision, it shall afford affected employees the protection contemplated by the negotiated labor protection agreement and any subsequent amendments to it.

[1](g) *Effective date.* This order shall become effective at 11:59 p.m., April 30, 1980.

[1](h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under authority of 49 U.S.C. 10304–10305 and 11121–11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

---

[1] Changed.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13360 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1033

Chicago & North Western Transportation Co. Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Third Revised Service Order No. 1432.

SUMMARY: This order amends Third Revised Service Order No. 1432, which authorized the Chicago and North Western Transportation Company to operate over the Milwaukee tracks, by extending the expiration date until 11:59 p.m., June 15, 1980.

DATES: Effective date: 11:59 p.m., April 30 1980. Expiration date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: April 24, 1980.

Upon further consideration of Third Revised Service Order No. 1432, (45 F.R. 18002, 23692 and 24893) and good cause appearing therefor:

It is ordered, § 1033, 1432 Third Revised Service Order No. 1432 Chicago and North Western Transportation Company authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company is amended by substituting the following paragraph (h) for paragraph (h) thereof:

(h) *Expiration date.* This provision of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

Effective date. This order shall become effective at 11:59 p.m., April 30, 1980.

This action is taken under authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commision at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13361 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1033

Escanaba & Lake Superior Railroad Co. Authorized To Operate Over Tracks Embargoed by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Revised Service Order No. 1433.

SUMMARY: This order amends Revised Service Order No. 1433, which authorized the Escanaba & Lake Superior Railroad to operate over embargoed tracks of the Milwaukee, by extending the expiration date until 11:59 p.m., June 15, 1980.

DATES: Effective Date: 11:59 p.m., April 30, 1980. Expiration Date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: April 24, 1980.

Upon further consideration of Revised Service Order No. 1433, (45 FR 18002, and 23694), and good cause appearing therefor:

It is ordered,

§ 1033.1433 Revised Service Order No. 1433 (Escanaba & Lake Superior Railroad Company authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company) is amended by substituting the following paragraph (i) for paragraph (i) thereof:

(i) *Expiration date.* This provision of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1980.

This action is taken under authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Buren, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13362 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1033

Consolidated Rail Corp. Authorized To Operate Over Tracks Embargoed by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Revised Service Order No. 1434.

SUMMARY: This order amends Revised Service Order No. 1434, which authorized Conrail to operate over embargoed tracks of the Milwaukee, by extending the expiration date until 11:59 p.m., June 15, 1980.

DATES: Effective date: 11:59 p.m., April 30, 1980. Expiration date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: April 24, 1980.

Upon further consideration of Revised Service Order No. 1434 (45 FR 18003 and 24894), and good cause appearing therefor:

It is ordered,

§ 1033.1434 Revised Service Order No. 1434.

Consolidated Rail Corporation authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, is amended by substituting the following paragraph (h) for paragraph (h) thereof:

(h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

Effective date. This order shall become effective at 11:59 p.m., April 30, 1980.

This action is taken under authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the

railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13363 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1033

Des Moines Union Railway Co. Authorized To Operate Over Tracks Embargoed by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Revised Service Order No. 1454.

SUMMARY: This order revises Service Order No. 1454, which authorized the Des Moines Union Railway to operate over the embargoed tracks of the Milwaukee, by making clear paragraph (d) Compensation, and by extending the expiration date until 11:59 p.m., June 15, 1980.

DATES: Effective date: 11:59 p.m., April 30, 1980. Expiration date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840.

Decided: April 24, 1980.

By Order No. 290A, dated February 25, 1980, the United States District Court for the Northern District of Illinois, Eastern Division, authorized the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) to impose an embargo on all operations outside of the MILW "core system" as identified by the Court. The MILW was authorized to place an embargo on inbound traffic as of 11:59 p.m., February 27, 1980, and on originating traffic as of 11:59 p.m., February 29, 1980. The MILW placed Embargo No. 10-80 as directed by the Court, effective on these dates. A subsequent court order authorized the Trustee to embargo additional lines named in Embargo No. 13-80, effective 11:59 p.m., March 23, 1980.

The lines from Des Moines to Grimes, Iowa, are included in this embargo. Des Moines Union Railway Company (DMU) has applied to the Railroad Service Board to operate those lines. MILW has consented to the use of these lines by DMU.

It is the opinion of the Commission that an emergency exists requiring the operation by DMU over tracks embargoed by MILW in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days notice.

It is ordered,

§ 1033.1454 Revised Service Order No. 1454.

(a) *Des Moines Union Railway Company authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company.* Des Moines Union Railway Company (DMU) is authorized to operate over tracks embargoed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) between Des Moines (Milepost 0) and Clive (Milepost 8.5 in the 25th Sub Division of the Illinois-Iowa Division) and between Clive (Milepost 0) and Grimes, Iowa (Milepost 7 in the 27th Sub Division of the Illinois-Iowa Division), a total of 15.5 miles, for the purpose of serving industries located adjacent to such tracks.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) Nothing herein shall be considered as a prejudgment of any application seeking permanent authority to operate over these tracks.

* (d) Compensation will be on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 11123(b)(2) of the Interstate Commerce Act.

(e) *Rates applicable.* Inasmuch as this operation by DMU over tracks previously operated by the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via MILW, until tariffs naming rates and routes specifically applicable via DMU become effective.

(f) In transporting traffic over these lines, DMU and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(g) *Employees.* On March 4, 1980, a number of rail carriers and labor unions reached an agreement regarding the proper level of employee protection entitled *"Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations operating through the Railway Labor Executives' Association"* (Negotiated Labor Protection Agreement). We have reviewed the negotiated labor protection agreement and find that it adequately safeguards the interests of affected employees.

Accordingly, if DMU chooses to exercise the authority granted by this decision, it shall afford affected employees the protection contemplated by the negotiated labor protection agreement and any subsequent amendments to it.

* (h) *Effective date.* This order shall become effective at 11:59 p.m., April 30, 1980.

* (i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13364 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

LaSalle & Bureau County Railroad Co. Authorized To Operate Over Tracks Embargoed by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Service Order No. 1457.

SUMMARY: This order amends Service Order No. 1457 which authorized the LaSalle and Bureau County Railroad to operate over embargoed tracks of the Milwaukee, by extending the expiration date until 11:59 p.m., June 15, 1980.

DATES: Effective date 11:59 p.m., April 30, 1980. Expiration date: 11:59 p.m., June 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided, April 24, 1980.

Upon further consideration of Service Order No. 1457, (45 FR 23696), and good cause appearing therefor:

It is ordered, § *1033.1457 Service Order No. 1457.* The LaSalle and Bureau County Railroad Company Authorized to operate over tracks embargoed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company is amended by substituting the following paragraph (i) for paragraph (i) thereof:

(i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This order shall become effective at 11:59 p.m., April 30, 1980.

This action is taken under the authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13365 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

Chesapeake & Ohio Railway Co. Authorized To Operate Over Tracks of Consolidated Rail Corporation

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Service Order No. 1380.

SUMMARY: This order amends Service Order No. 1380, which authorized the Chesapeake and Ohio Railway Company to operate over Conrail tracks, by reestablishing its expiration date in order to affect greater control of utilization.

DATES: Effective date: 12:01 a.m., April 26, 1980. Expiration date: 11:59 p.m., May 31, 1980, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: April 24, 1980.

Upon further consideration of Service Order No. 1380 (42 FR 38379, 43 FR 2725, 36639, and 44 FR 29894), and good cause appearing therefor:

It is ordered, § *1033.1380 Service Order No. 1380* (the Chesapeake and Ohio Railway Company authorized to operate over tracks of Consolidated Rail Corporation) is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1980, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 12:01 a.m., April 26, 1980.

(49 U.S.C. (10304–10305 and 11121–11126))

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13366 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Threatened Fish and Wildlife; Green, Loggerhead, and Olive Ridley Sea Turtles

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Technical amendment.

SUMMARY: Regulations listing three species of sea turtles as threatened species under the Endangered Species Act of 1973 were published on July 28, 1978 (43 FR 32800). This technical amendment clarifies the effective date of that listing as September 6, 1978.

EFFECTIVE DATE: May 1, 1980.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, NOAA Assistant General Counsel for Enforcement and Litigation, Page Building 1, Room 280, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 254–8350.

SUPPLEMENTARY INFORMATION: Regulations published July 28, 1978, (43 FR 32800), listed the green sea turtle (*Chelonia mydas*), the loggerhead sea turtle (*Caretta caretta*), and the olive (Pacific) ridley sea turtle (*Lepidochelys olivacea*) as threatened species under the Endangered Species Act of 1973. (Although not relevant here, certain green and Pacific turtle populations were listed as endangered species.) The rule prohibited interstate commerce and sale of these species and was made effective 30 days after Federal Register publication by the Environmental Protection Agency of the availability of a final Environmental Impact Statement. That statement was published on August 4, 1978 (43 FR 34479), making the listing effective on September 6, 1978.

The regulations provided limited "grace periods" during which interstate shipment and sale of specimens taken prior to the effective date of the listing, and during which ongoing scientific and propagation projects begun prior to the effective date of the listing, could legally continue. The method of publication

created some confusion as to the effective date of the listing, which was also the beginning date of the grace periods. The technical amendment published today clarifies the effective date of the listing.

As a technical amendment, this regulation is not significant within the meaning of Executive Order 12044, and does not require preparation of an Environmental Impact Statement under the National Environmental Policy Act of 1969. Since this revision makes no substantive change to Part 227, the public comment and delayed effectiveness provisions of the Administrative Procedure Act are found to be unnecessary. This revision is therefore effective May 1, 1980.

Signed in Washington, D.C., this 26th day of April 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

Accordingly, 50 CFR Part 227 is amended as follows:

Add the following sentence at the end of § 227.4:

§ 227.4 Enumeration of threatened species.

* * * The effective date of the listing of the species in paragraphs (a), (b), and (c) of this section is September 6, 1978.

[FR Doc. 80-13393 Filed 4-30-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 86
Thursday, May 1, 1980

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

Federal Crop Insurance Corporation

7 CFR Ch. IV

Crop Insurance Regulations—Various Commodities; Sunset Review Dates

AGENCY: Federal Crop Insurance Corporation.

ACTION: Notice of sunset review dates.

SUMMARY: This notice provides the "Sunset Review" dates for all regulations for insuring crops promulgated by the Federal Crop Insurance Corporation as required by the provisions of Executive Order No. 12044, "Improving Government Regulations", published on March 24, 1978 (43 FR 12661). This notice is provided as a service to the general public under the authority of the Federal Crop Insurance Act, as amended, by listing each regulation, the date it was last published, the Code of Federal Regulations citation, the Federal Register page number, and the projected Sunset Review date.

EFFECTIVE DATE: May 1, 1980.

ADDRESS: Any comments or suggestions on this notice should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone–447–3325.

SUPPLEMENTARY INFORMATION: Executive Order No. 12044 requires in part that no regulation be permitted to be in force for more than 5 years without being reviewed under criteria established in the Executive Order.

The Federal Crop Insurance Corporation has for many years conducted a review on each of the crop insurance regulations every 1 or 2 years in order to provide for changes brought about by crop planting practices, harvest dates, etc. Therefore, the Corporation is in full accord with the requirement for a "sunset review" date for each of its existing regulations.

Accordingly, the Federal Crop Insurance Corporation hereby publishes the sunset review date for each of its regulations as follows:

CFR citation	Crop insured	Date last published	FEDERAL REGISTER page	Sunset review date
7 CFR 401.137	Tomato	Jan. 17, 1978	43 FR 2370	Jan. 17, 1983.
7 CFR 401.155	Potato	Apr. 7, 1978	43 FR 14638	Apr. 7, 1983.
7 CFR 401.156	Sweet corn	Apr. 7, 1978	43 FR 14638	Apr. 7, 1983.
7 CFR Part 402	Raisins	June 25, 1979	44 FR 36929	June 25, 1984.
7 CFR Part 403	Peaches	Dec. 1, 1978	43 FR 56205	Dec. 1, 1983.
7 CFR Part 404	Western apples	Nov. 29, 1976	41 FR 52289	Nov. 29, 1981.
7 CFR Part 406	California oranges	Aug. 8, 1977	42 FR 39953	Aug. 8, 1982.
7 CFR Part 408	Eastern apples	Dec. 9, 1976	41 FR 53803	Nov. 10, 1981.
7 CFR Part 409	Arizona citrus	Aug. 8, 1977	42 FR 39956	Aug. 8, 1982.
7 CFR Part 410	Florida citrus	May 16, 1977	42 FR 24712	May 16, 1982.
7 CFR Part 411	Grape	Sept. 1, 1976	41 FR 36792	Sept. 1, 1981.
7 CFR Part 413	Texas citrus	June 2, 1977	42 FR 28141	June 2, 1982.
7 CFR Part 414	Forage seeding	Apr. 20, 1978	43 FR 16693	Apr. 20, 1983.
7 CFR Part 415	Forage production	Aug. 30, 1978	43 FR 38682	Aug. 30, 1983.
7 CFR Part 416	Pea	May 1, 1979	44 FR 25397	May 1, 1984.
7 CFR Part 417	Sugarcane	June 21, 1979	44 FR 36161	June 21, 1984.
7 CFR Part 418	Wheat	Jan. 23, 1979	44 FR 4687	Jan. 23, 1984.
7 CFR Part 419	Barley	June 19, 1979	44 FR 35195	June 19, 1984.
7 CFR Part 420	Grain sorghum	Sept. 20, 1979	44 FR 54453	Sept. 20, 1984.
7 CFR Part 421	Cotton	Sept. 28, 1979	44 FR 55792	Sept. 28, 1984.
7 CFR Part 423	Flax	Nov. 26, 1979	44 FR 67343	Nov. 26, 1984.
7 CFR Part 424	Rice	Nov. 26, 1979	44 FR 67349	Nov. 26, 1984.
7 CFR Part 425	Peanut	Nov. 28, 1979	44 FR 67953	Nov. 28, 1984.
7 CFR Part 426	Combined crop	Nov. 29, 1979	44 FR 68431	Nov. 29, 1984.
7 CFR Part 427	Oat	Oct. 22, 1979	44 FR 60701	Oct. 22, 1984.
7 CFR Part 428	Sunflower	Nov. 26, 1979	44 FR 67355	Nov. 26, 1984.
7 CFR Part 429	Rye	Oct. 22, 1979	44 FR 60709	Oct. 22, 1984.
7 CFR Part 430	Sugar beet	June 19, 1979	44 FR 35201	June 19, 1984.
7 CFR Part 431	Soybean	Nov. 8, 1979	44 FR 64786	Nov. 8, 1984.
7 CFR Part 432	Corn	Nov. 26, 1979	44 FR 67361	Nov. 26, 1984.
7 CFR Part 433	Dry bean	Nov. 29, 1979	44 FR 68435	Nov. 29, 1984.
7 CFR Part 434	Tobacco, dollar	Dec. 20, 1979	44 FR 75356	Dec. 20, 1984.
7 CFR Part 435	Tobacco, quota	Dec. 19, 1979	44 FR 75095	Dec. 19, 1984.
7 CFR Part 436	Tobacco, guarantee	Dec. 20, 1979	44 FR 75363	Dec. 20, 1984.

Issued in Washington, D.C., on April 25, 1980.
Dated: April 25, 1980.

Approved by
James D. Deal,
Manager.
Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

[FR Doc. 80-13311 Filed 4-30-80; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Parts 401, 437

Proposed Canning and Freezing Sweet Corn Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes procedures for insuring canning and freezing sweet corn effective with the 1981 crop year. This rule combines provisions from previous regulations for insuring canning and freezing sweet corn in a shorter, clearer, more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions must be submitted not later than June 30, 1980, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, D.C. 20250, telephone 202–447–3325.

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order No. 12044, and has been classified as "not significant".

Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), it is proposed that there be established a new Part 437 of Chapter IV in Title 7 of the Code of Federal Regulations to be known as

7 CFR Part 437 Canning and Freezing Sweet Corn Crop Insurance Regulations.

This part prescribes procedures for insuring canning and freezing sweet corn effective with the 1981 crop year. All previous regulations applicable to insuring canning and freezing sweet corn as found in 7 CFR 401.101–401.111, and 401.156 (43 FR 14638), will not be applicable to 1981 and succeeding canning and freezing sweet corn crops but will remain in effect for Federal Crop Insurance (FCIC) canning and freezing sweet corn insurance policies issued prior to 1981.

It has been determined that combining all previous regulations for insuring canning and freezing corn crops into one shortened, simplified, and clearer regulation would be more effective administratively, at the same time providing fewer documents for the policyholder to be concerned with.

In addition, proposed 7 CFR Part 437 provides (1) for a premium adjustment table which provides up to 50 percent premium discount for good insuring experience and premium increases for unfavorable insuring experience, which replaces the present premium discount system, (2) that any premium not paid by the termination date will be increased by a 9 percent charge, with a 9 percent simple interest applying to any balance at the end of each subsequent 12-month period thereafter, (3) that the 15-day period for submitting a notice of damage or loss be changed to 30 days, and the 60-day period for filing a claim be eliminated, (4) that there be three coverage level options in each county, with the imposed level being provided on the actuarial table and the conversion level being the one closest to the present level for the county, and (5) that the termination date for indebtedness will now be March 31.

In addition, § 437.5 of the proposed Canning and Freezing Sweet Corn Crop Insurance Regulations titled "Good Faith Reliance on Misrepresentation" increases the limitation from $5,000 to $20,000 in those cases involving good faith reliance on misrepresentation wherein the Manager of the Corporation (FCIC) is authorized to take action to grant relief.

All written submissions made pursuant to this notice will be available for public inspection in the Office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.156, but these provisions shall remain in effect for FCIC canning and freezing sweet corn insurance policies issued for crop years prior to 1981. The Corporation also proposes to issue a new Part 437 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1981 and subsequent crop years, which shall remain in effect until amended or superseded to read as follows:

PART 437—SWEET CORN CROP INSURANCE

Subpart—Regulations for the 1981 and Succeeding Crop Years

Sec.

437.1 Availability of Sweet Corn Insurance.
437.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
437.3 Public notice of indemnities paid.
437.4 Creditors.
437.5 Good faith reliance on misrepresentation.
437.6 The contract.
437.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

§ 437.1 Availability of Sweet Corn Insurance.

Insurance shall be offered under the provisions of this subpart on sweet corn in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which sweet corn insurance will be offered.

§ 437.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sweet corn which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 437.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 437.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 437.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sweet corn insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured

person shall be granted relief the same as if otherwise entitled thereto.

§ 437.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of duly executed applications for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 437.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the sweet corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1978 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a canning and freezing sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Sweet Corn Insurance Policy for the 1981 and succeeeding crop years, and the Appendix to the Sweet Corn Insurance Policy are as follows:

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Application for 19—— and Succeeding Crop Years

Sweet Corn; Crop Insurance Contract

Contract Number——————
Identification Number ——————
Name and Address——————
Zip Code ——————
County ——————
State ——————
Type of Entity ——————
Applicant is over 18 Yes—— No——

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the sweet corn planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. The premium rates and production guarantees shall be those shown on the applicable county actuarial table filed in the office for the county for each crop year.
Level Election——— Price Election——— —

Example: For the 19—— Crop Year Only (100% Share)

Location/ farm No.	Guarantee per acre*	Preimum per acre**	Practice
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

*Your grarantee will be on a unit basis (acres x per acre guarantee x share).

**Your premium is subject to adjustment in accordance with section 5(c) of the policy.

B. When notice of acceptance of this application is mailed to the applicant by the corporation, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, and shall continue for each succeeding crop year until canceled or terminated as provided in the contract. This accepted application, the following sweet corn insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, and insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness To Signature) ——————
(Signature of Applicant)——————
(Date)——————, 19——
Address of Office for County: ——————
——————
Phone ——————
Location of Farm Headquarters: ——————
——————
Phone——————

Sweet Corn Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix:

1. Causes of loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

(c) In addition to the causes of loss not insured against listed in section 1(b) above, the Corporation shall consider as uninsured any loss of production resulting solely from acreage not being timely harvested, unless the Corporation determines that, due to unusual weather conditions, a substantial percentage of contracted acreage in the area was ready for harvest at the same time. The uninsured loss of production resulting from failure to timely harvest will be appraised and counted as production by the Corporation as tons of sweet corn which were available for timely harvesting.

2. Crop and Acreage Insured. (a) The crop insured shall be canning and freezing sweet corn which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre, and which is grown under a contract executed with a processor by the date established by the Corporation for reporting acreage: *Provided,* That an instrument in the form of a "lease" under which the insured grower retains possession of the land on which the sweet corn is grown and which provides for delivery of the sweet corn under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a processor contract under which the insured has the interest in the crop.

(b) The acreage insured for each crop year shall be that acreage planted to sweet corn on insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided,* That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (2) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the

actuarial table, (3) which is destroyed and after such destruction it was practical to replant to sweet corn and such acreage was not replanted, (4) initially planted after the date on file in the office for the county which has been established by the Corporation as being too late to initially plant and expect a normal crop to be produced, (5) of volunteer sweet corn, (6) planted to a type or variety of sweet corn not established as adapted to the area or shown as noninsurable on the actuarial table, (7) planted with another crop, or (8) planted for the development or production of hybrid seed for experimental purposes.

3. Responsibility of Insured to Report Acreage and Share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of sweet corn planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre (ears and husks) shall be in tons as shown on the county actuarial table and the guarantee for any unharvested acreage shall be decreased 20 percent.

5. Annual Premium. (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

BILLING CODE 3410-08-M

% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 – .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 – .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 – .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 – .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 – 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

	Number of Loss Years Through Previous Year 2/															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 – 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 – 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 – 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 – 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 – 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 – 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 – 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 – 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 – 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 – Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

BILLING CODE 3410-08-C

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided,* When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however,* if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of agriculture, when not prohibited by law.

6. Insurance Period. Insurance on insured acreage shall attach at the time the sweet corn is planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) harvest, (c) September 20, or (d) total destruction of the insured sweet corn crop. *Provided, however,* That if any acreage is not timely harvested, insurance shall be deemed to have ceased when the acreage should have been harvested, as determined by the Corporation, *unless* the Corporation determines that, due to unusual weather conditions, a substantial percentage of contracted acreage in the area was ready for harvest at the same time.

7. Notice of Damage or Loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the sweet corn on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to sweet corn. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall given written notice thereof to the Corporation at the office for the county not later than *30 days* after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire sweet corn crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) In addition to the notices of loss required in section 7, written notice shall be given the Corporation at the office for the county (1) no later than 48 hours after harvesting of the sweet corn has been discontinued on a unit, or (2) before harvest would normally start if any acreage on a unit is not to be harvested. If such notice is not given, the Corporation shall appraise the tons of unharvested production, and if there is insufficient evidence upon which to base an appraisal, the appraisal on such acreage shall be the production guarantee.

(e) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(f) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of sweet corn on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of sweet corn on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of sweet corn to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided,* That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production. Appraised production to be counted shall include: (1) the greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted before harvest of sweet corn becomes general in the current crop year to any other crop insurable on such acreage (excluding small grains normally maturing for harvest in the following calendar year), (2) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (3) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (4) only the appraisal in excess of 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However,* if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of sweet corn becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and Fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of Insured Share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and Access to Farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract: Cancellation and Termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided,* That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State	Cancellation date	Termination date for indebtedness
All counties	Dec. 31	Mar. 31.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix—Additional Terms and Conditions

1. Meaning of Terms. For the purposes of sweet corn crop insurance:

(a) "Acturial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the sweet corn crop is normally grown and shall be designated by the calendar year in which the sweet corn crop is normally harvested.

(d) "Harvest" means the removal of the ears and husks from the stalks and the delivery thereof to the processor; sweet corn used for any purpose other than for canning and freezing shall be considered as unharvested.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county acturial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured sweet corn crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the sweet corn crop or proceeds therefrom.

(k) "Unit means all insurable acreage of sweet corn in the county on the date of planting for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage Insured. (a) The Corporation reserves the right to limit the insured acreage of sweet corn to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of sweet corn.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Irrigated Acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. Annual Premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however*, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. Claim for and Payment of Indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured sweet corn acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However*, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. Termination of the Contract. (a) The contract shall terminate if no preimum is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. Coverage Level and Price Election. (a) If the insured has not elected on the application

a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and/or price election for any crop year on or before the closing date for submitting applications for that crop year.

9. Assignment of Indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. Contract Changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 and OMB Circular A-40.

Approved by the Board of Directors on March 14, 1980.

Dated: April 24, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 80-13319 Filed 4-30-80; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 908

Handling of Valencia Oranges Grown in Arizona and Dessignated Part of California; Proposed Amendment of Size Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would continue through January 31, 1981, the current minimum size requirement of 2.32 inches in diameter for fresh shipments of Valencia oranges grown in Arizona and designated part of California. This proposal would also establish a maximum size requirement of 3.41 inches in diameter for such oranges during the period July 4, 1980, through January 31, 1981. This proposed action is designed to provide markets with acceptable sizes of fruit and to promote orderly marketing in the interest of producers and consumers.

DATES: Comments must be received not later than May 21, 1980.

ADDRESES: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202-447-5975.

SUPPLEMENTARY INFORM Valencia Orange Regulation 640 (§ 908.940; 45 FR 23638) during the period April 11, 1980, through June 12, 1980, limits shipments of Valencia oranges grown in Arizona or a designated part of California to oranges not smaller than 2.32 inches in diameter. The proposal would continue this requirement through January 31, 1981. It would also require that such oranges be not larger than 3.41 inches in diameter during the period July 4, 1980, through January 31, 1981.

This proposal is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal is based upon a recommendation of the Valencia Orange Administrative Committee.

The 1979-80 Valencia orange crop is currently estimated by the committee at 57,000 carlots. The committee reports that demand in regulated fresh market channels is expected to require about 35 percent of this volume. The remaining 65 percent would be available for utilization in export and processing outlets. The committee indicates that volume and size composition of the crop of Valencia oranges are such that more than ample supplies of the more desirable sizes will be available to satisfy the demand in regulated channels. The committee reports that when more than ample supplies of desirable sizes are available for shipment, disposition of the sizes which are proposed to be restricted by this amendment can be accomplished only at a substantial price discount and this tends to depress the market for all sizes of fruit. Oranges of the restricted sizes may be disposed of in processing and export markets.

This proposed action is consistent with the marketing policy for 1979-80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

The proposal is that § 908.940 Valencia Orange Regulation 640 (45 FR 23638) be amended to read as follows:

§ 908.940 Valencia Orange Regulation 640.

Order. (a) During the period June 13, 1980, through January 31, 1981, no handler shall handle any Valencia oranges grown in Districts 1, 2, or 3 which are of a size smaller than 2.32 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the Valencia oranges contained in any type of container may measure smaller than 2.32 inches in diameter.

(b) During the period July 4, 1980, through January 31, 1981, no handler shall handle any Valencia oranges grown in Districts 1, 2, or 3 which are of a size larger than 3.41 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the Valencia oranges contained in any type of container may measure larger than 3.41 inches in diameter.

(c) As used in this section, "handler," "handle," "District 1," "District 2," and "District 3" mean the same as defined in the marketing order.

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

Dated: April 28, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-13412 Filed 4-28-80; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-SW-11]

Designation of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend VOR Federal Airway V-194 from Hobby, Tex., to Lafayette, La. This action would improve traffic flow in the area, reduce delays in the vicinity of Galveston, Tex., and aid flight planning.

DATES: Comments must be received on or before June 2, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-SW-11, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communiçations received on or before June 2, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice man be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart C of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would extend VOR Federal Airway V-194 from Lafayette, La., to Hobby, Tex., via Sabine Pass, Tex. The extension of V-194 would permit more flexibility for operations between Lafayette and Hobby. In addition, traffic flow within these terminal areas would be improved thereby reducing departure/arrival delays. Subpart C of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 307).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) as follows:

Under V-194

V-194 is rewritten as follows:

"From Hobby, Tex., via INT Hobby 091° and Sabine Pass, Tex., 265° radials; Sabine Pass; Lafayette, La.; Baton Rouge, La.; McComb, Miss.; INT McComb 055° and Meridian, Miss.; 221° radials; Meridian. From Liberty, N.C., via Raleigh-Durham, N.C.; Tar River, N.C.; Cofield, N.C., to INT Cofield 077° and Norfolk, Va., 209° radials."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on April 24, 1980.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-13191 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 121, 127, and 135

[Docket No. 20298; Notice No. 80-8]

Air Carrier Certification and Operations; Operation of Foreign-Registered Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The FAA proposes to amend its rules to allow U.S. air carriers to operate foreign-registered aircraft, subject to certain conditions and limitations, in foreign air transportation and between points within the United States. This proposal would implement the "International Air Transportation Competition Act of 1979" (Pub. L. 96-192) which, among other things, amended section 1108 (b) of the Federal Aviation Act of 1958 to allow U.S. air carriers to engage in otherwise authorized common carriage and carriage of mail with foreign-registered aircraft under lease or charter to them without crew. The proposed changes would make available to U.S. air carriers, including commuters, a new source for aircraft and for equipment financing and will assist those carriers in achieving increased operational efficiency.

DATE: Comments must be received on or before June 30, 1980.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 20298, 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to: Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C.

Comments delivered must be marked: Docket No. 20298. Comments may be examined in Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gilbert Kemper, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to any significant environmental or economic impact that might result

because of the adoption of these proposals may also be submitted. Communications should identify the regulatory docket or notice number and be submitted or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–204, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 20298." The postcard will be dated and time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Each communication must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

Background

Section 121.153(a)(1) of the Federal Aviation Regulations (FAR) prohibits the holder of an air carrier or commercial operator operating certificate under Part 121 from operating an aircraft that is not registered as a civil aircraft of the United States. Section 135.25 of the FAR contains a similar prohibition.

Although Part 127 does not contain an explicit prohibition on the use of foreign-registered aircraft, those aircraft may not be used under Part 127 in air commerce within the United States by virtue of section 1108(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1508).

Prior to February 15, 1980, section 1108(b) of the Federal Aviation Act provided, in pertinent part, that foreign-registered civil aircraft permitted to navigate within the United States could be authorized by the Civil Aeronautics Board to engage in air commerce within the United States. However, they could not take on at any point within the United States persons, property, or mail carried for compensation or hire and destined for another point within the United States. In addition to implementing this provision of law, § 121.153(a)(1) has the effect of prohibiting carriage between a point in the United States and a point outside the United States, and between points outside the United States. Current § 135.25(a)(1) has the same effect for operations conducted under Part 135. Part 127 is applicable only to an air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board when that air carrier engages in scheduled interstate air transportation using helicopters within the 48 contiguous states and the District of Columbia.

The "International Air Transportation Competition Act of 1979" (Pub. L. 96–192), which became effective February 15, 1980, amended the third sentence of section 1108(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1508(b)) as follows [italicized portion is new]:

> Foreign civil aircraft permitted to navigate in the United States under this subsection may be authorized by the Board to engage in air commerce within the United States except that they shall not take on at any point within the United States, persons, property, or mail carried for compensation or hire and destined for another point within the United States, *unless specifically authorized under section 416(b)(7) of this Act or under regulations prescribed by the Secretary authorizing United States air carriers to engage in otherwise authorized common carriage and carriage of mail with foreign-registered aircraft under lease or charter to them without crew.*

The new law enhances the ability of the industry to increase aircraft utilization and to obtain aircraft financing from other than U.S. sources. it should open up a previously virtually untapped source of aircraft equipment for the broad spectrum of air carriers ranging from the very large trunk carrier to the smallest commuter or air taxi air carrier. For example, aircraft purchased by foreign owners from U.S. manufacturers could be leased to U.S. carriers for relatively long periods of time. As another example, a U.S. air carrier could lease a foreign-registered aircraft during its peak season and return the aircraft for the foreign air carrier's peak season. As still another example, the new statute and these proposals should encourage and facilitate interchange lease arrangements in which an authorized foreign air carrier would operate an aircraft to an interchange point at which the U.S. air carrier would take operational control for operation over its routes. Commuter air carriers should find these proposals especially beneficial in obtaining aircraft for use in providing essential air service to small communities.

The Proposal

To implement Pub. L. 96–192, the FAA proposes to amend §§ 121.153, 127.71, and 135.25 of the FAR to allow a U.S. air carrier to operate, in common carriage and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a foreign country which is a party to the Convention on International Civil Aviation (the Chicago Convention). Four specific requirements are proposed which would have to be met before the aircraft could be operated.

First, the aircraft would be required to carry an appropriate airworthiness certificate issued by the country of registration and to meet the registration and identification requirements of that country. This is necessary to comply with the Chicago Convention.

Second, the aircraft would be required to comply with all the requirements in the FAR (14 CFR Chapter 1) that would be applicable if the aircraft were registered in the United States. This includes all the requirements which must be met for the issuance of a U.S. standard airworthiness certificate, although a U.S. standard airworthiness certificate would not be issued for the aircraft. The intent of this requirement is that the foreign-registered aircraft and its operation would comply in all respects with the FAR as if it were a U.S.-registered aircraft operated by the air carrier. This would ensure that there would be no reduction in the level of safety currently provided by U.S. air carriers. Thus, among other things, the aircraft type design must be type certificated by the FAA and the particular aircraft involved must meet all the requirements for a U.S. standard airworthiness certificate, except the requirement for a U.S. registration certificate. This means the aircraft must conform to the FAA type certificate and be in a condition for safe operation, including compliance with all effective U.S. and foreign airworthiness directives, maintenance, and life-limited parts requirements. Certification and maintenance rules, operating and

equipment rules, and pilot certification, qualification, checking, training, and competency rules applicable to the operation of a U.S.-registered aircraft of the same type also would apply. However, the foreign-registered aircraft would not be eligible for or receive a U.S. standard airworthiness certificate or be registered in the United States. In addition to the requirement to hold a U.S. airman certificate, it may be necessary for the airman to hold an appropriate foreign airman certificate.

It is the intention of the proposals in §§ 121.153(c)(ii), 127.71(b)(ii), and 135.25(d)(ii) that the foreign-registered aircraft would have to comply with the noise provisions of the Federal Aviation Regulations to the same extent that a U.S.-registered aircraft would be required to comply for the operations conducted. For example, compliance would have to be shown with the requirements of the "new production" (Section 36.1(d)) and "acoustical change" (Section 36.7) rules in Part 36 and the operating noise limits rule in Subpart E of Part 91 as if the aircraft were (or would be) certificated and registered in the United States. Thus, a U.S. air carrier operating a foreign-registered aircraft would include that aircraft in the compliance plan/status report submitted to the FAA under § 91.308. In addition, if the FAA adopts or amends any other noise requirements applicable to U.S.-registered aircraft, those requirements would apply to foreign-registered aircraft operated by U.S. air carriers pursuant to any rules adopted as a result of this notice.

To enable the FAA to have a listing of all foreign-registered aircraft operated by U.S. air carriers, it is proposed that the certificate holder file a copy of the lease or charter agreement with the FAA Aircraft Registry at Oklahoma City.

Finally, the proposal provides the aircraft must be operated by airmen employed by the certificate holder. This is consistent with the requirement in Pub. L. 96–192 that the lease or charter be without crew.

Each commenter is requested to provide detailed comments on implementation aspects of these proposals, including suggestions for any additional procedures or advisory materials which the commenter believes would be helpful. These comments and suggestions should include consideration of how the laws and regulations of foreign countries might affect implementation and administration of these proposals, and whether there may be circumstances that do not dictate that all the U.S. requirements be met. We specifically invite comments that address the foregoing points.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Parts 121, 127, and 135 of the Federal Aviation Regulations (14 CFR Parts 121, 127, and 135), as follows:

1. By amending § 121.153(a) and adding a new paragraph (c) to read as follows:

§ 121.153 Aircraft requirements: general.

(a) Except as provided in paragraph (c) of this section, no certificate holder may operate an aircraft unless that aircraft—

* * * * *

(c) A certificate holder may operate in common carriage, and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The aircraft carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that State;

(2) The aircraft complies with all of the requirements of this chapter (14 CFR Chapter I) that would be applicable to that aircraft were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type certification, type design conformity, condition for safe operation, and the noise requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the aircraft;

(3) The aircraft is operated by U.S. certificated airmen employed by the certificate holder; and

(4) The certificate holder files a copy of the aircraft lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

2. By amending § 127.71 by redesignating the present paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 127.71 General.

(a) * * * * *

(b) An air carrier may operate a civil helicopter which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The helicopter carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that State;

(2) The helicopter complies with all of the requirements of this chapter (14 CFR Chapter I) that would be applicable to that helicopter were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type certification, type design conformity, condition for safe operation, and the noise requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the helicopter;

(3) The helicopter is operated by U.S. certificated airmen employed by the air carrier; and

(4) The air carrier files a copy of the helicopter lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

3. By amending § 135.25(a) and adding a new paragraph (d) to read as follows:

§ 135.25 Aircraft requirements.

(a) Except as provided in paragraph (d) of this section, no certificate holder may operate an aircraft under this part unless that aircraft—

* * * * *

(d) A certificate holder may operate in common carriage and for the carriage of mail a civil aircraft which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The aircraft carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that State;

(2) The aircraft complies with all of the requirements of this chapter (14 CFR Chapter I) that would be applicable to that aircraft were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type certification, type design conformity, condition for safe operation, and the noise requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness

certificate will not be issued for the aircraft;

(3) The aircraft is operated by U.S. certificated airmen employed by the certificate holder; and

(4) The certificate holder files a copy of the aircraft lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

(Secs. 313(a), 601, 603, 604, 610(b), 611, and 1108(b), Federal Aviation Act of 1958 (49 U.S.C. §§ 1354(a), 1421, 1423, 1424, 1430(b), 1431, and 1508(b)); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); 49 CFR § 1.47; and 14 CFR 11.45)

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under Executive Order 12044 as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by writing to the individual listed above as the information contact.

Issued in Washington, D.C., on April 25, 1980.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 80-13367 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-11136, File No. S7-832]

Exemption of Certain Purchase or Sale Transactions Between a Registered Investment Company and Certain Affiliated Persons Thereof

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is today publishing for public comment an amendment to a rule under the Investment Company Act of 1940 to exempt from certain provisions of the Act, provided that certain conditions are satisfied, the purchase or sale of certain securities between registered investment companies which are affiliated persons, or affiliated persons of affiliated persons, of each other, or between a registered investment company and a person, which is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers, and/or common directors. Absent this amendment, such a transaction would be permissible only upon the issuance, pursuant to an application, of an exemptive order by the Commission.

DATE: Comments must be received by June 5, 1980.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549. (Refer to File No. S7-832.) All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mark J. Mackey, Esq., Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 2272-3045.

SUPPLEMENTARY INFORMATION: The Commission today proposed for public comment an amendment to rule 17a-7 (17 CFR 270.17a-7) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a-1 et seq.) to exempt from section 17(a) of the Act (15 U.S.C. 80a-17(a)) certain purchase or sale transactions between registered investment companies which are affiliated persons, or affiliated persons of affiliated persons, of each other, or between a registered investment company and a person which is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers, and/or common directors. This proposed amendment to rule 17a-7 was developed by the Division of Investment Management's Investment Company Act Study Group in the context of its re-examination of the regulation of investment companies.

Background

Section 17(a) of the Act, in part, prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, knowingly from selling to, or purchasing from, the registered investment company any security.[1] Section 2(a)(3)(C) of the Act (15 U.S.C. 80a-2(a)(3)(C)) defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person.[2] However, section 17(b) of the Act (15 U.S.C. 80a-17(b)) authorizes the Commission to exempt proposed transactions from the prohibitions of section 17(a) where it finds, in part, that the terms of the transaction are fair and reasonable and donot involve overreaching on the part of any person involved.[3]

In 1966, the Commission adopted rule 17a-7 under the Act to exempt certain purchases and sales between registered investment companies which are affiliated persons, or affiliated persons of affiliated persons, from section 17(a) of the Act. Presently, rule 17a-7 conditions these exemptions on certain safeguards which may be summarized as follows:

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery, of a security traded on a national securities exchange or of a security traded in the over-the-counter market.[4]

(b) If the principal market for the security is a national securities

[1] Section 17(a) of the Act, in part, states:

(a) It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company * * * or any affiliated person of such person, promoter, or principal underwriter, acting as principal—

(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company * * *

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property * * *.

[2] The term "control" is defined in section 2(a)(9) of the Act (15 U.S.C. 80a-2(a)(9)) to mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. That section contains a rebuttable presumption that beneficial ownership of more than 25 percent of the voting securities of a company is control.

[3] Section 17(b) of the Act states:

(b) Notwithstanding subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under this title; and

(3) the proposed transaction is consistent with the general purposes of this title.

[4] The rule, as originally adopted, provided an exemption only for purchase or sale transactions involving securities traded on a national securities exchange. See Investment Company Act Release Nos. 4697 and 4604 (Sept. 8, 1966 and May 20, 1966) 31 FR 12092 and 31 FR 7913 (Sept. 16, 1966 and June 3, 1966). In 1974, rule 17a-7 was amended to apply also to purchases or sales of certain securities traded over-the-counter. See Investment Company Act Release Nos. 8494 and 8199 (Sept. 13, 1974 and Jan. 28, 1974) 39 FR 36002 and 39 FR 5506 (Oct. 7, 1974 and Feb. 13, 1974).

exchange, the transaction must be effected at the independent current market price of the security on the principal market.[5]

(c) If the principal market for the security is the over-the-counter market, the transaction must be effected at the average of the highest current independent bid and the lowest current independent offer as quoted for that security.[6]

(d) The transaction is consistent with the policy of each registered investment company.

(e) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction.

Discussion

The Commission has recently become aware of what may be an industry-wide practice of arranging for the execution of purchase and sale transactions between registered investment companies and persons which are affiliated persons of such companies (or affiliated persons of such persons) involving short-term money market instruments, such as commercial paper and certificates of deposit. This practice has occurred, generally, between companies in a financial services complex having a common investment adviser.[7] As part of its services to members of the complex, the investment adviser regularly monitors whether companies in the complex—including both registered investment companies and other companies—have idle cash to invest on a short-term basis or need to raise cash. From time to time the investment adviser will arrange for a trade involving a registered investment company by having dealers in money market instruments purchase securities from the registered investment company and simultaneously resell them at the same price to another investment company or advisory client in the complex, or vice versa.[8] In arranging such trades, the investment adviser typically asserts that it does not intend to afford preferential treatment to any particular investment company or advisory client in the complex.[9]

Of course, many of these transactions are prohibited by section 17(a) of the Act—regardless of the fairness of their terms—unless the participating investment companies and their affiliates have applied for and received an order from the Commission pursuant to section 17(b) exempting each such transaction from the prohibitions of section 17(a).[10] Moreover, these transactions prohibited by section 17(a) of the Act also do not qualify for the exemptive relief provided by rule 17a–7, the principles of which would govern the Commission's consideration of whether transactions similar to those covered by rule 17a–7 also met the standards for exemption in section 17(b) of the Act. First, the securities being purchased and sold are not traded on a national securities exchange or on an inter-dealer quotation system which is sponsored and governed by the rules of a national securities association registered pursuant to section 15A of the Securities Exchange Act of 1934. Second, many of these transactions are between a registered investment company and a person other than another registered investment company. Finally, to the extent these transactions are effected at the "bid" or "asked" price rather than at an average of the two prices, they would not be in compliance with the rule's pricing requirements.

The Commission is concerned that this practice—left unregulated and in violation of section 17(a)—could result in serious harm to registered investment companies. For example, an unscrupulous investment adviser might "dump" undesirable securities on a registered investment company or transfer desirable securities from a registered investment company to another more favored advisory client in the complex. Moreover, the transaction could be effected at a price which is disadvantageous to the registered investment company.[11]

Nevertheless, upon considering the matter, the Commission believes that it would be appropriate to exempt by rulemaking certain of these transactions provided that certain conditions, described below, are met.[12] Accordingly, the Commission proposes to amend rule 17a–7 to exempt certain transactions which heretofore have not been exempted by the rule, both with respect to the persons which could participate in the transaction, and the securities which could be purchased and sold. The Commission has determined that the proposed expansion of the rule is consistent with the existing rule's proposes (1) to eliminate the necessity of filing and processing applications under circumstances where there appears to be little likelihood that the statutory finding for a specific exemption under section 17(b) of the Act could not be made, and (2) to permit investment companies which heretofore had chosen to avoid the application procedures of section 17(b) of the Act by purchasing or selling securities on the open market, thereby incurring actual brokerage charges, to avoid the payment of brokerage commissions by effecting such transactions directly.[13] Moreover, the proposed amendment would enhance the role of disinterested directors as " 'watchdogs' to protect shareholder interest."[14]

A. Persons Eligible To Participate

Presently, the rule applies only to purchases or sales between affiliated registered investment companies,

[5] Paragraph (b) of the rule defines the term "current market price" to be the last independent sale price of the security on the principal exchange if the security was traded on that exchange on that day. If the security was not so traded, the current market price is the average of the highest current independent bid and the lowest current independent offer for the security on the principal exchange.

[6] With regard to securities traded principally on the over-the-counter market, the rule also requires that the security is entered in an inter-dealer quotation system, which is sponsored and governed by the rules of a national securities association registered pursuant to section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78a et sec.), and that, at the time of the transaction, the quotation system carries at least two independent current bids and offers furnished or submitted by at least two brokers or dealers with respect to the security.

[7] Many of these transactions are between two registered investment companies in the complex. Of course, whether such companies would be affiliated persons of each other depends on the facts and circumstances of each particular case.

[8] Several dealers have reported to the staff of the Commission that they are willing to be interposed in these transactions without compensation as an accommodation to their customers.

[9] Beyond the question of whether either side of such a securities transaction has made a suitable investment decision, it is unclear whether these transactions are effected at the bid price, the asked price, or an average of these two prices. If the bid price is used, the buyer would benefit; if the asked price is used, the seller would benefit; if the average of the two prices is used, both the buyer and the seller would benefit equally in terms of the relative cost of the execution.

[10] Sections 17 (a) and (b) are discussed in notes 1 and 3, supra. The Commission notes that the interpositioning of a dealer in these transactions does not remove them from the prohibitions of section 17(a). Section 48(a) of the Act (15 U.S.C. 80a–47(a)) provides that it shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the Act. Indeed, dealers who effect these trades may themselves be held responsible for aiding and abetting violations of section 17(a) of the Act.

[11] For example, the adviser could cause the registered investment company always to sell securities on the bid side and always to purchase securities on the offering side, thus improperly giving the other party to the transaction the benefit of the spread between the bid and asked price. See n.9 supra.

[12] These conditions are designed to prevent abuses—such as those described above—which can occur when a registered investment company effects transactions with affiliated persons without benefit of Commission scrutiny.

[13] Investment Company Act Release No. 4604, n.4, supra.

[14] Burks v. Lasker, 99 S.Ct. 1831 (1979). The term "disinterested director" is a commonly used reference to a director who is not an interested person of the investment company, as defined in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)).

including separate series of a registered investment company. The Commission proposes to expand the exemptive rule to apply also to transactions between registered investment companies and certain other of their affiliated persons, such as unregistered investment companies and investment advisory accounts which are affiliated persons of such registered investment companies (or affiliated persons of such persons) solely by reason of having a common investment adviser, common officers and/or common directors.[15] When a purchase or sale involves registered investment companies and those of its affiliated persons which are affiliates exclusively by virtue of having a common investment adviser, directors and/or officers, generally, no person who is responsible for evaluating and approving the terms of a proposed transaction on behalf of such persons would have a significant personal financial interest in improperly influencing those terms. Of course, reliance by a person on rule 17a–7 to effect a securities transaction would not be deemed to be an admission that any such affiliation exists.

B. Securities Transactions

As presently effective, rule 17a–7 is applicable only to transactions in certain securities traded on either: (a) A national securities exchange; or (b) the over-the-counter market, provided that the security is entered in a specified inter-dealer quotation system. The Commission recognizes that a significant portion of the securities held by many registered investment companies—such as municipal securities, Government securities and money market instruments—presently may not qualify to be traded under rule 17a–7 because they are not traded in those two markets. The Commission believes that it is appropriate to include, as eligible for exemption under the rule, any transaction in a security for which market quotations are readily available.[16] The existence of such quotations would provide an independent basis for determining, in part, that the terms of the transaction are fair and reasonable to any participating investment company and do not involve overreaching.

C. Enhanced Directorial Role

Presently, rule 17a–7 specifies in detail the method for determining the fairness of the terms of a purchase or sale which may be effected pursuant to the rule.[17] Upon reconsideration, the Commission believes that determination of the necessary and appropriate procedures for establishing both the fairness of the terms of a particular transaction through the independent current market value—that is, the price at which such transactions should be effected in order to insure fairness and reasonableness and to prevent overreaching—and the consistency of the transaction with the policy of each registered investment company participating in the transaction, should be determined by an investment company's directors, assuming that other safeguards apply. This belief accords with the Commission's general objective of enhancing, insofar as feasible, the role of investment company directors and particularly disinterested directors as watchdogs of shareholder interests.[18]

The Commission believes that the first line of responsibility for determining compliance with the proposed amendment should be with each investment company's directors. Therefore, the proposed amendment would require the board of directors of an investment company, including a majority of the directors who are not interested persons with respect thereto, to establish procedures reasonably designed to ensure that the fairness and other requirements of the rule have been satisfied, and to review these procedures at least annually for their continuing appropriateness.[19] Moreover, the proposed amendment would require that, at least quarterly, the investment company's directors, including a majority of its disinterested directors, determine whether transactions effected pursuant to rule 17a–7 have satisfied the procedures which the directors had established. Finally, the proposed amendment would include certain recordkeeping requirements so that the Commission may monitor, through its inspection program, the experience of investment companies with the proposed amendment.

It should be noted, however, that the proposed amendment would not exempt many of the transactions involving short-term money market instruments described earlier in this release.[20] For example, transactions between a registered investment company and its adviser would continue to be unlawful absent an order of the Commission pursuant to section 17(b) exempting the transaction from the prohibitions of section 17(a). Moreover, in view of the serious potential for abuse and the lack of any direct Commission supervision, the Commission will consider any transaction of this type effected without an appropriate Commission order of exemption and not in compliance with the proposed rule to be a very serious matter warranting appropriate enforcement action.[21]

Text of Proposed Amended Rule

It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by revising § 270.17a–7 as follows:

---

[15] As the Commission noted in Steadman Security Corp., Investment Company Act Release No. 9830 (June 29, 1977), remanded on other grounds, 603 F.2d 1126 (5th Cir. 1979), regarding certain purchase and sale transactions between a registered investment company and an unregistered investment company which were determined to be in violation of section 17(a) of the Act:

The rationale of rule 17a–7 applies to these transactions. Each of them could have been effected with perfect legality in the open market through a broker. Had that been done, the net effect on investors would have been the same as it was. But substantial brokerage commissions would have been expended.

[16] The phrase "which market quotations are readily available" also is found in section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and rule 2a–4 (17 CFR 270.2a–4), and is intended to have the same meaning ascribed to it in those other provisions.

[17] A security whose principal market is on a national securities exchange must be traded at its independent current market price for such exchange. N.5, supra. Over-the-counter securities must be traded at the average of the highest current independent bid and the lowest current independent offer quoted on a specified inter-dealer quotation system. Text at n.6, supra.

[18] N.14, supra.

[19] The proposed amendment retains the fairness tests described in existing paragraphs (b) and (c) of rule 17a–7 for purposes of complying with the proposed amendment's requirement that the transaction be effected at the independent current market price of the security. However, unlike the existing rule, in those over-the-counter transactions where no bid or offer exists for the security being purchased or sold, but where market quotations are nevertheless "readily available," the board of directors would be required to establish procedures reasonably designed to insure that the transactions are effected at the independent current market price of the security. Moreover, in all circumstances directors should give recognition to industry developments, such as the establishment of the consolidated tape system and other developments in achieving a national market system.

[20] See pp. 5–8, supra.

[21] In this connection, the Commission expects investment companies' directors to review the trading practices of their companies to determine whether they have engaged in such trading with affiliated persons without an appropriate Commission order. If such trading has occurred, the directors should determine whether the investment companies have been harmed and take appropriate steps to remedy any harm which has occurred. Because violations of section 17(a) would be material facts which should be disclosed to investors, directors should also consider whether it is necessary to make any disclosures to current and prospective shareholders concerning any such trading practices in which their investment companies have engaged.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.17a-7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

A purchase or sale transaction between registered investment companies which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company and a person, which is an affiliated person of such registered investment company (or an affiliated person of such person) solely by reason of having a common investment adviser, common directors, and/or common officers, is exempt from section 17(a) of the Act: *Provided,* That:

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) The transaction is effected at the independent current market price of such security. For the purposes of this paragraph the "current market price" shall be: (1) If the principal market for such security is a national securities exchange, the last independent sale price of the security on that exchange (if the security was traded on that exchange on that day), or the average of the highest current independent bid and the lowest current independent offer for the security on that exchange if the security was not traded on that exchange on that day; or (2) If the principal market for the security is the over-the-counter market, the average of the highest current independent bid and the lowest current independent offer for the security on that market, where such bid and offer is available;

(c) The transaction is consistent with the policy of each registered investment company participating in the transaction as recited in its registration statement and reports filed under the Act;

(d) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction;

(e) The board of directors of the investment company, including a majority of the directors who are not interested persons with respect thereto, (1) have adopted procedures, pursuant to which such purchase or sale transactions may be effected for the company, which are reasonably designed to provide that all the conditions of this section in paragraphs (a) through (d) have been complied with, (2) review no less frequently than annually such procedures for their continuing appropriateness, and (3) determine no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures; and

(f) The investment company (1) shall maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section, and (2) shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of this section were made.

Statutory Basis

Amended rule 17a–7 is proposed pursuant to the provisions of section 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)) of the Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 21, 1980.

[FR Doc. 80–13434 Filed 4–30–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 172

Leasing of Allotted Indian Lands for Mining

April 21, 1980.

AGENCY: Bureau of Indian Affairs.

ACTION: Public comment on petition of Mobil Oil Corporation to amend allotted lands leasing regulations.

SUMMARY: The following petition has been submitted to the Secretary of the Interior by Mobil Oil Corporation under the Department of the Interior rulemaking regulations, 43 CFR 14.6. Those regulations provide that a petition for rulemaking may be published for public comment on the proposal. The petition is reproduced under the Supplementary Information section of this notice.

The petition proposes to add a new subsection to 25 CFR Part 172 to authorize the Superintendent at a Bureau of Indian Affairs agency to execute mineral leases on behalf of individuals owning undivided interests in Indian allotted lands where the Commissioner, under another provision of the regulations, § 172.6, has authorized the negotiation of leases. The proposals, if adopted by final rulemaking, would allow for the execution of a mineral lease by the Superintendent on behalf of persons: (1) who are undetermined heirs and own minority interest; and (2) determined heirs not using the lands or not using the lands for purposes which preclude mineral development where (a) they are unlocatable, (b) own less than 1%, or, (c) have failed to agree to terms with those owning a majority interest after a period of three months. A provision somewhat comparable to that now proposed was contained in the proposed revision of the Indian Mineral Development Regulations in 1977, see 25 CFR 171.3 and 171.4, 42 FR. 18083, 18085 (April 5, 1977). Those revisions have not as yet been promulgated to become effective; but will shortly be republished for public comment. In the meantime, public comment is sought on the petition.

DATE: Comments must be received by June 2, 1980.

ADDRESSES: Written comments should be directed to: Director of Office of Trust Responsibilities, Bureau of Indian Affairs, Department of Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David E. Jones, Attorney, Indian affairs Division, Office of Solicitor, Department of Interior, Washington, D.C. 20240. Telephone: (202) 343–9331.

SUPPLEMENTARY INFORMATION: Public comment is sought on the following petition for rulemaking:

February 1, 1980.

Hon. Cecil D. Andrus,

Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240.

Dear Mr. Secretary: Pursuant to Section 14, Title 43 of the Code of Federal Regulations, Mobil Oil Corporation hereby petitions you to issue a rule implementing Section 380 of Title 25 of the United States Code. The text of the proposed rule, which would be incorporated in Title 25, Section 172 of the Code of Federal Regulations, would read as follows:

"In respect of any lease in which the Commissioner has granted to the Indian owners of restricted alloted lands written permission to negotiate for a lease for minerals other than oil and gas as provided in Section 172.6 hereof, the Superintendent shall execute such lease on behalf of:

"(1) undetermined heirs who in the aggregate hold a minority ownership interest; and

"(2) determined heirs who are not using such lands or whose use does not preclude mineral development, and

"(a) who are unlocatable;

"(b) who individually hold less than a one percent ownership interest; or

"(c) who have failed or refused to sign such lease after the lapse of three months following written notification to them by the Superintendent that a majority of the ownership interests have signed such lease and desire mineral development, which notification shall include a copy of the lease signed by a majority of the ownership interests.

"The proceeds derived from such leases shall be credited to the accounts of the individuals entitled thereto in accordance with their respective interests."

The need for this rule becomes apparent when you have been acquainted with Mobil's experience in direct lease negotiations with Indian allottees at Crownpoint, New Mexico.

By way of background, Mobil acquired uranium mining leases having 10-year durations over 82 allotments in the Crownpoint area in 1972. These leases were obtained under a competitive bidding arrangement. Thereafter, Mobil proceeded with exploration operations which culminated in the delineation of uranium ore bodies. In this effort Mobil drilled about 2,900 exploration and evaluation core holes at approximate depths of 2,000 feet and installed a solution mining facility on one tract to test the technical, economic, and environmental feasibility of this technique. By year-end 1972 some $30 milliom has been invested in these efforts.

As early as 1976 it was recognized that Mobil's program was in jeopardy because of the limited time remaining under the leases' 10-year primary terms. Although at that time mineralization trends had been identified, considerable in-fill drilling and other work was required to delineate these trends for the purposes of defining areas for unitization and establishing the potential viability of solution mining as an alternative to underground mining. Mobil was able by 1978 to request DOI permission to conduct a solution mining test. However, the time required for DOI to process and approve the application and the two-year period required to conduct the test, made the 1982 lease expirations a critical limiting factor. Faced with this problem, Mobil contacted the BIA to discuss options. These discussions eventually led to BIA authorization for new lease negotiations directly between Mobil and the allottees owning 40 of the 82 allotments on which exploration and evaluation work was most advanced.

Additional complications ensued. In late December, 1978 an environmental lawsuit was filed in which curtailment of uranium development in New Mexico was sought. Thereafter, the owner of the allotment on which the solution mining facility was located sought to cancel the lease in an administrative proceeding before the Department of the Interior. As a result, new lease negotiations were not commenced until May, 1979. By October, 1979 we had signed 90 percent of the total ownership interests in the 40 tracts. At the present time, by additional signings of scattered interests, the total is now 93 percent. However, due to the BIA requirement that no lease can receive its approval without signatures of 100 percent of the ownership interests, obtaining the signatures of the outstanding 7 percent becomes critical. The failure to obtain these signatures, although representing only 7 percent of the ownership interests, would cause about 15 of the 40 leases to fail—well over one-third of the leases covered by the negotiations. The problem areas that need to be addressed are the following:

1. *Fractionation of Interests*—Due to deaths over the years, allotment interests have successively devolved to an ever-growing number of allottees with ever-diminishing ownership interests. For example, one allotment has 70 owners with the largest individual interest being 6.47 percent and some individual interests as small as 0.02 percent. We estimate about 475 allottees have been contacted in connection with the 40 tracts. The logistical problems of locating these hundreds of scattered owners and conducting individual lease negotiations with them are enormous. More importantly, any one of them has the power to defeat a lease by simply refusing to come to an agreement. This aspect will be considered in more detail a little later. The proposed rule empowers the Superintendent to sign on behalf of those allottees holding less than a one percent ownership interest.

2. *Undetermined Heirs of Deceased Allottees*—Where the owner of a partial allotment interest is dead there is no mechanism under the existing regulations for the Superintendent to sign on behalf of undetermined heirs in a direct negotiation context. The interest cannot be put up for competitive bids because it would be a practical necessity that the winning bidder be the identical party whom the BIA had authorized to conduct direct negotiations, and the terms of the winning bid would have to be identical to the terms negotiated with the other allotment interest holders. Thus, the only solution presently available is to await determination of heirs. This creates undue delays in completing lease negotiations. The proposed rule empowers the Superintendent to sign on behalf of undetermined heirs comprising a minority ownership interest.

3. *Unlocatable Heirs of Deceased Allottees*—The same vacuum exists here as described for undetermined heirs above. Where direct negotiations have been authorized, competitive bidding cannot be used, simply because the same lease cannot have different terms and conditions and lessees for different classes of allotment interests. The proposed rule empowers the Superintendent to sign on behalf of unlocatable determined heirs.

4. *Non-Signing Allottees*—Under general mineral leasing in the private sector, an owner of a minority interest in lands subject to leasing cannot prevent the majority interests from going forward with mineral development. Thus, a lease can become operative with less than 100 percent agreement. However, the BIA has no authority to approve a mineral lease with less than 100 percent of the ownership interests signed. It would be unfortunate if the owners of minority interest who either oppose mineral development or make unacceptable financial demands should be able to frustrate the desires of the majority. Furthermore, if Mobil is forced to develop properties affected by these few unsigned owners of minority interests under Mobil's subsisting leases, it means adopting development alternatives that are less efficient, more costly, and produce less uranium. This benefits no one, including the allottees who have failed or refused to sign new leases. It is our belief that the BIA's trust responsibility should be exercised in favor of those Indian allottees who have demonstrated their desire for uranium development, especially where they hold the majority interests in a given tract. The proposed rule empowers the Superintendent to sign on behalf of determined heirs holding a minority ownership interest in those instances where they fail or refuse to sign a lease after they have been afforded a period of three months to consider the lease approved by a majority of the owners.

25 U.S.C.A. Section 380 provides a statutory basis for you to remedy these gaps in the regulations currently in force. The rule which Mobil proposes pursuant to Section 380 is a major step in facilitating mineral leasing and will operate to the mutual benefit of the bureau of Indian Affairs, the preponderant number of Indians who earnestly desire mineral development and the mineral developer. Not only will the proposed rule permit conclusion of Mobil's current new lease negotiations, but it will greatly facilitate and expedite anticipated new lease negotiations on the 42 remaining leases Mobil has in the Crownpoint area as well as future direct negotiations the BIA may authorize between Indian allottees and other uranium development companies. Unless a regulatory mechanism such as we propose is put in place to facilitate mineral leasing, the desires and needs of the overwhelming number of Indian allottees will be frustrated; orderly, efficient and optimum development will be impeded; and BIA administration of its trust responsibility will be further complicated.

Mobil recognizes the BIA's reluctance to indefinitely continue giving extensions of time to complete the leasing program. Thus, it is of extreme importance that this petition be given a high priority. Your kind consideration would be greatly appreciated.

Very truly yours,

W. H. Marshall,

General Manager, Energy Minerals Exploration and Producing Division, Mobil Oil Corporation.

It has been determined that the petition does not meet the criteria of significance, nor is the preparation of a regulatory analysis required in accordance with the Interior Department rulemaking regulations, 43 CFR 14.3.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-13313 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-02-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Determination of Completeness for Permanent Program Submission From the State of New Mexico

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Proposed rule: Notice of determination of completeness of submission.

SUMMARY: On February 28, 1980, the State of New Mexico submitted to OSM its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice announces the Regional Director's determination as to whether the New Mexico program submission contains each required element specified in the permanent regulatory program regulations. The Regional Director has concluded his review and has determined the New Mexico program submission is complete.

ADDRESSES: Written comments on the New Mexico program and a summary of the public meeting are available for public review, 8:00 a.m.–4:00 p.m., Monday through Friday, excluding holidays at: Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Copies of the full text of the proposed New Mexico program are available for review during regular business hours at the OSM Regional Office above and at the following offices of the State regulatory authority: Division of Mining and Minerals, Energy and Minerals Department, Post Office Box 2860, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Sylvia Sullivan, Public Information Office, Office of Surface Mining, Region V, Department of the Interior, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, (303) 837–4731.

SUPPLEMENTARY INFORMATION: On February 28, 1980, OSM received a proposed permanent regulatory program from the State of New Mexico. Pursuant to the provisions of 30 CFR Part 732, "Procedures and Criteria for Approval or Disapproval of State Program Submissions" (44 FR 15326–15328 March 13, 1979), the Regional Director, Region V, published notification of receipt of the program submission in the **Federal Register** of March 7, 1980, and in the following newspaper of general circulation within New Mexico: *Albuquerque Journal.*

Part 732 of the permanent program regulations established a schedule for the review of all State program proposals based upon a final submission date of August 3, 1979. On July 25, 1979, the U.S. District Court for the District of Columbia, in response to a suit filed by the State of Illinois, enjoined the Department of the Interior from requiring the submission of State programs under Section 503(a) of the Act until March 3, 1980. As a result of this court ordered change in the required submission deadline the Office announced an amendment to Section 731.12 of the final regulations in the October 22, 1979, **Federal Register** (44 FR 60969). The amended regulation revises the original schedule by making Sections 732.11, 732.12 and 732.13 inapplicable for post August 3, 1979, submissions. In lieu of this schedule, Section 731.12(d) authorizes the Regional Director to make adjustments in the timing of the review process for State programs.

The following timetable sets forth the general schedule for review of the New Mexico proposed State regulatory program:

—A public review meeting was held on April 15, 1980, as established in the above DATE section of this notice;

—A final date for the submission of program changes by the State will be established June 11, 1980.

—A public hearing will be held on June 21, 1980.

—A final date for the submission of public comments will be July 24, 1980;

—The intitial decision of the Secretary will be announced approximately 40 days after the public hearing, approximately 180 days from the original date of the State submission.

This notice is published pursuant to 30 CFR 732.11(b) and constitutes the Regional Director's decision on the completeness of the New Mexico program. Having considered public comments, testimony presented at the public review meeting and all other relevant information, the Regional Director has determined that the New Mexico submission does fulfill the content requirements for program submission under 30 CFR 731.14 and is therefore complete.

No later than June 16, 1980, the Regional Director will publish a notice in the **Federal Register** and in the following newspapers of general circulation in New Mexico initiating substantive review of the program submission: *Albuquerque Journal.*

The review will include an informal public hearing and written comment period. Procedures will be detailed in that notice. Further information concerning how that substantive review will be conducted may be found in 30 CFR 732.12.

The Office of Surface Mining is not preparing an environmental impact statement with respect to the New Mexico regulatory program, in accordance with Section 702(d) of SMCRA (30 U.S.C. 1292(d)), which states that approval of State programs shall not constitute a major action within the meaning of Section 102(2)(C) of the National Environmental Policy Act.

Dated: April 28, 1980.

Donald A. Crane,

Regional Director.

[FR Doc. 80-13456 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

[CGD 78-160]

Outer Continental Shelf Activities

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: In response to enactment of the Outer Continental Shelf Lands Act Amendments of 1978 and because of changes in other Coast Guard regulations, the Coast Guard proposes amendments to regulations governing activities on the Outer Continental Shelf. The proposed amendments affect design, equipment, operations, manning, inspections, and investigations on facilities, vessels, and other units, domestic and foreign, engaged in mineral exploration, production, or development activites on the Outer Continental Shelf. The intented effect of this proposal is to improve the safety of operations and implement certain statutory requirements.

DATE: Comments must be received on or before July 30, 1980.

ADDRESSES: Comments may be mailed to Commandant (G–CMC/TP24) (CGD 78–160), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–CMC/TP24), Room 2418, U.S. Coast Guard Headquarters, 2100 2nd Street S.W., Washington, D.C. 20593, (202) 426–1477 between the hours of 7:00 a.m. and 5:00 p.m. Monday through Thursday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas J. Barrett, Outer Continental Shelf Safety

Project, Office of Merchant Marine Safety, Room 2505, U.S. Coast Guard Headquarters, 2100 2nd Street S.W., Washington, D.C. 20593, (202–472–5160).

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person submitting them, identify this notice (CGD 78–160) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. If an acknowledgement is desired, a stamped, addressed postcard should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Thomas J. Barrett, Outer Continental Shelf Safety Project Staff, Office of Merchant Marine Safety and Mr. Stephen H. Barber, Project Attorney, Office of the Chief Counsel.

Background

Subchapter N, Title 33, Code of Federal Regulations (33 CFR Parts 140–147), establishes general requirements for artificial islands and fixed structures on the Outer Continental Shelf of the United States (OCS). These requirements were developed and issued under the Outer Continental Shelf Lands Act of 1953 (67 Stat. 462; 43 U.S.C. 1331 et seq.), which gave the Coast Guard authority to regulate to promote the safety of life and property on artificial islands and fixed structures on the OCS. On September 18, 1978, the President signed into law the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95–372). Title II of these Amendments revises the 1953 OCS Lands Act and, in turn, makes changes to subchapter N necessary.

Law Implemented or Incorporated

The scope of this proposed rulemaking is limited to the minimum changes needed (1) to implement major new provisions added by the 1978 Amendments, such as that requiring manning by U.S. citizens, (2) to conform the scope of the existing regulations to the broader scope of the amended Act, and (3) to conform the subchapter to new Coast Guard regulations for mobile offshore drilling units and for life preservers. Though much of the substance of the existing regulations in subchapter N on firefighting equipment, lifesaving appliances, and operating requirements is not changed in this proposal, other changes are believed to be needed to update and improve these regulations. Any changes proposed will be addressed in future rulemaking proposals and be made available to the public for comment.

(a) The following provisions of the amended Outer Continental Shelf Lands Act (the Act) are implemented by these proposals:

(1) Section 22(b) of the act making it the duty of any holder of a lease or permit under the Act (i) to maintain all places of employment free from recognized hazards to employees, (ii) to maintain operations in compliance with occupational safety and health standards and other regulations intended to protect persons, property and the environment on the OCS, and (iii) to allow inspectors prompt access to the site of operations.

(2) Section 22(c) of the Act providing for both scheduled and unannounced inspections of OCS facilities.

(3) Section 22(d) of the Act requiring investigation and public report on each major fire, major oil spill, death, and serious injury resulting from operations conducted pursuant to the Act.

(4) Section 22(e) of the Act providing for Coast Guard review of any allegation that an occupational safety and health regulation issued under the Act has been violated.

(5) Section 22(f) of the Act authorizing administration of oaths and subpoenaing of witnesses and documents in the course of investigations.

(6) Section 23 of the Act establishing procedures pertaining to citizen suits, court jurisdiction, and judicial review.

(7) Section 24 of the Act providing a new system of remedies and penalties.

(8) Section 30(a)(2) of the Act requiring the Coast Guard to issue regulations establishing minimum standards of design, construction, alteration, and repair for vessels, rigs, platforms, or other vehicles or structures used for activities pursuant to the Act.

(9) Section 30(a)(3) of the Act directing the Coast Guard to issue regulations requiring certain vessels, rigs, platforms, or other vehicles or structures used for activities pursuant to the Act to be manned by United States citizens.

(b) The following areas which the Act authorizes the Coast Guard to regulate are not addressed in this proposal:

(1) Section 21(b) of the Act requiring on drilling and production operations, the use of the best available and safest technologies (BAST) which are economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment. Existing Coast Guard regulations, in particular, the standards for mobile offshore drilling units in subchapter I–A of 46 CFR Chapter I, as well as U.S. Geological Survey requirements for drilling and production operations, already incorporate this principle to a large extent. Accordingly, the Coast Guard is deferring specific new rulemaking action concerning BAST until additional data is available, including the preliminary results of a joint Geological Survey/Coast Guard study under section 21(a) of the Act on the technology, equipment, and techniques available for exploration, development, and production of the minerals of the OCS. A public notice concerning this study was published in the **Federal Register** on February 28, 1980 (45 FR 13127).

(2) Section 21(c) of the Act authorizing the Coast Guard to promulgate regulations applying to hazardous working conditions not presently regulated and to modify any regulation, interim or final, dealing with hazardous working conditions already regulated. This provision of the Act is addressed in a separate rulemaking project (CGD 79–073) on which the Coast Guard published an advance notice of proposed rulemaking in the September 20, 1979 issue of the **Federal Register** (44 FR 54499).

(3) Section 30(a)(1) of the Act directing the Coast Guard to publish regulations requiring that any vessel, rig, platform, or other vehicle or structure used for activities pursuant to the Act, "when required to be documented by the laws of the United States, be documented under the laws of the United States." The conference committee report which accompanied the Act states that "this provision reaffirms existing interpretations and applications of mandatory documentation under U.S. laws" (H.R. Report No. 95–1474, pp. 123–124). Because the provision does not change existing law, no new regulations are necessary and none are proposed.

(c) In addition to implementing the Act, this proposal—

(1) Applies certain of the new Coast Guard requirements for domestic mobile offshore drilling units of certain minimum tonnage and means of propulsion (43 FR 56799–56838; December 4, 1978), or their equivalent, to all domestic and foreign mobile offshore drilling units operating on the OCS, regardless of tonnage and means of propulsion; and

(2) Incorporates into subchapter N certain of the new Coast Guard rules for lights and retroreflective material for life preservers and other lifesaving equipment (44 FR 38778–38789; July 2, 1979). This proposal extends the new lifesaving requirements to manned OCS facilities.

Discussion of the Proposed Amendments

The existing title of subchapter N, "Artificial Islands and Fixed Structures on the Outer Continental Shelf", is derived from the original language of section 4(a) of the Act, extending the jurisdiction of the United States to the subsoil and seabed of the Outer Continental Shelf and "to all artificial islands and fixed structures which may be erected thereon." Section 4(a) was amended in 1978 to refer to "all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed." In addition, certain new provisions were added to the Act in 1978, such as the requirement for manning by U.S. citizens (section 30(a)(3)), which refer to any "vessel, rig, platform, or other vehicle or structure used for activities pursuant to the Act". Accordingly, the proposed title of subchapter N is changed to "Outer Continental Shelf Activities" to more accurately describe the scope of the Act and the proposed regulations.

Existing parts 140, 143, 144, 146, and 147 are revised and renumbered. New parts 141 on personnel requirements and 142 on workplace safety requirements are proposed. Existing part 145 on firefighting equipment is not changed.

Part 140—General

Proposed § 140.1, which states the purpose of the subchapter, revises existing § 140.01–1 to reflect the broader scope of the proposed subchapter N.

Existing § 140.01–5 on assignment of functions is deleted as unnecessary. The Act vests all functions of the Secretary of Transportation directly in the Secretary. The Secretary has, in turn, delegated to the Commandant of the Coast Guard all Secretarial powers and duties under the Act, except for those relating to pipeline safety. (44 FR 2395–2396; January 11, 1979).

Proposed § 140.3 revises existing § 140.05–1 on applicability, as the proposed subchapter must now be made to apply to vessels, rigs, platforms, artificial islands, installations, and other vehicles, structures, and devices used for activities pursuant to the Act. Proposed § 140.3 excludes pipelines, because the powers and duties of the Secretary of Transportation with respect to pipeline safety have been delegated to the Materials Transportation Bureau (MTB) of the Research and Special Programs Directorate of the Department of Transportation.

Proposed § 140.5 concerning exemptions for OCS facilities under construction revises existing § 140.05–(a) and allows the Officer in Charge, Marine Inspection, to waive requirements that would be impractical or unreasonable to apply during construction of a facility. Existing § 140.05–5(b) concerning lights and warning devices is moved to proposed § 143.15 with no substantive change. Existing § 140.05–5(c) is deleted because its exclusion of pipeline matters is noted in proposed § 140.3 and its reference to the responsibility for drilling operations is addressed in proposed § 143.3.

Existing § 140.05–10 on effective date of the regulations is deleted. The effective date of this proposed revision will be noted in the preamble to the final rulemaking. Except for proposed § 141.15 and the amendments to part 144, the Coast Guard expects to make the regulations effective 30 days after the date of publication of the final rules. The restrictions on employment in proposed § 141.15 need not be complied with until one year after the effective date of final rules as required by 43 U.S.C. 1356. The amendments to Part 144 on lifesaving appliances will be effective six months after the effective date of final rules.

Existing § 140.05–15 on amendments or additions to regulations is deleted. Coast Guard rulemaking procedure is governed by other law, primarily the Department of Transportation order entitled "Improving Government Regulations—Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

Proposed § 140.10 containing definitions applicable throughout the subchapter is renumbered from existing § 140–10. The definitions of "approved", "attending vessel", "District Commander", "Commandant", "manned facility", and "Officer in Charge, Marine Inspection", are substantially unchanged; however, reference in the existing definitions to "platforms" is changed to refer to "OCS facilities". Existing definitions of "artificial island or fixed structure", "mobile platform", and "party" are deleted. New definitions are proposed for "act", "development", "exploration", "production", "floating installation", "investigating officer", "marine inspector", "minerals", "mobile offshore drilling unit", "Outer Continental Shelf", "OCS activities", "OCS facility", "operator", "owner", "person", "person in charge", "rebuilt", and "unit". The proposed definitions of "exploration", "development", "production", "Outer Continental Shelf", "minerals," and "person" follow definitions in the Act; however, in the definition of "development", reference to "related onshore activities" has been deleted as no onshore activities are regulated under subchapter N.

Proposed § 140.15 is existing subpart 140.15 on equivalents and approved equipment with no substantive change.

Proposed § 140.20 on delegations replaces existing subpart 140.20 and clarifies the enforcement responsibilities of Coast Guard District Commanders and Officers in Charge, Marine Inspection. Existing § 140.20–5 is deleted as the penalty provision referenced in that section has been eleiminated from the Act.

Proposed §§ 140.25 and 140.30 revise existing subpart § 140.25 on intra-agency appeals procedures and judicial review.

Proposed §§ 140.35 and 140.40 implement the civil and criminal penalty provisions of section 24 of the Act. As authority to assess, collect, and compromise civil penalties is vested by the Act in the Secretary of the Interior, proposed § 140.40 provides for referral of civil penalty cases to the delegee of the Secretary of Interior.

Subpart B or proposed part 140 on inspection of units is a revision of existing part 142. Proposed § 140.101 specifies that all units engaged in OCS activities may be inspected by the Coast Guard with or without advance notice and that drills and tests may be required as part of any inspection. Proposed § 140.102 on foreign units sets forth the inspection requirements for these units.

Proposed § 140.103 on deficiencies discovered during inspections replaces existing § 142.15 and implements the requirement of section 24(b) of the Act that notice of the deficiency be provided before civil penalties may be assessed.

Proposed § 140.105 on OCS facility inspections implements requirements of section 22(c)(1) of the Act concerning scheduled annual inspections of facilities. Existing § 142.20, authority to perform inspections, is deleted as unnecessary in view of proposed § 140.101.

Proposed subpart C of part 140 concerns investigations, including those required by section 22(d) of the Act. Proposed § 140.201 lists the type of incidents which may be investigated by Coast Guard investigating officers. Proposed § 140.203 states that the conduct of such investigations will normally follow the procedures for marine investigations in 46 CFR Part 4. This section also provides that U.S. Geological Survey representatives may participate fully in any investigation

conducted by the Coast Guard that is related to OCS activities. The intent of this provision is to recognize that both the Coast Guard and Geological Survey have investigatory authority on the OCS and that both are concerned with many casualties associated with OCS activities. To minimize the burdens that separate and duplicate investigations by the two agencies would cause, the proposed revision provides for Coast Guard officials to coordinate their investigations with Geological Survey to the extent warranted by the circumstances of particular casualties. Proposed § 140.203(c) implements the requirement of section 22(d) of the Act requiring that public reports of OCS investigations be made, though the Coast Guard already makes public the results of all of its marine casualty investigations.

Proposed § 140205 on subpoenas implements section 22(f) of the Act with respect to oaths and subpoenas.

Part 141—Personnel

Proposed subpart A of part 141 on restrictions on employment of personnel implements section 30(a)(3) of the Act which requires, with certain exceptions, that units engaged in OCS activities be manned or crewed by U.S. citizens or aliens lawfully admitted for permanent residence. The Coast Guard may propose additional subparts applicable to other personnel matters in subsequent rulemaking actions.

Proposed § 141.5 on applicability excludes from coverage under part 141 vessels of the United States that are already subject to the requirements of 46 U.S.C. 672a with respect to citizenship of pilots, licensed officers, and unlicensed crew. Under section 30(c)(2) of the Act, foreign owned or controlled units are also excluded; however, the President may impose citizenship requirements on foreign units engaged in OCS activities on a reciprocal basis in accordance with the Act.

Proposed § 141.10 defines certain terms used in part 141, including "citizen of the United States", "resident alien", and "citizen of a foreign nation". "Citizen of a foreign nation" as used in section 30(c)(2) of the Act is defined in order to assist in the determination of whether a foreign unit is exempt from the Act's requirement that units be manned by U.S. citizens or resident aliens. This definition is consistent with the meaning of "citizen" in the Shipping Act (46 U.S.C. 802) and is intended to strictly limit exemptions of foreign units to those allowed by the Act.

Proposed § 141.15 sets forth the basic requirement that units subject to part 141 be manned or crewed by citizens of the United States or resident aliens. "Manning or crewing" includes marine, industrial, support and other personnel necessary for the routine functioning of the unit. In proposed § 141.15, these personnel are referred to as members of the "regular complement of the unit."

Proposed § 141.20 implements the statutory exceptions to the citizenship requirements and sets forth the procedures for obtaining certification of an exemption. In general, application to the Coast Guard with supporting documentation is required in each instance.

Propose § 141.25 and 141.30 list the documents that an owner or operator of a unit may accept as evidence of citizenship or resident alien status. The type of evidence is similar to that accepted for merchant marine personnel under 46 CFR 10.02–5(c) and owners or operators of documented vessels under 46 CFR 67.02–11.

Proposed § 141.35, concerning records which must be kept by the owner or operator, requires the owner or operator of each unit subject to this subpart to maintain a written record of the documents each employee used as evidence of citizenship or resident alien status. In addition, the owner or operator must keep a record on board the unit of each position on that unit that is part of the regular complement, the individual filling each position, and the citizenship of each employee. If this information is already recorded by the owner or operator, it does not have be duplicated to comply with the section. No particular form is prescribed for the records and any simple format containing the required information is acceptable.

Part 142—Workplace Safety and Health

Proposed part 142 on workplace safety and health is directed specifically at occupational safety on and health OCS facilities and other units engaged in OCS activities. This rulemaking project addresses only two requirements associated with provisions of the Act; other problems relating to occupational safety and health on the OCS will be addressed in separate rulemaking projects. Proposed § 142.1 sets forth the duties of lessees, permittees, and persons responsible for actual operations to maintain safe working conditions on the OCS. Proposed § 142.5, on reports of unsafe working conditions, is designed to bring the Coast Guard's attention conditions which may threaten individual safety or health on OCS facilities and other units engaged in OCS activities.

Part 143—Design and Equipment

Proposed part 143 retitles, expands, and renumbers existing part 143 but retains, for the most part, the existing design and equipment requirements. This part implements section 30(a)(2) of the Act, which calls for regulations requiring any vessel, rig, platform, or other vehicles or structure used for activities pursuant to the Act to comply with such minimum standards of design, construction, alteration, and repair as the Geologocial Survey or the Coast Guard may establish.

Design and construction requirements for vessels, including mobile offshore drilling units and other floating OCS facilities, are the responsibility of the Coast Guard and are addressed in proposed part 143. However, design and construction requirements for platforms, structures, and other fixed and bottom-founded OCS facilities are addressed by the U.S. Geological Survey and no additional requirements for such facilities are proposed. With respect to equipment, Coast Guard requirements in part 143 are directed at emergency and other equipment affecting navigation or the safety of personnel. The Coast Guard does not regulate drilling or production equipment except from these standpoints.

Proposed § 143.3 on the relationship of the requirements of this part to other law states that Coast Guard design and equipment requirements are in addition to those established by U.S. Geological Survey regulations and orders.

Proposed § 143.15 on lights and warning devices restates existing § 140.05–5(b) but updates the reference to the International Regulations for Preventing Collisions at Sea, 1972.

Existing subparts 143.05 on means of escape, 143.10 on personnel landings, and 143.15 on guards and rails have been renumbered but remain substantially unchanged. However, the Coast Guard is aware that these parts may need revising and is reviewing the requirements. Any changes which may be necessary will be addressed in a subsequent rulemaking notice.

Proposed subpart C treats mobile offshore drilling units (MODU's) separately from other OCS facilities and vessels. It establishes new design and equipment requirements for all domestic and foreign MODU's operating on the OCS that are not already subject to 46 CFR Chapter I, Subchapter I–A.

Proposed § 143.201 exempts units built before or under construction on the effective date of final regulations from any new design or construction requirements by reason of subpart C until the unit is rebuilt. When a unit is

"rebuilt" the hull or principal structural component is substantially altered. When this occurs, the entire unit may be required to comply with the new design and construction requirements.

Proposed § 143.205 requires all U.S. mobile offshore drilling units operating on the OCS to comply with the design and equipment requirements in 46 CFR Part 108.

Proposed § 143.207 on foreign mobile offshore drilling units details new requirements for foreign MODU's operating on the OCS. Presently, foreign MODU's need comply only with the construction and arrangement requirements of existing part 143, a significantly lower standard than most U.S. mobile offshore drilling units must meet under 46 CFR Part 108. The proposed revision requires foreign mobile offshore drilling units operating on the OCS to comply with the requirements of 46 CFR Part 108, with foreign national standards that provide a generally equivalent level of safety, or with the International Maritime Consultative Organization (IMCO) Code for mobile offshore drilling units.

Section 143.210 provides a mechanism by which the owners or operators of units may obtain a determination whether a unit provides an acceptable level of safety for operations on the OCS.

Proposed subpart D establishes minimum design standards for vessels other than mobile offshore drilling units through application of load line requirements. Load line requirements as established by 46 CFR Chapter I, Subchapter E, would apply to vessels engaged in OCS activities to the same extent that they would apply to those vessels upon entering or departing any port or place subject to the jurisdiction of the United States.

Part 144—Lifesaving Appliances

Existing part 144 on lifesaving appliances is revised to require lights and retroreflective material on life preservers used on manned platforms. Section 144.01–20 proposes requirements similar to those recently established for U.S. mobile offshore drilling units (44 FR 38784–85). Other lifesaving equipment requirements are not being revised at this time; however, the Coast Guard is currently reviewing these requirements. Any other changes which appear necessary will be addressed in a subsequent rulemaking notice.

Part 145—Firefighting Equipment

Part 145 concerning firefighting equipment is not addressed in this proposal. These requirements are currently under review. Any amendments which appear necessary will be addressed in a subsequent rulemaking notice.

Part 146—Operations

Existing subpart § 146.01 on special operating requirements is redesignated Subpart A and revised to exclude mobile offshore drilling units from its applicability.

Proposed § 146.10 on notice of construction clarified the information that must be provided to the Coast Guard when new facilities are installed.

Existing section 146.01–5 requiring the assignment of identification marks to facilities is deleted as unnecessary in light of similar U.S. Geological Survey requirements; however, the requirement in existing § 146.01–10 that the appropriate Coast Guard District Commander be notified of the markings assigned is retained in proposed § 146.10.

Existing § 146.01–15 (proposed § 146.15) on maintenance of emergency equipment, existing § 146.01–17 (proposed § 146.20) on work vests, and existing § 146.01–25 (proposed § 146.25) on authority of the person in charge are renumbered but remain substantially unchanged.

Existing § 146.01–20 on casualty reports is revised, expanded, and renumbered as § 146.30 in this proposal. This section requires immediate notice to the Coast Guard of casualties involving death or multiple injuries and sets forth new reporting requirement for injuries which result in incapacitation of an individual for more than 72 hours. It also limits reporting of damage to facilities to floating facilities rather than to all OCS facilities. Although the Coast Guard investigates certain fires jointly with the U.S. Geological Survey, no reporting requirements for fires are proposed. Fires are reported to the U.S. Geological Survey under 30 CFR 250.45.

Proposed § 146.35 continues the requirement of existing § 146.01–20 that a written report be submitted on each reportable casualty occurring on an OCS facility.

Existing subpart 146.05 on manned platforms is redesignated as subpart B and revised to exclude mobile offshore drilling units. Other existing requirements are substantially unchanged. The Coast Guard, however, is reviewing the substantive provisions of subpart B and any changes which appear necessary will be addressed in a subsequent rulemaking notice.

Proposed subpart C on mobile offshore drilling units extends the operating requirements of 46 CFR Part 107 to all mobile offshore drilling units operating on the OCS and clarifies notice of arrival requirements for such units.

Proposed subpart D on vessels extends the death and injury casualty reporting requirements of proposed § 146.30 to vessels engaged in OCS activities that are not now required to report deaths and serious injuries to the Coast Guard.

Part 147—Safety Zones

Existing Part 147 is revised to reflect the amended language of the Act. No substantive change is made.

Regulatory Evaluation

The Coast Guard considers this regulatory action to be classified as "non-significant" under the regulatory policies and procedures established by the Department of Transportation (44 FR 11040; February 26, 1979). A draft regulatory evaluation has been prepared, copies of which are available for inspection or copying at the Marine Safety Council. (See Addresses.)

As explained more fully in a draft evaluation, many of the proposed amendments to subchapter N do not impose an economic burden. Several of the proposed requirements which do impose economic burdens, such as the requirements for manning by U.S. citizens, are required by the Act. The estimated total cost to comply with the other proposed changes to subchapter N is estimated at $8.2 million. Annual costs are estimated at $2.1 million. The principal benefit of these proposed amendments is expected to be the improved safety of operations on the Outer Continental Shelf. The Coast Guard requests that those who submit comments include an assessment of economic as well as other effects that their recommendations may have.

Environmental Assessment

The Coast Guard has considered the environmental impact of the proposed regulations and concluded that preparation of an environmental impact statement does not appear necessary. An environmental assessment with a proposed finding of no significant impact has been prepared and is on file in the rulemaking docket.

In consideration of the foregoing, the Coast Guard proposes to amend subchapter N, Chapter I, Title 33 of the Code of Federal Regulations as follows:

1. By revising the title of Subchapter N to read as follows:

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

2. By revising Part 140 to read as follows:

PART 140—GENERAL

Subpart A—General

Sec.
140.1 Purpose.
140.3 Applicability.
140.5 Exemptions during construction.
140.7 Matter incorporated by reference.
140.10 Definitions.
140.15 Equivalents and approved equipment.
140.20 Delegations.
140.25 Intra-agency appeals.
140.30 Judicial review.
140.35 Sanctions.
140.40 Processing penalty cases.

Subpart B—Inspections

140.101 General inspection requirements.
140.102 Foreign units.
140.103 Deficiencies discovered during inspections.
140.105 OCS facility inspections.

Subpart C—Investigations

140.201 General.
140.203 Investigation procedures.
140.205 Subpoenas.

Authority: Sec. 4, 67 Stat. 462 (43 U.S.C. 1333) as amended; sec. 22 of sec. 208, Pub. L. 95-372, 92 Stat. 655 (43 U.S.C. 1348); sec. 30 of sec. 208, Pub. L. 95-372, 92 Stat. 669 (43 U.S.C. 1356); 49 CFR 1.46(z).

Subpart A—General

§ 140.1 Purpose.

This subchapter is intended to promote safety of life and property on facilities, vessels, and other units engaged in Outer Continental Shelf activities, protect the marine environment, and implement the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), as amended by the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372, 92 Stat. 629).

§ 140.3 Applicability.

Unless otherwise stated, this subchapter applies to facilities, vessels, and other units engaged in mineral exploration, production, or development activities on the Outer Continental Shelf, except pipelines and deepwater ports (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502)).

§ 140.5 Exemptions during construction.

The Officer in Charge, Marine Inspection, may exempt any unit under construction from any requirements of this subchapter that would be impracticable or unreasonable to apply during construction or erection of the unit.

§ 140.7 Matter incorporated by reference.

(a) The Coast Guard incorporates by reference the design, equipment and operating equipment standards for mobile offshore drilling units contained in the International Maritime Consultative Organization (IMCO) Code for Construction and Equipment of Mobile Offshore Drilling Units (IMCO Assembly Resolution A 414 (XI), 1979). These standards are incorporated as they exist on November 15, 1979. Changes to these standards will be published periodically in the **Federal Register.**

(b) The material incorporated by reference is available for inspection at the Library of the Office of the Federal Register, Room 8301, 1100 L Street, N.W., Washington, D.C. 20408 and at the Marine Safety Council (G-CMC/TP24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second St. S.W., Washington, D.C. 20593. A copy of the Code may be purchased from IMCO Sales, New York Nautical Instrument and Service Corp., 140 West Broadway, New York, N.Y. 10013 at a cost of $9.00 per copy.

(c) Incorporation by reference of the material listed in this section was approved by the Director of the Federal Register on ————, 19——.

§ 140.10 Definitions.

As used in this subchapter:

"Act" means the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331 et seq.), as amended by the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372).

"Approved" means approved by the Commandant.

"Attending vessel" means a vessel which is moored close to and readily accessible from an OCS facility and is especially adapted to providing power, fuel, or other services to the operation being conducted on the facility.

"Commandant" means Commandant of the Coast Guard or that person's authorized representative.

"Development" means those activities which take place following discovery of minerals in paying quantities, including, but not limited to, geophysical activity, drilling, and platform construction, and which are for the purpose of ultimately producing the minerals discovered.

"District Commander" means an officer who commands a Coast Guard District described in Part 3 of this chapter or that person's authorized representative.

"Exploration" means the process of searching for minerals, including, but not limited to, (a) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (b) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after the discovery which is needed to delineate an reservoir and to enable the lessee to determine whether to proceed with development and production.

"Floating installation" means a buoyant OCS facility securely and substantially moored so that it cannot be moved without a special effort. This terms include tension leg platforms and permanently moored semi-submersibles, but does not include mobile offshore drilling units and other vessels.

"Investigating officer" means a person assigned by the Commandant, a District Commander, or an Officer in Charge, Marine Inspection, to conduct an investigation of an accident, casualty, or other incident associated with OCS activities.

"Manned facility" means an OCS facility on which people are actually and continuously living or accommodated.

"Manned platform" means an OCS facility, other than a floating facility or mobile offshore drilling unit, on which people are actually and continuously living or accommodated.

"Marine inspector" means a person designated as such by an Officer in Charge, Marine Inspection, to perform inspections of units to determine whether the requirements of this subchapter are met.

"Minerals" includes oil, gas, sulphur, geopressured geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1702(e)).

"Mobile offshore drilling unit" or "MODU" means a vessel, other than a public vessel of the United States, capable of engaging in drilling operations for exploration or exploitation of subsea resources;

"Officer in Charge, Marine Inspection" means a person who commands a Marine Inspection Zone described in 33 CFR Part 3 and who is immediately responsible for the performance of duties with respect to inspections, enforcement, and administration of regulations governing units.

"Operator" means—

(a) In the case of a vessel, a charterer by demise or any other person who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(b) In the case of a unit other than a vessel, any person who is responsible for the operation of the unit.

"Outer Continental Shelf" or "OCS" means all submerged lands lying seaward and outside of the area of "lands beneath navigable waters" as defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"OCS" activity" means any offshore activity associated with exploration for, or development or production of, the minerals of the Outer Continental Shelf.

"OCS facility" means any artificial island, installation, or other device permanently or temporarily attached to the subsoil or seabed of the Outer Continental Shelf, erected for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources. The term includes mobile offshore drilling units when in contact with the seabed of the OCS for exploration or exploitation of subsea resources. The term does not include any pipeline or deepwater port (as the term "deepwater port" is defined in section 3(10)of the Deepwater Port Act of 1974 (33 U.S.C. 1502)).

"Owner" means a person holding title to or, in the absence of title, other indicia of ownership of a unit.

"Person" means an individual, association, partnership, consortium, joint venture, private, public, or municipal firm or corporation, or a government entity.

"Person in charge" means the master or other individual designated as such by the owner or operator under § 146.5 of this subchaptr or 46 CFR 109.107.

"Production" means those activities which take place after the successful completion of any means for the removal of minerals, including, but not limited to, such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover drilling.

"Rebuilt" means having had substantial alteration of the hull or principal structural component;

"Unit" means any OCS facility, vessel, rig, platform, or other vehicle or structure, domestic or foreign.

"Unmanned facility" means an OCS facility, other than a floating facility or mobile offshore drilling unit, which is not a manned facility even though it may be continuously serviced by an attending vessel.

"Unmanned platform" means a fixed, bottom-founded OCS facility which is not a manned facility even though it may be continuously serviced by an attending vessel.

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water.

§ 140.15 Equivalents and approved equipment.

(a) The use of alternate equipment or procedures for those specified in this subchapter may be permitted by an Officer in Charge, Marine Inspection, to the extent and upon conditions as will insure a degree of safety comparable to or greater than that provided by the minimum standards in this subchapter.

(b) Where equipment in this subchapter is required to be of an approved type, the equipment requires the specific approval of the Commandant. Approvals are published in the **Federal Register** and Coast Guard publication CG–190, "Equipment Lists" available from Commandant (G–MMT–2), U.S. Coast Guard, Washington, DC 20593.

(c) Specifications for certain items required to be of an approved type are contained in 46 CFR Parts 160 through 164.

§ 140.20 Delegations.

(a) Each District Commander is responsible for the administration and enforcement of the regulations in this subchapter within that person's assigned district.

(b) Under the general superintendence of the District Commander, the Officer in Charge, Marine Inspection, is delegated authority to administer and enforce the regulations in this subchapter.

(c) Authority delegated under this section may be delegated as necessary by the delegee.

§ 140.25 Appeals.

(a) Any person directly affected by an action or decision of an Officer in Charge, Marine Inspection, under the act or the regulations in this subchapter may request reconsideration of that action or decision. If still dissatisfied, that person may appeal the action or decision within 30 days to the District Commander of the District in which the action was taken or the decision made. The District Commander issues a decision after reviewing the appeal submitted under this paragraph.

(b) Any person not satisfied with the decision of a District Commander may appeal that ruling within 30 days to the Chief, Office of Merchant Marine Safety, U.S. Coast Guard, Washington, DC, who issues a decision after reviewing the appeal submitted under this paragraph. Decisions of the Chief, Office of Merchant Marine Safety constitute final agency action.

(c) An appeal to the District Commander or Chief, Office of Merchant Marine Safety must be made in writing, except in an emergency when an oral appeal may be accepted; must describe the decision or action being appealed; and must state the reasons why the action or decision should be set aside or modified. The appeal may contain supporting documents and evidence that the appellent wishes to have considered.

(d) Pending determination of any appeal, the action or decision appealed remains in effect, unless suspended by the District Commander to whom the appeal was made or by the Chief, Office of Merchant Marine Safety.

§ 140.30 Judicial review.

(a) Nothing in this subchapter shall be construed to prevent any interested party from seeking judicial review as authorized by law.

(b) Judicial review of the regulations in this subchapter, or any final decision or order of the Commandant pursuant to the Act or the regulations in this subchapter, is governed by the judicial review provisions of section 23 of the Act (43 U.S.C. 1349).

§ 140.35 Sanctions.

(a) Any person who fails to comply with any provision of the Act, any regulation in this subchapter, or any order issued pursuant to the Act or the regulations in this subchapter by the Commandant, District Commander, or Officer in Charge, Marine Inspection, after notice of the failure and after expiration of any reasonable period allowed for corrective action, shall be liable for a civil penalty of not more than $10,000 for each day of the continuance of the failure.

(b) Any person who knowingly and willfully—

(1) Violates any provision of the Act;

(2) Violates any regulation in this subchapter designed to protect health, safety, or the environment;

(3) Violates any order of the Commandant, District Commander, or Officer in Charge, Marine Inspection, issued under the Act or the regulations in this subchapter that is designed to protect health, safety, or the environment or conserve natural resources;

(4) Makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under the Act or the regulations in this subchapter;

(5) Falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act or the regulations in this subchapter; or

(6) Reveals any data or information required to be kept confidential by the Act shall, upon conviction, be punished by a fine of not more than $100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under paragraph (b)(1), (b)(2), or (b)(3) of this section continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in paragraph (b)(5) of this section, constitutes a separate violation.

(c) Whenever a corporation or other entity is subject to prosecution under paragraph (b) of this section, any officer or agent of the corporation or entity who knowingly and willfully authorized, ordered, or carried out the prescribed activity shall be subject to the same fines or imprisonment, or both, as provided for under paragraph (b) of this section.

(d) The penalties prescribed in this section are concurrent and cumulative and the exercise of one does not preclude the exercise of the others. Further, the penalties prescribed in this section are in addition to any other penalties afforded by any other law or regulation.

§ 140.40 Processing penalty cases.

(a) Apparent violations of the regulations in the subchapter are processed in accordance with Subpart 1.07 of 33 CFR Part I on civil and criminal penalty proceedings, except:

(1) The District Commander refers civil penalty cases to the Secretary of the Interior, or that person's delegee, who, under the Act, assesses, collects, and compromises civil penalties.

(2) If a possible violation investigated by the Coast Guard carries both a civil and a criminal penalty, the District Commander determines whether to refer the case to the U.S. Attorney for criminal prosecution or to the Secretary of the Interior, or that person's delegee, for civil penalty proceedings.

(3) When the U.S. Attorney declines to institute criminal proceedings, the District Commander decides whether to refer the case to the Secretary of the Interior, or that person's delegee, for civil penalty proceedings or to close the case.

Subpart B—Inspections

§ 140.101 General inspection requirements.

(a) Each unit engaged in OCS activities is subject to inspection by the Coast Guard.

(b) Under the direction of the Officer in Charge, Marine Inspection, marine inspectors inspect units engaged in OCS activities to determine whether the requirements of this subchapter are met. These inspections may be conducted with or without advance notice at any time deemed necessary by the Officer in Charge, Marine Inspection.

(c) As part of an inspection, a marine inspector may review records and require and observe the conduct of emergency drills and other tests and procedures as may be necessary to demonstrate to that person's satisfaction that the unit and its equipment are in full compliance with applicable regulations.

§ 140.102 Foreign units.

(a) Coast Guard inspections of foreign units recognize valid international certificates accepted by the United States, including Safety of Life at Sea (SOLAS), Loadline, and Mobile Offshore Drilling Unit (MODU) Code certificates for matters covered by the certificates, unless there are clear grounds for believing that the condition of the unit or its equipment does not correspond substantially with the particulars of the certificate.

(b) The owner or operator of a foreign mobile offshore drilling unit which must comply with the requirements of this subchapter is issued a letter of compliance by the Officer in Charge, Marine Inspection, when that person determines the requirements of this subchapter are met.

(c) A letter of compliance issued under this section is valid for one year or until a unit departs the OCS for foreign operations, whichever comes first.

§ 140.103 Deficiencies discovered during inspections.

(a) Any deficiency or hazard discovered during an inspection is reported to the unit's owner or operator, who shall have the deficiency corrected as soon as practicable and within any period of time specified for correction by the Coast Guard marine inspector.

(b) Whenever a deficiency or hazard remains uncorrected after notice and after the expiration of any period specified for correction by the marine inspector, the Officer in Charge, Marine Inspection, initiates appropriate enforcement measures.

(c) Lifesaving or firefighting equipment which is found defective by a marine inspector and which cannot be satisfactorily repaired shall be so mutilated that it cannot be used for the purpose for which it was originally intended.

§ 140.105 OCS facility inspections.

(a) This section applies to OCS facilities other than mobile offshore drilling units inspected under 46 CFR Part 107.

(b) Each OCS facility is subject to a comprehensive annual on-site inspection by the Coast Guard.

(c) An annual inspection includes inspection of all Coast Guard approved or required equipment and procedures designed to prevent or mitigate fires, spillages, and other major accidents on OCS facilities.

(d) The Coast Guard may conduct the first annual inspection of any OCS facility prior to commencement of drilling or production operations.

Subpart C—Investigations

§ 140.201 General.

Under the direction of the Officer in Charge, Marine Inspection, investigating officers investigate the following incidents occurring as a result of OCS activities:

(a) Death.

(b) Injury resulting in substantial impairment of any bodily unit or function.

(c) Major fire.

(d) Oil spillage exceeding two hundred barrels of oil in one occurrence during a thirty-day period.

(e) Other injuries, casualties, accidents, compliants of unsafe working conditions, fires, pollution, and incidents occurring as a result of OCS activities as may be necessary to promote the safety of life or property or protect the marine environment.

§ 140.203 Investigation procedures.

(a) In so far as practicable, investigations conducted pursuant to this subchapter shall follow the procedures of 46 CFR Part 4.

(b) Representatives of the U.S. Geological Survey may participate in these investigations. This participation may include, but is not limited to—

(1) Participating in a joint on scene investigation;

(2) Making recommendations concerning the scope of the investigation;

(3) Calling and examining witnesses; and

(4) Submitting or requesting additional evidence.

(c) Reports of investigations conducted under this subchapter shall be made available to the public upon completion of agency action.

§ 140.205 Supoenas.

(a) In any investigation conducted pursuant to this subchapter, the investigating officer shall have the power to administer necessary oaths, subpoena witnesses, and require the production of books, papers, documents, and any other evidence.

(b) Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a process similar to that used in the District Courts of the United States.

3. By adding a new Part 141 to read as follows:

PART 141—PERSONNEL

Subpart A—Restrictions on Employment

Sec.
141.1 Purpose.
141.5 Applicability.
141.10 Definitions.
141.15 Restrictions on employment.
141.20 Exceptions to restrictions on employment.
141.25 Evidence of U.S. citizenship.
141.30 Evidence of status as a resident alien.
141.35 Records to be kept by the owner or operator.

Authority: Sec. 30 of sec. 208, Pub. L. 95-372, 92 Stat. 669 (43 U.S.C. 1356); 49 CFR 1.46(z).

Subpart A—Restrictions on Employment

§ 141.1 Purpose.

This subpart prescribes rules governing restrictions on the employment of personnel on Outer Continental Shelf (OCS) facilities and other units engaged in OCS activities.

§ 141.5 Applicability.

(a) This subpart applies to employment of personnel on units engaged in OCS activities, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to employment of personnel on any—

(1) Vessel subject to the citizenship requirements of 46 U.S.C. 672a for pilots, licensed officers, and unlicensed crew when the vessel is transiting to or from an OCS facility or a United States port;

(2) Vessel subject to the citizenship requirements of 46 U.S.C. 1132 for officers and crew on federally subsidized or documented vessels; or

(3) Unit over 50 percent of which is owned by one or more citizens of a foreign nation or with respect to which one or more citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil or gas in its offshore areas.

(c) The District Commander may, upon request or upon that person's own initiative, determine whether over 50 percent of a particular unit is owned by citizens of a foreign nation or whether citizens of a foreign nation have the right effectively to control the unit.

(d) In determining whether ownership or a right effectively to control exists, the District Commander considers title, lease and charter arrangements, financial interests, management responsibility, and operational control of a unit.

(e) The owner or operator of any unit affected is notified of the District Commander's determination.

§ 141.10 Definitions.

As used in this subpart:

(a) "Citizen of the United States" means—

(1) In the case of an individual, one who is a native born, derivitive, or fully naturalized citizen of the United States;

(2) In the case of a partnership, unincorporated company, or association, one in which 50% or more of the controlling interest is vested in citizens of the United States; or

(3) In the case of a corporation, one which is incorporated under the laws of the United States or of any State thereof.

(b) "Resident alien" means an alien lawfully admitted to the United States for permanent residence in accordance with § 101(a)(20) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. § 1101(a)(20).

(c) "Citizen of a foreign nation" means—

(1) In the case of an individual, one who is not a citizen of the United States;

(2) In the case of a partnership, unincorporated company, or association, one in which more than 50% of the controlling interest is vested in citizens of a nation other than the United States; or

(3) In the case of a corporation, one which is incorporated under the laws of a nation other than the United States so long as (i) the title to a majority of the stock thereof is free from any trust or fiduciary obligation in favor of any person who is a citizen of the United States; (ii) the majority of the voting power in the corporation is not vested in citizens of the United States; (iii) through any contract or understanding, the majority of the voting power may not be exercised directly or indirectly on behalf of any person who is a citizen of the United States; or (iv) by no other means, control of the corporation is conferred upon or permitted to be exercised by any person who is a citizen of the United States.

§ 141.15 Restrictions on employment.

(a) On or after [one year after the effective date of final regulations], the owner or operator of any unit engaged in OCS activities that is subject to this part must employ, as members of the regular complement of the unit, only citizens of the United States or resident aliens except as provided by § 141.20.

(b) As used in paragraph (a) of this section, "regular complement of a unit" means those personnel necessary for the routine functioning of the unit, including marine officers and crew; industrial personnel on the unit (such as toolpushers, drillers, roustabouts, floor hands, crane operators, derrickmen, mechanics, motormen, and general maintenance personnel); and support personnel on the unit (such as cooks, stewards and radio operators). The term does not include consultative personnel, such as geologists or professional engineers, who may be aboard a unit to provide specialized advice or assistance but who are not engaged in the routine operation of the unit; extra personnel on a unit for training; and other personnel temporarily on a unit for specialized operations, such as construction, alteration, well logging, or unusual repairs or emergencies.

(c) The Officer in Charge, Marine inspection, may, upon request or upon that person's own initiative, determine whether a particular individual or position is part of the regular complement of a unit. A copy of the determination is provided to the owner or operator of the unit affected.

§ 141.20 Exceptions to restrictions on employment.

Under section 30(c) of the Act, persons other than citizens of the United States or resident aliens may be employed as part of the regular complement of a unit engaged in OCS activities under the following circumstances:

(a) When specific contractual provisions or national registry manning requirements in effect on September 18, 1978 provide that a person is to be employed on a particular unit. The owner or operator of any unit claiming an exemption under this paragraph must submit a written request for the

exemption with a copy of the applicable contract and a list of the persons claimed exempt for each unit to the Commandant (G–MVP), U.S. Coast Guard, 2100 2nd Street, S.W., Washington, D.C. 20593. Upon approval, the Coast Guard issues a certification of exemption to the owner or operator, who must maintain a copy on each unit affected as required by § 141.35;

(b) When there are not a sufficient number of citizens of the United States, or resident aliens qualified and available for the work. The owner or operator of any unit claiming an exemption under this paragraph must submit a written request for the exemption to the Commandant (G-MVP), U.S. Coast Guard, 2100 2nd Street, S.W., Washington, D.C. 20593. The request must describe each unit involved and each person or position sought to be exempted. Upon receipt of a request, the Coast Guard seeks an advisory opinion from the Division of Labor Certification of the Employment Service of the Department of Labor, concerning whether there are citizens of the United States, or resident aliens qualified and available for the work. If the Coast Guard approves the exemption, it issues a certification of the exemption in letter form valid for one year to the owner or operator, who must maintain a copy on each unit affected as required by § 141.35.

(c) When the President determines with respect to a particular unit that the employment of only citizens of the United States or resident aliens would not be consistent with the national interest. The owner or operator of any unit claiming an exemption under this paragraph must submit a written request for the exemption with any supporting data or ducumentation to the Commandant (G-MVP), U.S. Coast Guard, 2100 2nd Street, S.W., Washington, D.C. 20593. After consulting with other federal agencies as approriate, the Commandant forwards the request and the comments of the Coast Guard and other interested agencies to the President for determination. Upon approval by the President, the Coast Guard issues a certification of the exemption to the owner or operator, who must maintain a copy on each unit affected as required by § 141.35.

§ 141.25 Evidence of citizenship.

(a) The owner or operator may accept as sufficient evidence that a person is a citizen of the united States any one of the following documents and no others:

(1) A merchant mariner's document issued by the Coast Guard under 46 CFR Part 12.

(2) An original or certified copy of a birth certificate or birth registration issued by a state or the District of Columbia.

(3) A United States passport.

(4) A Certificate of Citizenship issued by the Immigration and Naturalization Service.

(5) A Certificate of Naturalization issued by a Naturalization Court.

(6) A letter from the Coast Guard issued under paragraph (d) of this section.

(b) If a person does not have one of the documents listed in paragraphs (a)(1) through (a)(6) of this section, that person may appear in person before an Officer in Charge, Marine Inspection, and submit one or more of the following documents which may be considered as the evidence that the applicant is a citizen of the United States:

(1) A Certificate of Derivative Citizenship or a Certificate of Naturalization of either parent and a birth certificate of the applicant or other evidence satisfactorily establishing that the applicant was under 21 years of age at the time of the parent's naturalization.

(2) A Baptismal certificate or parish record recorded within one year after birth.

(3) A statement of a practicing physician certifying that the physician attended the birth and has a record showing the date on which the birth occurred.

(4) A commission, or evidence of commission, in the Armed Forces of the United States which shows the holder to be a citizen of the United States;

(5) A continuous discharge book or certificate of identification issued by the Coast Guard or the former Bureau of Marine Inspection, provided the document shows that the applicant produced satisfactory evidence of citizenship at the time the document was issued.

(6) A delayed certificate of birth issued under a state seal, provided there are no collateral facts indicating fraud in its procurement.

(7) A report of the Census Bureau showing the earliest available record of the applicant's age or birth.

(8) Affidavits of parents, relatives, or two or more responsible citizens of the United States; school records; immigration records; insurance policies; or other records which support the citizenship claim.

(c) In any case where doubt exists concerning evidence of citizenship submitted under paragraph (b) of this section, the Officer in Charge, Marine Inspection, may refer the matter to the United States Immigration and Naturalization Service for an advisory opinion.

(d) If the documents submitted under paragraph (b) of this section are determined by the Officer in Charge, Marine Inspection, to be sufficient evidence that the applicant is a citizen of the United States, the Coast Guard issues the applicant a letter acknowledging this determination.

§ 141.30 Evidence of status as a resident alien.

The owner or operator may accept as sufficient evidence that a person is a resident alien any one of the following documents and no others:

(a) A merchant mariner's document issued by the Coast Guard under 46 CFR Part 12.

(b) An alien registration receipt card issued by the Immigration and Naturalization Service certifying that the card holder has been admitted to the United States as an immigrant.

(c) A declaration of intention to become a citizen of the United States issued by a Naturalization Court.

§ 141.35 Records to be kept by the owner or operator.

(a) The owner or operator of any unit subject to this subpart that is engaged in OCS activities shall maintain a record identifying which of the documents listed in §§ 141.25 and 141.30 were relied upon by the owner or operator for each employee. The record must consist of either a copy of the document or the following information for each document:

(1) For a merchant mariner's document or a United States passport, the document's title and control number.

(2) For a birth certificate or birth registration, the document's title and the employee's date and place of birth.

(3) For all other documents listed in §§ 141.25 and 141.30, the document's title and date and place of issuance.

(b) The owner or operator of any unit engaged in OCS activities that is subject to this subpart shall maintain on board the unit:

(1) A copy of any determination under § 141.15(c) as to whether a particular individual or position is part of the regular complement of the unit;

(2) A copy of any Coast Guard certification issued under § 141.20 to employ persons who are not citizens of the United States or lawfully admitted aliens as part of the regular complement of the unit; and

(3) A written description of the positions that make up the regular complement of the unit and the name and nationality of the individual filling

each employee position on board the unit.

(c) The information required by paragraphs (a) and (b)(3) of this section may be in summary form and any simple format.

4. By revising Part 142 to read as follows:

PART 142—WORKPLACE SAFETY AND HEALTH

Sec.

142.1 Duties of lessees, permittees, and persons responsible for actual operations.
142.5 Reports of unsafe working conditions.

Authority: Sec. 4, 67 Stat. 462 (43 U.S.C. 1333) as amended; sec. 22 of sec. 208, Pub. L. 95-372, 92 Stat. 655 (43 U.S.C. 1348); 49 CFR 1.46(z).

§ 142.1 Duties of lessees, permittees, and persons responsible for actual operations.

(a) Each holder of a lease or permit under the Act shall ensure that all places of employment within the lease area or within the area covered by the permit on the OCS are maintained in compliance with occupational safety and health regulations and, in addition, free from recognized hazards.

(b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractors, shall ensure that those operations subject to their control are conducted in compliance with occupational safety and health regulations and, in addition, free from recognized hazards.

(c) "Recognized hazards", in paragraphs (a) and (b) of this section, means conditions which are—

(1) Generally known among persons in the affected industry as threatening the health or safety of persons exposed to those conditions; and

(2) Routinely controlled in the affected industry.

§ 142.5 Reports of unsafe working conditions.

(a) Any person may report a possible violation of any regulation in this subchapter or any other hazardous or unsafe working condition on any unit engaged in OCS activities to an Officer in Charge, Marine Inspection.

(b) After reviewing the report and conducting any necessary investigation, the Officer in Charge, Marine Inspection, notifies the owner or operator of any deficiency or hazard and initiates enforcement measures as the circumstances warrant.

(c) The identity of any person making a report under paragraph (a) of this section is not made available, without the permission of the reporting person, to anyone other than those officers and employees of the Department of Transportation who have a need for the record in the performance of their official duties.

5. By revising Part 143 to read as follows:

PART 143—DESIGN AND EQUIPMENT

Subpart A—General

Sec.

143.1 Purpose.
143.3 Relationship to other law.
143.15 Lights and warning devices.

Subpart B—OCS Facilities

143.100 Applicability.
143.101 Means of escape.
143.105 Personnel landings.
143.110 Guards and rails.
143.120 Floating installations.

Subpart C—Mobile Offshore Drilling Units

143.200 Applicability.
143.201 Existing units exempted from new design requirements.
143.205 Requirements for U.S. and undocumented units.
143.207 Requirements for foreign units.
143.210 Letter of compliance.

Subpart D—Vessels

143.300 Applicability.
143.301 Load line requirements.

Authority: Sec. 4, 67 Stat. 462 (43 U.S.C. 1333) as amended; Sec. 30 of sec. 208, Pub. L. 95-372, 92 Stat. 669 (43 U.S.C. 1356); 49 CFR 1.46(z).

Subpart A—General

§ 143.1 Purpose.

This part prescribes design and equipment requirements for units engaged in OCS activities.

§ 143.3 Relationship to other law.

(a) Design and equipment requirements of this part for OCS facilities, including mobile offshore drilling units in contact with the seabed of the OCS for exploration or exploitation of subsea resources, are in addition to the regulations and orders of the U.S. Geological Survey applicable to those facilities.

(b) Any apparent conflict between the application of any requirement of this part and any regulation or order of the U.S. Geological Survey should immediately be brought to the attention of the Officer in Charge, Marine Inspection.

(c) This part does not establish design requirements for fixed, bottom-founded OCS facilities or regulate drilling or production equipment on any OCS facility except for matters affecting navigation or workplace safety or health.

§ 143.15 Lights and warning devices.

(a) OCS facilities must maintain and display lights and warning devices in accordance with the requirements of Part 67 of this chapter concerning aids to navigation on artificial islands and fixed structures.

(b) Vessels engaged in OCS activities, including attending vessels, must display lights and warning devices in accordance with the International Regulations for Preventing Collisions at Sea 1972 (33 CFR Part 87, Appendix A) or the local rules established in accordance with Rule 1 of those Regulations.

Subpart B—OCS Facilities

§ 143.100 Applicability.

This subpart applies to OCS facilities except mobile offshore drilling units.

§ 143.101 Means of escape.

(a) "Primary means of escape" shall be fixed stairways or fixed ladders of metal construction.

(b) "Secondary means of escape" shall be types approved for "primary means of escape" or portable, flexible ladders, knotted man ropes, and other devices satisfactory to the Officer in Charge, Marine Inspection.

(c) Manned OCS facilities shall be provided with at least two "primary means of escape" extending from the uppermost platform level that contains living quarters or that personnel occupy continuously, to each successively lower working level and to the water surface. Working levels without living quarters, shops, or offices in manned facility structural appendages, extensions, and installations that personnel occupy only occasionally shall be provided with one "primary means of escape" and, when necessary in the opinion of the Officer in Charge, Marine Inspection, one or more "secondary means of escape."

(d) Unmanned OCS facilities shall be provided with at least one "primary means of escape" extending from the uppermost platform working level to each successively lower working level and to the water surface. When personnel are on board, unmanned facilities shall also be provided with one or more "secondary means of escape," but not more than one will be required for every 10 persons extending from the uppermost working level of the facility to each successively lower working level and to the water surface, excluding facility appendages and installations, unless "secondary means of escape" from such appendages and installations are necessary in the opinion of the Officer in Charge, Marine Inspection.

(e) "Means of escape" shall be suitably accessible to personnel for rapid facility evacuation.

(f) When two or more "means of escape" are installed, at least two shall be located as nearly diagonally opposite each other as practicable unless such requirement is unreasonable or impracticable in the opinion of the Officer in Charge, Marine Inspection.

§ 143.105 Personnel landings.

(a) Sufficient personnel landings shall be provided on each manned OCS facility to assure safe access and egress. When due to special construction personnel landings are not feasible, then suitable transfer facilities to provide safe access and egress shall be installed.

(b) The personnel landings shall be provided with satisfactory illumination. The minimum shall be one-foot candle of artificial illuminiation as measured at the landing floor and guards and rails.

§ 143.110 Guards and rails.

(a) Except for helicopter landing decks which are provided for in paragraph (b) of this section, and areas not normally occupied, the unprotected perimeter of all floor or deck areas and openings shall be rimmed with guards and rails or wire mesh fence. The guard rail or fence shall be at least 42 inches high. The two intermediate rails shall be so placed that the rails are approximately evenly spaced between the guard rail and the floor or deck area: *Provided,* That if a toe board is installed then one of the intermediate rails may be omitted and the other rail placed approximately half way between the top of the toe board and the top guard rail.

(b) The unprotected perimeter of the helicopter landing deck shall be protected with a device of sufficient strength and size as to prevent any person from falling from such deck.

(c) Each catwalk and each stairway shall be provided with a suitable guard rail or rails, as necessary.

§ 143.120 Floating installations.

(a) Before construction is started on a proposed floating installation, the owner or operator of the installation must submit plans and information indicating the proposed arrangement and construction of the installation to the Coast Guard for approval following the procedures of Subpart C of 46 CFR Part 107.

(b) The installation must comply with the marine and electrical engineering requirements of Subchapters F and J of 46 CFR Chapter I and the design and equipment requirements of 46 CFR Part 108. Where unusual design or equipment needs make compliance impracticable, alternative proposals that provide an equivalent level of safety may be accepted.

Subpart C—Mobile Offshore Drilling Units

§ 143.200 Applicability.

This subpart applies to mobile offshore drilling units when engaged in OCS activities.

§ 143.201 Existing units exempted from new design requirements.

Any mobile offshore drilling unit built before or under construction on [the effective date of final regulations] is not required to meet the design requirements of this subpart until the unit is rebuilt. Until rebuilt, the unit must continue to comply with the design requirements applicable to the unit on [one day before the effective date of final regulations].

§ 143.205 Requirements for U.S. and undocumented units.

Each mobile offshore drilling unit that is documented under the laws of the United States and each mobile offshore drilling unit that is not documented under the laws of any nation must comply with the design, equipment, and inspection requirements of 46 CFR Parts 107 and 108 in order to engage in OCS activities.

§ 143.207 Requirements for foreign units.

Each mobile offshore drilling unit that is documented under the laws of a foreign nation must, when engaged in OCS activities, comply with one of the following:

(a) The design and equipment standards of 46 CFR Part 108.

(b) The design and equipment standards of the documenting nation if the standards provide a level of safety generally equivalent to or greater than that provided under 46 CFR Part 108.

(c) The design and equipment standards for mobile offshore drilling units contained in the International Maritime Consultative Organization (IMCO) Code for Construction and Equipment of Mobile Offshore Drilling Units (IMCO Assembly Resolution A414(XI), 1979).

§ 143.210 Letter of Compliance.

The Officer in Charge, Marine Inspection, determines whether a mobile offshore drilling unit which does not hold a valid Coast Guard Certificate of Inspection meets the requirements of § 143.205 or § 143.207 relating to design and equipment standards and issues a letter of compliance to the owner or operator of each unit which meets the requirements. Inspection of the unit may be required as part of this determination.

Subpart D—Vessels

§ 143.300 Applicability.

This subpart applies to all vessels engaged in OCS activities except mobile offshore drilling units.

§ 143.301 Load line requirements.

(a) Vessels, including foreign vessels, which would be subject to the requirements of Subchapter E of 46 CFR Chapter I concerning load lines when arriving at or proceeding to sea from any port or place within the United States must comply with those requirements when engaged in activities on the OCS.

(b) Load line certificates and load line exemption certificates issued or accepted under Subchapter E of 46 CFR Chapter 1 are accepted as evidence of compliance with paragraph (a) of this section.

PART 144—LIFESAVING APPLIANCES

6. By adding new paragraphs (c) and (d) to § 144.01–20 as follows:

§ 144.01–20 Life preservers.

* * * * *

(c) Each life preserver carried on a manned platform after [six months after the effective date of final regulations] must have a personal flotation device light that is approved under 46 CFR 161.012. Each light must be securely attached to the front shoulder area of the life preserver.

(d) Each life preserver carried on a manned platform after [six months after the effective date of final regulations] must have at least 200 sq. cm (31 sq. in.) of retroreflective material attached on its front side, at least 200 sq. cm on its back side, and at least 200 sq. cm of material on each of its reversible sides. The material must be Type I material that is approved under 46 CFR Subpart 164.018. The material attached on each side of a life preserver must be divided equally between the upper quadrants of the side, and the material in each quadrant must be attached as closely as possible to the shoulder area of the life preserver.

7. By revising Part 146 to read as follows:

PART 146—OPERATIONS

Subpart A—OCS Facilities

Sec.

146.1 Applicability.
146.5 Person in charge.
146.10 Notice of new facilities.
146.15 Maintenance of emergency equipment.
146.20 Work vests.

Sec.

146.30 Notice of casualty or accident.
146.35 Written report of casualty.
146.40 Diving casualties.
146.45 Reporting of oil pollution incidents.

Subpart B—Manned OCS Facilities

146.101 Applicability.
146.105 General alarm system.
146.110 Emergency signals.
146.115 Duties of personnel.
146.120 Manning of survival craft.
146.125 Emergency drills.
146.130 Station bill.
146.135 Markings for emergency equipment.

Subpart C—Mobile Offshore Drilling Units

146.201 Applicability.
146.202 Notice of arrival or relocation of units on the OCS.
146.203 Requirements for U.S. and undocumented units.
146.205 Requirements for foreign units.

Subpart D—Vessels

146.301 Applicability
146.303 Notice of casualty or accident.

Authority: Sec. 4, 67 Stat. 462 (43 U.S.C. 1333) as amended; 49 CFR 1.46(z).

Subpart A—OCS Facilities

§ 146.1 Application.

The provisions of this subpart apply to OCS facilities except mobile offshore drilling units.

§ 146.5 Person in charge.

(a) The owner or operator, or the agent of either of them, shall designate by title and in order of succession the persons on each OCS facility who shall be the "person in charge."

(b) In case an emergency arises, nothing in the regulations in this subchapter shall be so construed as preventing the person in charge from pursuing the most effective action in that person's judgement for rectifying the conditions causing the emergency.

§ 146.10 Notice of new facilities.

(a) The owner or operator of each OCS facility not in operation before [the effective date of the final regulations] shall, at least 30 days before the date operation of the facility is expected to commence, notify the District Commander for the area in which the facility is located of—

(1) The position in which the facility will be operated;

(2) The designation assigned to the facility for identification under 30 CFR 250.37;

(3) The date when operation of the facility is expected to commence; and

(4) The date when the facility will be available for inspection by Coast Guard.

(b) The information required in paragraph (a) of this section may be submitted together with and need not repeat information submitted in connection with the application and notice requirements in 33 CFR Part 67 for aids to navigation on the Outer Continental Sheld.

§ 146.15 Maintenance of emergency equipment.

(a) The emergency equipment provided, regardless of whether or not required by this subchapter, shall be maintained in good condition at all times. Good operating practices require replacement of expended equipment, as well as periodic renewal of those items which have a limited period of effectiveness, such as replacing charges in fire extinguishers.

(b) Each personal flotation device light that has a non-replaceable power source must be replaced on or before the expiration date of the power source.

(c) Each replaceable power source for a personal flotation device light must be replaced on or before its expiration date and the light must be replaced when it is no longer serviceable.

§ 146.20 Work vests.

(a) *Approved unicellular plastic foam.* Buoyant work vests carried under the permissive authority of this section shall conform to the specifications for Type V work vests in 46 CFR Subpart 160.053.

(b) *Use.* Approved buoyant work vests are considered to be items of safety apparel and may be carried aboard OCS facilities to be worn by persons employed thereon when working near or over the water under favorable work conditions. The use and control of such vests shall be under the supervision of the person in charge of the facility. When carried, such vests shall not be accepted in lieu of any portion of the required number of approved life preservers and shall not be substituted for the approved life preservers required to be worn during drills and emergencies.

(c) *Stowage.* The work vests shall be stowed separately from the regular stowage of approved life preservers. The location for the stowage of work vests shall be such as not to be easily confused with that for approved life preservers.

(d) *Inspections.* Each work vest shall be subject to examination by a marine inspector to determine its serviceability. If found to be satisfactory, it may be continued in service, but shall not be stamped by a marine inspector with a Coast Guard stamp. If a work vest is found not to be in a serviceable condition, then such work vest shall be removed from the OCS facility. If a work vest is beyond repair, it shall be destroyed or mutilated in the presence of a marine inspector so as to prevent its continued use as a work vest.

§ 146.30 Notice of casualties.

(a) The owner, operator, and person in charge of an OCS facility shall ensure the Coast Guard is notified immediately, by the most rapid means available, of each casualty involving the facility which results in—

(1) Death; or

(2) Injury to 5 or more persons in a single incident.

(b) The owner, operator, and person in charge shall ensure the Coast Guard is notified promptly of each casualty involving the facility which results in—

(1) Damage affecting the usefulness of primary lifesaving or firefighting equipment;

(2) Injury causing any person to be incapacitated for more than 72 hours;

(3) Damage to the facility exceeding $10,000 resulting from a collision by a vessel with the facility; or

(4) Damage to a floating installation exceeding $25,000.

(c) The notice required by paragraphs (a) and (b) of this section must identify the person giving the notice and the facility involved and describe, in so far as practicable, the nature of the casualty and the extent of injury to personnel and damage to property.

(d) The damage amounts set forth in paragraphs (b)(3) and (b)(4) of this section are based on the costs necessary to restore the facility to the same condition of servicebility that the facility was in before the casualty, including the cost of salvage, gas freeing, and drydockage. It does not include demurrage or similar items.

§ 146.35 Written report of casualty.

(a) In addition to the notice of a casualty required by § 146.30, the owner, operator, and person in charge shall ensure that, within 10 days of the casualty, the Officer in Charge, Marine Inspection, is provided a written report which—

(1) Identifies the facility involved, its owner, operator and person in charge;

(2) Describes the casualty, including the date and time;

(3) Describes the nature and extent of injury to personnel and damage to property;

(4) Describes the apparent cause of the casualty;

(5) Gives the name, address, and phone number of persons involved in or witnessing the casualty; and

(6) Gives any desired comments, especially with respect to use of or need for emergency equipment.

(b) The written report required by paragraph (a) of this section may be—

(1) In narrative form;
(2) On Form CG 2692 for casualties resulting in only property damage; or
(3) On Form CG 924E for casualties resulting only in injury to personnel.
(c) If filed within 5 days of the casualty, the written report required by paragraph (a) of this section serves as the notice required by § 146.30(b).

§ 146.40 Diving casualties.

Diving related casualties are reported in accordance with 46 CFR 197.484 and 46 CFR 197.486.

§ 146.45 Reporting of oil pollution incidents.

Oil pollution incidents involving an OCS facility are reported in accordance with § 135.305 and § 135.307 of this chapter. Additional provisions concerning liability and compensation because of oil pollution are contained in Subchapter M of this chapter.

Subpart B—Manned OCS Facilities

§ 146.101 Application.

The provisions of this subpart apply only to manned OCS facilities except mobile offshore drilling units.

§ 146.105 General alarm system.

Each manned facility shall be provided with a general alarm system. When operated, this system shall be audible in all parts of the facility on which provided.

§ 146.110 Emergency signals.

(a) The owner, or his agent, or the person in charge shall establish emergency signals to be used for calling the personnel to their emergency stations.
(b) The emergency signal shall be an intermittent signal on the general alarm system for not less that 15 seconds. The abandon facility signal shall be a continuous signal on the general alarm system.

§ 146.115 Duties of personnel.

(a) The owner, or his agent, or the person in charge, shall assign to each person on a manned facility special duties and duty stations so that in event an emergency arises confusion will be minimized and no delay will occur with respect to the use or application of equipment required by this subchapter. The duties shall, as far as possible, be comparable with the regular work of the individual.
(b) The duties shall be assigned as necessary for the proper handling of any emergency, and shall include the following:
(1) the closing of airports, watertight doors, scuppers, sanitary and other discharges which lead through the facility's hull.
(2) The stopping of fans and ventilation systems.
(3) The donning of life preservers.
(4) The preparation and launching of life floats, lifeboats, or life rafts.

§ 146.120 Manning of survival craft.

The owner, or the owner's agent, or the person in charge, shall assign a person to each life float, lifeboat, life raft, or survival capsule who shall be responsible for launching it in event of an emergency.

§ 146.125 Emergency drills.

(a) Emergency drills shall be conducted at least once each month by the person in charge of the manned facility. The drill shall be conducted as if an actual emergency existed. All personnel should report to their respective stations and be prepared to perform the duties assigned to them.
(b) The person in charge and conducting the emergency drill shall give such instructions to the personnel as are necessary to insure that all persons are familiar with their duties and stations.
(c) The date and time of such drills shall be reported in writing by the person in charge at the time of the drill to the owner who shall maintain this report record for a year and furnish it upon request to the Coast Guard. After one year, such records may be destroyed. When it is impossible to conduct emergency drills as required by this section during a particular calendar month, during the following month a written report by the owner shall be submitted to the Officer in Charge, Marine Inspection, stating why the drills could not be conducted.

§ 146.130 Station bill.

(a) The owner, the owner's agent, and the person in charge, shall be responsible for and have prepared a station bill (muster list). This station bill must be signed by the person in charge. Copies shall be duly posted in conspicuous locations on the manned platform.
(b) The station bill shall set forth the special duties and duty stations of each member of the personnel for any emergency which involves the use or application of equipment required by this subchapter. In addition, it shall contain all other duties assigned and considered as necessary for the proper handling of any emergency.
(c) The station bill shall contain the various signals to be used for calling the personnel to their emergency stations, and to abandon the facility.

§ 146.135 Markings for emergency equipment.

(a) Markings shall be provided as considered necessary for the guidance of persons on manned facilities.
(b) The general alarm bell switches shall be identified by red letters at least one inch high with a contrasting background: "General Alarm."
(c) All general alarm bells shall be identified by a sign at each bell in red letters at least one inch high with a sharp contrasting background: "General Alarm—When Bell Rings Go To Your Station."
(d) All life floats, lifeboats, life rafts, and survival capsules, together with paddles or oars, shall be conspicuously marked with a name or number or identification of the facility on which placed. The number of persons allowed on each life float, lifeboat, or life raft shall be conspicuously marked thereon in letters and numbers 1½ inches high. These numbers shall be placed on both sides of the life float, lifeboat, or life raft. Inflatable life rafts shall be marked in accordance with Subpart 160.051 of this chapter and no additional markings are required.
(e) All life preservers and ring life buoys shall be marked with the name and number or identification of the facility on which placed.

Subpart C—Mobile Offshore Drilling Units

§ 146.201 Application.

This subpart applies to mobile offshore drilling units engaged in OCS activities.

§ 146.202 Notice of arrival or relocation of units on the OCS.

(a) The owner or operator of any mobile offshore drilling unit engaged in OCS activities shall, as soon as a permit from the Corps of Engineers is obtained or, if possible, 30 days before arrival of the unit on the OCS, notify the District Commander for the area in which the unit will operate of—
(1) The unit's name, nationality, and designation assigned for identification under 30 CFR 250.37;
(2) The location and year that the unit was built;
(3) The name and address of the owner and the owner's local representative, if any;
(4) Classification or inspection certificates currently held by the unit;
(5) The location and date operations on the OCS are expected to commence; and
(6) The location and date that the unit will be available and ready for inspection by the Coast Guard.

(b) Once a unit is located on the OCS, the owner or operator of the unit shall notify the District Commander before relocating the unit.

(c) The information required in paragraphs (a) and (b) of this section may be submitted together with and need not repeat information submitted in connection with the application and notice requirements in 33 CFR Part 67 for aids to navigation on the Outer Continental Shelf.

§ 146.203 Requirements for U.S. and undocumented units.

Each mobile offshore drilling unit documented under the laws of the United States and each mobile offshore drilling unit that is not documented under the laws of any nation must comply with the operating standards of 46 CFR Part 109 when engaged in OCS activities.

§ 146.205 Requirements for foreign units.

Each mobile offshore drilling unit that is documented under the laws of a foreign nation must, when engaged in OCS activities, comply with one of the following:

(a) The operating standrds of 46 CFR Part 109.

(b) The operating standards of the documenting nation if the standards provide a level of safety generally equivalent to or greater than that provide under 46 CFR Part 109.

(c) The operating standards for mobile offshore drilling units contained in the International Maritime Consultative Organization (IMCO) Code for the Construction and Equipment of Mobile Offshore Drilling Units and the requirements of 46 CFR Part 109 for matters not addressed by the Code.

Subpart D—Vessels

§ 146.301 Applicability.

This subpart applies to vessels engaged in OCS activities other than United States vessels already required to report marine casualties under Subpart 4.05 of 46 CFR Part 4 or Subpart D of 46 CFR Part 109.

§ 146.303 Notice and written report of casualties.

The owner, operator, and person in charge of a vessel engaged in OCS activities shall ensure that the notice of casualty requirements of § 146.30 and the written report requirements of § 146.35 are complied with whenever a casualty involving the vessel occurs which results in—

(a) Death;

(b) Injury to 5 or more persons in a single incident; or

(c) Injury causing any person to be incapacitated for more than 72 hours.

8. By revising Part 147 to read as follows:

PART 147—SAFETY ZONES

Sec.
147.1 Purpose of safety zones.
147.5 Delegation of authority.
147.10 Establishment of safety zones.
147.15 Extent of safety zones.

Authority: Sec. 4, 67 Stat. 462 (43 U.S.C. 1333) as amended; 49 CFR 1.46(z).

§ 147.1 Purpose of safety zones.

Safeth zones may be established around OCS facilities being constructed, maintained, or operated on the Outer Continental Shelf to promote the safety of life and property on the facilities, their appurtenances and attending vessels, and on the adjacent waters within the safety zones. Regulations adopted for safety zones may extend to the prevention or control of specific activities and access by vessels or persons, and include measures to protect the living resources of the sea from harmful agents. The regulations do not encompass the operating equipment or procedures used in the drilling for and production of oil, gas, or other minerals, or the transportation of oil, gas, or other minerals by pipeline except as they relate to the safety of life and property on OCS facilities and on the waters adjacent to OCS facilities or to the protection of the living resources of the sea within a safety zone from harmful agents.

§ 147.105 Delegation of authority.

The authority to establish safety zones and to issue and enforce safety zone regulations in accordance with the provisions of this part is delegated to Distict Commanders.

§ 147.10 Establishment of safety zones.

(a) Whenever it comes to the attention of the District Commander that a safety zone and regulations may be required concerning any OCS facility being constructed, maintained, or operated on the Outer Continenaal Shelf or its appurtenances and attended vessels, or the adjacent waters, the District Commander may initiate appropriate inquiry to determine whether a safety zone and regulations should be established. In making this determination, the District Commander considers all relevant safety factors, including existing or reasonably foreseeable congestion of vessels, the presence of unusually harmful or hazardous substances, and any obstructions within 500 meters of the OCS facility. If the District Commander determines that the circumstances warrant the establishment of a safety zone and regulations the District Commander takes action as necessary consistent with the provisions of this part.

(b) Except as provided in paragraph (c) of this section, a safety zone and necessary regulations may be established concerning any OCS facility being constructed, maintained or operated on the Outer Continental Shelf, following publication of a notice of proposed making in the **Federal Register** and after interested parties have been given the opportunity to submit comments. A zone and necessary regulations may be in effect during any period when construction equipment and materials are within 500 meters of the construction site until the removal of all portions of the facility.

(c) A safety zone and necessary regulations may be established without public rule making procedures when the District Commander determines that imminent danger exists with respect to the safety of life and property on an OCS facility constructed, maintained, or operated on the Outer Continental Shelf, its appurtenances and attending vessels or adjacent waters. A safety zone and regulations may be made effective on the date the rule is published in the **Federal Register.** However, if circumstances require, they may be placed into effect immediately, followed promptly by publication in the **Federal Register.** The District Commander may utilize, in addition to broadcast Notices to Mariners, Local Notices to Mariners, and Notices to Mariners, newspapers, and broadcasting stations to disseminate information concerning a safety zone and regulations pertaining thereto. The public may comment concerning the establishments of a safety zone or regulations under this paragraph. A safety zone or regulations may be modified or withdrawn, as appropriate, based on the comments received.

§ 147.15 Extent of safety zones.

A safety zone established under this part may extend to a maximum distance of 500 meters around the OCS facility measured from each point on its outer edge or from its construction site, but may not interfere with the use of recognized sea lanes essential to navigation.

(43 U.S.C. 1331 et seq.; 49 CFR 1.46(z))

Dated: April 23, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-13309 Filed 4-28-80; 10:22 am]

BILLING CODE 4910-14-M

33 CFR Part 157

[CGD 79-152]

Tank Vessels Transferring Outer Continental Shelf Oil; Proposed Design and Equipment Standards

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: The Coast Guard proposes to require tank vessels engaged in the transfer of oil in bulk as cargo from an offshore oil exploitation or production facility on the Outer Continental Shelf (OCS) of the United States to have segregated ballast tanks, dedicated clean ballast tanks, or special ballast arrangements as outlined in this document. This proposal would implement subsection 7(M) of Section 5 of the Port and Tanker Safety Act of 1978. These proposals would eliminate the mixing of ballast water and oil and thus reduce operational pollution that could occur if there was a substantial in vessel traffic transfering Outer Continental Shelf oil ashore.

DATES: Written comments must be received on or before June 16, 1980.

ADDRESSES: Written comments should be submitted to Commandant (G-CMC/TP24) (CGD 79-152), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. Comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/TP24), Room 2418, TransPoint Building, 2100 2nd Street SW., Washington, D.C. 20593, between the hours of 7:00 a.m. and 5:00 p.m. Monday thru Thursday. Copies of the Draft Environmental Assessment and the Draft Regulatory Evaluation are available during the same hours and days at the preceding address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Richard S. Tweedie, Merchant Marine Technical Division (G-MMT/TP13), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, D.C. 20593 (202-426-4431).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 79-152) and the specific section of the proposed regulations to which their comments apply, and give reasons for their comments. Persons desiring acknowledgement that their comment has been received should enclose a self-addressed, stamped postcard or envelope. The regulations may be changed as a result of the comments received. All comments received before expiration of the comment period will be considered before final action is taken on these proposed regulations. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by an interested person who can demonstrate that the opportunity to make an oral presentation will aid in this ruelmaking.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Commander Richard S. Tweedie, Project Manager, Office of Merchant Marine Safety, and Mr. Stanley Colby, Project Attorney, Office of Chief Counsel.

Background

Ninety-five percent of the Outer Continental Shelf oil produced in the U.S. is transferred to shore via pipeline at the present time. This is the most cost effective and efficient transfer method for most established wells on the OCS. The remaining five percent of the total OCS oil produced in this country is transferred by tank barge. The oil that is transferred by tank vessel usually comes from one of four sources:

a. A new well which has not been connected to a pipeline.

b. A gas well which also produces a limited amount of distillate for which a pipeline may be uneconomical or under construction.

c. A marginal well that produces insufficient crude to justify the construction of a pipeline.

d. A well for which a piepeline may not be acceptable due to technical, political, or environmental concerns.

The OCS oil presently being transported by tank vessel is stored aboard the platform until a sufficient quantity is available for transfer to shore. Currently there are 19 tank barges and no tank ships holding a Federal Maritime Commission Certificate of Financial Responsibility permitting them to engage in this trade.

Future discoveries may result in an increase in the transfer of OCS oil by tank vessels as finds are made further offshore or in areas where it is more costly to lay pipelines. An increase in this trade could increase the threat of oil pollution to the waters in which this traffic would take place. These regulations are being proposed to reduce this threat.

Discussion

The proposed regulations would require all tank vessels, except barges that do not ballast cargo tanks while enroute, engaged in the transfer of oil from an offshore oil exploitation or production facility on the OCS of the United States to have by June 1, 1980:

a. Segregated ballast tanks (SBT),

b. Dedicated clean ballast tanks (CBT), or

c. Special ballast arrangements.

While most of the OCS oil will be transported by U.S. flag vessels some could be transported by foreign flag vessels under certain limited circumstances. This proposal includes requirements for U.S. flag and foreign flag vessels such that the marine environment is protected under all possible circumstances. The vessels engaged in this trade would also have to meet all other applicable requirements of 33 CFR Part 157, including §§ 157.10 and 157.10a.

SBT are tanks which are completely separated from cargo oil and fuel oil systems and which are permanently allocated to the carriage of water ballast.

CBT are cargo tanks dedicated solely to the carriage of clean ballast water and are no longer used to carry cargo. The associated piping systems and pumps may be common for both cargo and ballast systems provided they are capable of being drained and thoroughly flushed prior to handling clean ballast.

The capacity of SBT or CBT required would be dependent upon the vessel's size with two different minimum mean draft and maximum trim requirements—one for vessels 150 meters or more in length and one for vessels less than 150 meters in length. The standards for vessels 150 meters or more in length are the same as those contained in the International Convention for the Prevention of Pollution from Ships, 1973. The proposed draft and trim standards for vessels less than 150 meters in length are the recommendations of the Intergovernmental Maritime Consultative Organization (MEPC XI/21).

Special ballast arrangements are ballasting methods that would allow for the safe navigation of the vessel, would prevent the mixing of ballast water with cargo oil through the use of vessel design requirements and operating restrictions, and would have to be acceptable to the Commandant. This proposal limits the use of special ballast arrangements to a specified route on which the vessels do not travel more

than 50 miles from shore and the ballast voyage is less than 10 hours in duration. The concept of special ballast arrangements for vessels in specialized trades was originally advanced at the International Conference on Tanker Safety and Pollution Prevention, 1978. Regulation 13D of the MARPOL Protocol contains a version of this concept.

These proposed regulations would implement Revised Statutes 4417a (7)(M) (Port and Tanker Safety Act of 1978, 92 Stat 1480, 46 U.S.C. 391a). The proposed implementation date and application of these standards for self-propelled vessels are mandated by the Port and Tanker Safety Act of 1978. The intent of these requirements is to insure there will not be any increase in operational oil pollution due to discharge of ballast water at the offshore loading site. In carrying this intent to its logical conclusion it is necessary to include in the regulatory action barges that carry ballast on the voyage to the transfer facility. However, the types of barges that are presently engaged in this trade do not normally ballast, thus, in practice these proposed rules would seldom apply to them.

Economic Impact

These requirements would have no immediate economic impact since the applicable vessels are not presently engaged in this trade. If a significant trade involving the transfer of OCS oil by these vessels did develop at a future date the economic impact would be dependent on the type of vessels used, the location of the trade, and the amount of oil transferred.

Some tank vessels of 20,000 DWT or more would already have SBT because of other requirements in Part 157. Thus the economic impact would be greatest if vessels less than 20,000 DWT were used in this trade since there are no existing CBT or SBT requirements for these vessels.

The particular trade route would not only affect the size and type of vessel but could also determine the amount of ballast the vessel would carry on the ballast leg of the voyage. Some trade routes might be amenable to the special ballast arrangement alternatative where the amount of ballast the vessel would carry could be fairly small for fair weather operations. During periods of expected normal heavy weather (winter), the vessel would provide additional ballast in a manner that would not mix ballast water and cargo. One method of providing this additional ballast would be to carry cargo oil in the cargo tanks on the ballast leg of the voyage to the transfer facility on the Outer Continental Shelf. This would permit an increased vessel carrying capacity during good weather and eliminate mixing ballast water with cargo during heavy weather. This system has been used in the North Sea oil fields.

The capital cost of retrofitting SBT or CBT to an existing tank vessel of 20,000 DWT would vary from about 100,000 for CBT to about $800,000 for SBT. These requirements will reduce the vessel's cargo capacity which will result in an equivalent increase in operating costs to transport the original amount of oil. Since this trade does not exist at the present time, direct economic comparisons or calculation of the total costs of this regulation cannot be made; however, given the cost differentials between pipelines and tank vessels, it is believed by the Coast Guard that this trade will be small. The preference for pipelines on the OCS is evidenced by the fact that 95% of all OCS oil is presently transferred through pipelines.

Environmental Impact

The proposed regulatory action will not have a significant environmental impact. There would be no short term impact since there would be almost no vessels affected by this regulatory action at the time of implementation. The future impact would be proportional to the size of the trade that did develop; however, it is believed by the Coast Guard that the primary means of transferring OCS oil ashore will continue to be pipelines.

The proposed regulations are directed at reducing operational oil pollution from tank vessels that could occur if a substantial vessel trade developed to transfer OCS oil ashore. Operational oil pollution from tank vessels occurs from deballasting, tank cleaning, and sludge removal prior to shipyard entry. CBT, SBT and the special ballast arrangements would nearly eliminate oil pollution generated during the deballasting operation. When SBT is used, the ballast pumping, piping, and tanks are isolated from all oil systems.

Ballast in a CBT system is carried in tanks dedicated to ballast; however, the ballast water can be transferred to and from the ballast tanks with the cargo pumping and piping system. The success of a CBT system would depend upon the vessel's adherence to a detailed operating procedure. For this reason, an approved operating manual would be required for each vessel with a CBT system. Being tailored for each vessel, these manuals would be expected to enhance performance of these operations as well as provide specific information for crew members. Special ballast arrangements would be approved only if they prevent the mixing of ballast water with cargo oil.

This Notice of Proposed Rulemaking is non-significant and has been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A Draft Environmental Assessment and Draft Regulatory Evaluation have been prepared and included in the public docket. They may be obtained as indicated in "ADDRESSES". The issuance of a finding of no significant environmental impact is expected.

In consideration of the foregoing, it is proposed to amend Part 157 of Title 33, Code of Federal Regulations as follows:

1. By amending § 157.08 by revising paragraph (g) and by adding paragraph (h) to read as follows:

§ 157.08 Applicability of Subpart B.

* * * * *

(g) Sections 157.09(b)(3), 157.10(c)(3), 157.10a(d)(3), and 157.10b(b)(3) do not apply to tank barges.

(h) Section 157.10b does not apply to tank barges if they do not carry ballast while they are engaged in trade involving the transfer of crude oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States.

2. By adding § 157.10b to read as follows:

§ 157.10b Segregated ballast tanks, dedicated clean ballast tanks, and special ballast arrangements for tank vessels transporting Outer Continental Shelf oil.

(a) Not later than June 1, 1980, each tank vessel that is engaged in the transfer of crude oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States must, if segregated ballast tanks or dedicated clean ballast tanks are not required under § 157.09, § 157.10 or § 157.10a, have one of the following:

(1) Segregated ballast tanks with a total capacity to meet the draft and trim requirements in paragraph (b) of this section.

(2) Dedicated clean ballast tanks having a total capacity to meet the draft and trim requirements in paragraph (b) of this section and meeting the design and equipment requirements under Subpart E of this part.

(3) Special ballast arrangements acceptable to the Coast Guard.

(b) In any ballast condition during any part of a voyage, including that a lightweight with either segregated ballast in segregated ballast tanks or clean ballast in dedicated clean ballast tanks, each vessel under paragraph (a)(1) or (a)(2) of this section must have

the capability of meeting each of the following:

(1) The molded draft amidship (dm), in meters, without taking into account vessel deformation, must not be less than "dm" in the following mathematical relationship:

dm=2.00+0.020L for vessels of 150 meters or more in length
dm=1.25+0.025L for vessels less than 150 meters in length

(2) The drafts, in meters, at the forward and after perpendiculars must correspond to those determined by the draft amidship under paragraph (b)(1) of this section, in association with a trim, in meters, by the stern (t) of no more than "t" in the following mathematical relationship:

t=0.015L for vessels of 150 meters or more in length
t=1.5+0.005L for vessels less than 150 meters in length

(3) The minimum draft at the after perpendicular is that which is necessary to obtain full immersion of the propeller.

(c) Special ballast arrangements are accepted if—

(1) The vessel is dedicated to one specific route;

(2) Each offshore transfer facility on the route is less than 50 miles from shore;

(3) The duration of the ballast voyage is less than 10 hours;

(4) They prevent the mixing of ballast water and cargo oil; and

(5) They provide suitable draft and trim to allow for the safe navigation of the vessel on the intended route.

(d) The owner or operator of a vessel that meets paragraph (c) of this section must apply for acceptance of the special ballast arrangement, in writing, to the Officer in Charge, Marine Inspection of the zone in which the vessel operates. The application must contain—

(1) The specific route on which the vessel would operate;

(2) The type of ballast to be carried;

(3) The location of the ballast on the vessel;

(4) Calculations of draft and trim for maximum ballast conditions; and

(5) The associated operating requirements or limitations necessary to ensure safe navigation of the vessel.

Note.—Operating requirements or limitations necessary to ensure safe navigation of the vessel could include (but are not limited to) weather conditions under which the vessel would not operate and weather conditions under which cargo would be carried in certain cargo tanks on the ballast voyage.

(e) The Coast Guard will inform each applicant for special ballast arrangements under paragraph (d) of this section whether or not the arrangements are accepted. If they are not accepted, the reasons why they are not accepted will be stated.

(f) Each tank vessel under this section may be designed to carry ballast water in cargo tanks, as allowed under § 157.35.

3. By revising the introductory text in § 157.11(d) to read as follows:

§ 157.11 Pumping, piping and discharge arrangements.

* * * * *

(d) Each tank vessel under § 157.09, § 157.10a, or § 157.10b must have—

* * * * *

4. By revising § 157.15(b)(1) to read as follows:

§ 157.15 Slop tanks in tank vessels.

* * * * *

(b) * * *

(1) Segregated ballast tanks that meet the requirements in § 157.09, § 157.10, § 157.10a, or § 157.10b; or

* * * * *

5. By revising the introductory text in § 157.24(c) to read as follows:

§ 157.24 Submission of calculations, plans, and specifications.

* * * * *

(c) Calculations to substantiate compliance with the segregated ballast capacity and distribution requirements in § 157.09, § 157.10, § 157.10a, or § 157.10b or a letter from the government of the vessel's flag state certifying that the vessel complies with the segregated ballast capacity and distribution requirements in—

(1) Section 157.09, § 157.10, § 157.10a, or § 157.10b; or

* * * * *

6. By revising the introductory text in § 157.35 to read as follows:

§ 157.35 Ballast added to cargo tanks.

The master of a tank vessel that meets § 157.09, § 157.10, § 157.10a(a)(1), § 157.10a(b), § 157.10a(c), or § 157.10b(a) shall ensure that ballast water is carried in a cargo tank only if—

* * * * *

7. By revising § 157.37(b) to read as follows:

§ 157.37 Discharge of cargo residues.

* * * * *

(b) Cargo residues and tank washings must be transferred to a shore based reception facility by the following:

(1) Each tank vessel that only carries asphalt.

(2) Each tank vessel that is engaged in the transfer of oil from an offshore exploitation or production facility on the Outer Continental Shelf of the United States.

8. By revising the introductory text of § 157.200(a) to read as follows:

§ 157.200 Plans for U.S. tank vessels: Submission.

(a) Before the date on which the dedicated clean ballast tanks are required by this part, the owner or operator of each U.S. tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) must submit to the Coast Guard plans that include—

* * * * *

9. By revising the introductory text of § 157.202 to read as follows:

§ 157.202 Plans and documents for foreign tank vessels: Submission.

If the owner or operator of a foreign tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) desires the letter from the Coast Guard under § 157.204 accepting the plans submitted under this paragraph, the owner or operator must submit to the Commandant (G-MMT), U.S. Coast Guard, Washington, D.C. 20593—

* * * * *

10. By revising § 157.206 to read as follows:

§ 157.206 Dedicated Clean Ballast Tanks Operations Manual for U.S. tank vessels: Submission.

Before the date on which the dedicated clean ballast tanks are required by this part, the owner or operator of a U.S. tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) must submit two copies of a *Dedicated Clean Ballast Tanks Operations Manual* that meets § 157.224 to the Officer in Charge, Marine Inspection, of the zone in which the dedicated clean ballast tank system is installed or to the appropriate Coast Guard field technical office listed in § 157.200(b).

11. By revising § 157.208 to read as follows:

§ 157.208 Dedicated Clean Ballast Tanks Operations Manual for foreign tank vessels: Submission.

If the owner or operator of a foreign tank vessel under § 157.10a(b), § 157.10(c)(2), or § 157.10b(a)(2) desires a Coast Guard approved *Dedicated Clean Ballast Tanks Operations Manual* under § 157.210, the owner or operator must submit two copies of a manual that meets § 157.224 to the Commandant (G—MMT), U.S. Coast Guard, Washington, D.C. 20593.

12. By revising the introductory text of § 157.214 to read as follows:

§ 157.214 Required documents: U.S. tank vessels.

On and after the date on which the dedicated clean ballast tanks are required by this part, the owner, operator, and master of a U.S. tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) shall ensure that the vessel does not engage in a voyage unless the vessel has on board—

* * * * *

13. By revising the introductory text of § 157.216 to read as follows:

§ 157.216 Required documents: Foreign tank vessels.

On and after the date on which the dedicated clean ballast tanks are required by this part, the owner, operator, and master of a foreign tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) shall ensure that the vessel does not enter the navigable waters of the United States or transfer cargo at a port or place subject to the jurisdiction of the United States unless the vessel has on board—

* * * * *

14. By revising § 157.220(a) to read as follows:

§ 157.220 Dedicated clean ballast tanks: Standards.

(a) Cargo tanks that are designated as dedicated clean ballast tanks must allow the tank vessel to meet the draft and trim requirements under § 157.10a(d) and § 157.10b(b).

* * * * *

15. By revising the introductory text of § 157.225 to read as follows:

§ 157.225 Dedicated clean ballast tanks operations: General.

The master of a tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) shall ensure that—

* * * * *

16. By revising § 157.226 to read as follows:

§ 157.226 Dedicated Clean Ballast Tanks Operations Manual: Procedures to be followed.

The master of a foreign tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) that has a *Dedicated Clean Ballast Tanks Operations Manual* approved under § 157.210 and is operating in the navigable waters of the United States or transferring cargo at a port or place subject to the jurisdiction of the United States and the master of a U.S. tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a) shall ensure that the procedures listed in the *Dedicated Clean Ballast Tanks Operations Manual* are followed.

17. By revising § 157.228 to read as follows:

§ 157.228 Isolating valves: Closed during a voyage.

(a) The master of each U.S. tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) shall ensure that the valves under § 157.222(d) remain closed during each voyage.

The master of each foreign tank vessel under § 157.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) shall ensure that the valves under § 157.222(d) remain closed when the vessel is on a voyage in the navigable waters of the United States.

(Sec. 5, Port and Tanker Safety Act of 1978, 92 Stat. 1480 (46 U.S.C. 391a); 49 CFR 1.46(n)(4))

Dated: April 9, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-13429 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 5815]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 and section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently also appearing at its former Title 24, Chapter 10, Part 1917.4(a)).

These elevations, together with the flood plain management measures required by Section 60.3 (formerly section 1910.3) of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	Stamford (Town), Fairfield County	Mianus River	50 feet upstream from center of Merribrook Lane	*103
			Intersection of river and center of Farms Road	*193
		Rippowan River	Intersection of Green Place and Renwick Street	*22
			100 feet upstream from center of Cold Spring Road	*41
			Intersection of Black Road and Wire Mill Road	*137
		Noroton River	Intersection of river and center of Glen Terrace	*41
			Intersection of river and center of Camp Avenue	*75
		Toilsome Brook	25 feet upstream from intersection of brook and center of West Lane	*56
		Laurel Brook	25 feet upstream from instersection of brook and center of Reservoir Lane.	*280
		Long Island Sound	Intersection of Tupper Drive and Carter Drive	*12
			Intersection of Flying Cloud Road and Dolphin Cove Way	*12
	Maps available at City Clerk's Office, 175 Atlantic Street, Stamford, Connecticut.			
	Send comments to the Honorable Luis Clapes, Mayor, City of Stamford, Municipal Office Building, 429 Atlantic Street, Stamford, Connecticut 06901.			
Delaware	Bethel, Town, Sussex County	Chesapeake Bay (Broad Creek)	Entire shoreline within Bethel	*6
	Maps available at the Bethel Methodist Church.			
	Send comments to Mr. H. K. Graves, Council President of Bethel, P.O. Box 40, Bethel, Delaware 19931.			
Delaware	Blades, Town, Sussex County	Chesapeake Bay (Nanticoke River).	Entire shoreline within community	*6
	Maps available at the Blades Town Hall, 4th Street.			
	Send comments to Honorable Lester Kurd, Mayor of Blades, Box 691, Blades, Delaware 19973.			
Delaware	Laurel, Town, Sussex County	Broad Creek	Downstream Corporate Limits	*6
			Downstream side of Willow Street	*7
			Upstream Corporate Limits	*12
		Rossakatum Branch	Confluence with Broad Creek	*7
			Downstream West 6th Street	*9
			Upstream West 6th Street	*12
			Upstream Corporate Limits	*14
			Approximately 790 feet upstream of Oaklane Drive	*15
		Georgetown Road Branch	Confluence with Records Pond	*12
			Approximately 100 feet downstream of Delaware Avenue	*17
			Upstream Delaware Avenue	*25
			Upstream Corporate Limits	*27
	Maps available at the Laurel Town Hall.			
	Send comments to Honorable William Horner, Mayor of Laurel, P.O. Box 210, Laurel, Delaware 19956.			
Florida	Wakulla County, Unincorporated Areas.	Sopchoppy River	Intersection of River and State Highway 22	*13
		Lost Creek	100 feet upstream from intersection of River and State Highway 374	*22
			200 feet upstream from intersection of River and State Highway 368	*31
		Buckhorn Creek	150 feet upstream from intersection of Creek and U.S. Highway 319 and State Highway 375.	*21
		West Branch Buckhorn Creek	200 feet upstream from intersection of Creek and U.S. Highway 319 and State Highway 375.	*23
		Ochlockonee River	Intersection of River and U.S. Highway 319 and State Highway 377	*11
		Gulf of Mexico	Intersection of State Highway 372B and State Highways 30, 61 and U.S. Highway 98 near Panacea Park.	*10
			Intersection of State Highway 365 and State Highway 30 and U.S. Highway 98 at Newport.	*12
	Maps available at Wakulla County Courthouse, Church Street, Crawfordville, Florida.			
	Send comments to Mr. Joe Duggar, Chairman, Board of County Commissioners, Wakulla County, P.O. Box 580, Crawfordville, Florida 32327.			
Georgia	Savannah (City), Chatham County	Pipe Makers Canal	State Route 307 100 feet upstream from centerline	*14
		Savannah River	Area in the vicinity of the intersection of Carolan Street and Damon Street.	*11
			Area in the vicinity of the intersection of Wheaton Street and Hitch Drive.	*11
			Area in the vicinity of the intersection of Riverview Drive and Gregory Street.	*12
			Area in the vicinity of Derenne Avenue and Athens Drive	*13
			Area in the vicinity of the intersection of Fulton Road and Navajo Road.	*13
			Area in the vicinity of the intersection of Schley Avenue and Old Barn Road.	*14
			Area in the vicinity of Ella Island	*15
		Springfield Canal	Ogeechee Road 100 feet upstream from centerline	*12
			52nd Street at centerline	*13
		Springfield Canal Tributary A	Tremont Road 200 feet upstream from centerline	*13
		Casey Canal	Victory Drive at centerline	*14
			Meridian Road 1500 feet upstream from centerline	*13
		Harmon Canal	Edgewater Road 50 feet upstream from centerline	*12
			Montgomery Cross Road 100 feet downstream from centerline	*15
		Dundee Canal	Seaboard Coast Line Railroad (third crossing) 500 feet downstream from centerline.	*15

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
		Wilshire Canal	Abercorn Street 100 feet upstream from centerline	*12
			Largo Drive at centerline	*18
		Wilshire Canal Tributary A	Holland Drive at centerline	*20
		Wilshire Canal Tributary Al	At confluence with Wilshire Canal Tributary A	*16

Maps available at City Hall, Bull & Bay Street, Savannah, Georgia.

Send comments to the Hon. John P. Rousakis, Mayor, City of Savannah, City Hall, P.O. Box 1027, Savannah, Georgia 31402.

Illinois	(C) Carmi, White County	Little Wabash River	Just upstream Highway 460	*378
			Just upstream Conrail	*379

Maps avilable at City Hall, Main Street, Carmi, Illinois.

Send comments to the Hon. J. B. Brown, Mayor, City of Carmi, City Hall, Main Street, Carmi, Illinois 62821.

Illinois	(C) Champaign, Champaign County.	Boneyard Creek	Downstream corporate limits	*720
			About 175 feet upstream of Springfield Avenue	*723
			Just downstream of Conrail	*729
			About 50 feet downstream of Illinois Central Gulf Railroad	*731
			Just upstream of Illinois Central Gulf Railroad	*733
		Upper Boneyard Creek	About 100 feet downstream of Neil Street	*736
			Just downstream of Bloomington Road	*747
		Third Street Boneyard Creek Tributary.	At confluence with Boneyard Creek	*722
			About 700 feet upstream of confluence with Boneyard Creek	*723
		Copper Slough	About 950 feet downstream of Kirby Avenue	*712
			About 150 feet downstream of William Street	*720
			Just downstream of Springfield Avenue	*724
			Just downstream of Parkland Way Road	*744
			Just upstream of Conrail	*750
		John Street Copper Slough Tributary.	At confluence with Copper Slough	*721
			Upstream of confluence with Copper Slough	*725
		Phinney Branch	2,800 feet downstream of Duncan Road	*709
			Just upstream of Hemlock Drive	*720
			About 300 feet downstream Windsor Road	*726

Maps avilable at City Hall, Planning and Zoning Department, 102 North Neil Street, Champaign, Illinois.

Send comments to Hon. Joan Severns, Mayor, City of Champaign, City Hall, 102 North Neil Street, Champaign, Illinois 61820 to the attention of Ms. Bette McKown, Planning Director.

Illinois	(V) Lake Bluff, Lake County	Skokie River	At the downstream corporate limit	*669
			At the upstream corporate limit	*671
		Lake Michigan	Shoreline	*584

Maps available at Village Hall, 40 East Central Avenue, Lake Bluff, Illinois.

Send comments to Mr. Thomas H. Oliver, Village President, Village of Lake Bluff, Village Hall, 40 East Central Avenue, Lake Bluff, Illinois 60044, Attention: Mr. Homer Ankrum, Village Administrator.

Illinois	(C) Palos Hills, Cook County	Stony Creek (West)	Mouth at Calumet Sag Channel	*583
			Just upstream 111th Street	*587
			Just downstream Harlem Avenue	*591
		Lucas Ditch	Just downstream 111th Street	*585
			Just downstream 86th Avenue	*591
			About 250 feet downstream 80th Street	*595
		Lucas Ditch Cut-off	Approximately 1050 feet upstream of confluence	*589
			Just downstream 103rd Street	*593
			Just upstream 103rd Street	*594
			Approximately 2200 feet upstream 103rd Street	*595

Maps available at Mayors Office, City Hall, 8555 West 103rd Street, Palos Hills, Illinois.

Send comments to Hon. Leonard A. Meyer, Mayor, City of Palos Hills, City Hall, 8555 West 103rd Street, Palos Hills, Illinois 60465.

Illinois	(C) Urbana, Champaign County	Saline Branch	Approximately 1,600 feet downstream of western corporate limits	*694
			Just upstream of Broadway Avenue	*706
			Approximately 1,400 feet upstream of Lincoln Avenue	*717
		Boneyard Creek	Approximately 1,450 feet downstream of University Avenue	*703
			Just downstream of western corporate limits	*720
		McCullough Creek	Just upstream of Race Street	*718
			Just downstream of Windsor Road	*727

Maps available at City Hall, Code Enforcement Office, 400 South Vine Street, Urbana, Illinois.

Send comments to Hon. Jeffrey T. Markland, Mayor, City of Urbana, City Hall, 400 South Vine Street, Urbana, Illinois 61801 to the attention of Mr. Bruce Walden, Acting Code Enforcement Officer.

Illinois	(V) Westmont, Du Page County	St. Joseph Creek	Approximately 1,500 feet downstream of King Arthur Court Crossing	*720
			Just downstream of Easy Acres Golf Course Culvert	*721
			About 200 feet upstream from Easy Acres Golf Course Culvert	*726
			Just downstream of 59th Street	*728
			Just upstream of Williams Street near 59th Street intersection	*731
			Just upstream of 61st Street	*734
			Just upstream of 63rd Street	*737
		St. Joseph Creek Tributary	At confluence with St. Joseph Creek	*728
			Approximately 130 feet from 61st Street	*734

Maps available at the Village Manager's Office, Village Hall, 31 West Quincy Street, Westmont, Illinois.

Send Comments to Mr. Robert Maciejewski, Village President, Village of Westmont, Village Hall, 31 West Quincy Street, Westmont, Illinois 60559 to the attention of Mr. Oliver Bishop, Village Manager.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Kansas	(C) Eudora, Douglas County	Eudora Middle Tributary	Just upstream of Atchison Topeka and Santa Fe Railroad	*807
			Just upstream of 7th Street	*815
			Just upstream of 9th Street	*819
			Just upstream of 10th Street	*827
			Just upstream of 11th Street	*831
			Just upstream of 12th Street	*833
			Approximately 800 feet upstream of 12th Street	*837
		Eudora East Tributary	Just upstream of 10th Street	*837
			Corporate limits	*837
		Wakarusa River	East corporate limits	*805
			Approximately 650 feet in upstream from Main Street	*806
			West corporate limits	*807
	Maps available at City Hall, Main and 7th Street, Eudora, Kansas.			
	Send comments to Hon. James Hoover, Mayor, City of Eudora, City Hall, Main and 7th Street, Eudora, Kansas 66025.			
Massachusetts	Boylston, Town, Worcester County.	Sewall Brook	Sewall Pond Outlet	*400
			Upstream of YMCA culvert	*407
			Upstream of Sewall Street	*416
			Approximately 0.145 mile upstream of Sewall Street	*430
			Approximately 0.27 mile upstream of Sewall Street	*440
			Approximately 0.168 mile downstream of Old Stone Dam	*449
			Downstream of Old Stone Dam	*461
			Upstream of Old Stone Dam	*471
			Approximately 0.01 mile downstream of New England Telephone Company culvert.	*481
			Downstream of New England Telephone Company culvert	*485
			Upstream of New England Telephone Company culvert	*495
			Approximately 65' upstream of New England Telephone Company culvert.	*497
		Cold Harbor Brook	Downstream Corporate Limits	*400
			Confluence of Rawson Hill Brook	*408
			Upstream of Reservoir Road	*412
			Approximately 0.202 mile upstream of Reservoir Road	*424
			Approximately 0.281 mile upstream of Reservoir Road	*437
			Approximately 0.325 mile upstream of Reservoir Road	*448
	Maps available at the Planning Board, Municipal Building, Boylston, Massachusetts.			
	Send comments to Mr. Knollan Spencer, Chairman of the Board of Supervisors of Boylston, Municipal Building, Main Street, Boylston, Massachusetts 01505.			
Michigan	(Twp.) Flushing, Genesee County.	Flint River	Just upstream Mount Morris Road	*646
			Approximately 2 miles upsteam Mount Morris Road	*656
			Downstream City of Flushing corporate limits	*668
			Upsteam City of Flushing corporate limits	*683
			Just downstream Elms Road	*687
		Bowman Drain	At mouth	*701
			Just upstream Stanley Road	*705
			Just upstream Johnson Road	*712
			Just upstream Carpenter Road	*721
		Armstrong Creek	About 550 feet upstream Frances Road	*680
			Just upstream Mount Morris Road	*692
			Just upstream Stanley Road	*702
			At confluence with Cattail Swamp Drain	*705
		Cattail Swamp Drain	At confluence with Armstrong Creek	*705
			Upstream corporate limit (Just downstream of Elms Road)	*708
		Cole Creek	At City of Flushing corporate limit	*703
			Just upstream McKinley Road	*713
			Just downstream Potter Road	*715
		Mud Creek	Just downstream River Street	*683
			About 100 feet upstream River Road	*687
			At downstream City of Flushing corporate limit	*688
			At upstream City of Flushing corporate limit	*696
			Just upstream Morrish Road	*709
			Just downstream Potter Road	*721
	Maps available at Township Hall, 6524 North Seymour Road, Flushing, Michigan.			
	Send comments to Mr. Gerald Ward, Supervisor, Township of Flushing, Township Hall, 6524 North Seymour Road, Flushing, Michigan 48423.			
Missouri	(C) Farmington, St. Francois County.	Kennedy Branch	Downstream corporate limits (just upstream of State Highway 32)	*852
			Just upstream Curtis Street	*864
			About 50 feet upstream North Carleton Street	*879
			About 1,400 feet upstream North Middle Street	*894
		St. Francis River Tributary	Downstream corporate limits (just downstream of West Columbia Street).	*878
			Upstream corporate limits (just downstream of West Liberty Street)	*892
	Maps available at the City Clerk's Office, City Hall, 110 West Columbia, Farmington, Missouri.			
	Send comments to Hon. W. H. Ledbetter, Mayor, City of Farmington, City Hall, 110 W. Columbia, Farmington, Missouri 63640.			
Missouri	(C) Kinloch, St. Louis County	Maline Creek	About 300 feet downstream of eastern corporate limits	*506
			Just downstream of North Hanley Road	*516
	Maps available at City Hall, 5990 Monroe Avenue, Kinloch, Missouri.			
	Send comments to Hon. Joseph L. Wells, Mayor, City of Kinloch, City Hall, 5990 Monroe Avenue, Kinloch, Missouri 63140.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
Nebraska	(V) Arlington, Washington County.	Elkhorn River	Approximately 8,000 feet downstream of Chicago & North Western Railroad.	*1,157
			Approximately 50 feet upstream of Chicago & North Western Railroad	*1,161
			Approximately 1,800 feet downstream of U.S. Highway 30	*1,165
			Approximately 7,400 feet upstream of U.S. Highway 30	*1,167
		Bell Creek	Approximately 60 feet upstream of Chicago & North Western Railroad	*1,163
			Just upstream of U.S. Highway 30	*1,166
			Approximately 950 feet upstream of U.S. Highway 30	*1,168
			Approximately 1,280 feet upstream of the County Road Mill crossing which is located about 850 feet upstream of County Road P 32.	*1,171
	Maps available at City Hall, Arlington, Nebraska.			
	Send comments to Dr. Jack Cady, Chairman of the Village Board, Village of Arlington, P.O. Box 207, Arlington, Nebraska 68002.			
Nebraska	(C) Papillion, Sarpy County	Big Papillion Creek	Approximately 1,300 feet downstream of Fricke Ditch	*998
			Approximately 4,700 feet upstream of Fricke Ditch	*998
		West Papillion Creek	Approximately 1 mile downstream of 66th Street	*1,001
			Just upstream of 66th Street	*1,006
			Just downstream from Washington Street	*1,013
			Located at upstream corporate limit	*1,016
			Approximately 600 feet upstream from confluence of Walnut Creek	*1,020
			Approximately 500 feet upstream from Papillion extraterritorial limits	*1,030
		Midland Creek	Approximately 900 feet downstream from County Road	*1,007
			Just upstream of County Road	*1,012
			Approximately 1,300 feet upstream from County Road	*1,016
			Just upstream from Chicago, Rock Island and Pacific Railroad	*1,027
			Just upstream from State Highway 370	*1,030
			Approximately 1,100 feet upstream from State Highway 370	*1,031
			At confluence of West Midland Creek	*1,041
			Approximately 1,725 feet upstream from confluence of West Midland Creek.	*1,051
		Walnut Creek	At confluence of West Papillion Creek	*1,020
			Approximately 2,100 feet downstream from County Road	*1,021
			Just upstream from County Road	*1,031
			Approximately 200 feet upstream from State Highway 370	*1,049
			Approximately 1,000 feet downstream from Private Road	*1,058
			Just upstream from Private Road	*1,062
			Approximately 700 feet downstream of confluence of West Walnut Creek.	*1,071
			Approximately 550 feet upstream of confluence of West Walnut Creek	*1,075
		West Walnut Creek	At confluence with Walnut Creek	*1,073
			Approximately 375 feet upstream from Private Drive	*1,075
		South Midland Creek	At confluence with Midland Creek	*1,035
			Approximately 1,600 feet upstream from confluence with Midland Creek.	*1,042
		West Midland Creek	At confluence with Midland Creek	*1,041
			Approximately 100 feet upstream Chicago, Rock Island and Pacific Railroad.	*1,057
			Approximately 1,000 feet upstream from Chicago, Rock Island and Pacific Railroad.	*1,060
	Maps available at City Hall, 122 East 3rd Street, Papillion, Nebraska.			
	Send comments to Hon. William R. Oliver, Mayor, City of Papillion, City Hall, 122 East 3rd Street, Papillion, Nebraska 68046.			
Nebraska	(Uninc.) Sarpy County	Missouri River	Downstream county boundary	*966
			About 1.6 miles upstream of confluence of Papillion Creek	*968
			About 2.16 miles downstream of confluence of Mosquito Creek	*973
			At confluence of Indian Creek	*976
		Platte River	Mouth at Missouri River	*966
			Just upstream of U.S. Highways 73 & 75	*970
			About 1.84 miles upstream of U.S. Highways 73 & 75	*979
			About 2.25 miles downstream of confluence of Buffalo Creek	*1,005
			About 300 feet upstream of State Highway 50	*1,025
			Just upstream of Chicago, Rock Island and Pacific Railroad	*1,038
			Just downstream of Interstate 80	*1,053
			Just upstream of Interstate 80	*1,056
			About 600 feet upstream of U.S. Highway 6	*1,067
			About 0.62 mile downstream of confluence of Elkhorn River	*1,080
			Northern county boundary	*1,103
		Papillion Creek	At mouth	*967
			About 1.71 miles upstream of LaPlatte Road	*973
		Big Papillion Creek	About 4,000 feet downstream of Cornhusker Drive	*998
			About 1 mile upstream of Cornhusker Drive	*998
		West Papillion Creek	About 1,100 feet downstream of Chicago, Rock Island and Pacific Railroad.	*995
			About 2,500 feet upstream of 45th Street	*1,001
		Buffalo Creek	At mouth	*1,013
			Just upstream of Chicago, Rock Island and Pacific Railroad	*1,013
			About 1,450 feet upstream of State Highway 50	*1,030
			Just upstream of 156th Street	*1,042
			Just upstream of Ruff Road	*1,054
			Just upstream of 168th Street	*1,063
			Just upstream of Pflug Road	*1,076
			Just upstream of 180th Street	*1,090
			Just upstream of Platteview Road	*1,100
			About 0.52 mile upstream of Platteview Road	*1,105

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		Springfield Creek	At mouth	*1,012
			About 300 feet upstream of Buffalo Road	*1,012
			Just upstream of Missouri Pacific Railroad	*1,026
			About 2,000 feet upstream of Missouri Pacific Railroad (first crossing)	*1,030
			About 1,300 feet downstream of Fairview Road	*1,073
			Just upstream of Fairview Road	*1,081
			About 2,200 feet upstream of Fairview Road	*1,086
		Elkhorn River	At mouth	*1,085
			About 3.09 miles upstream of mouth	*1,097
			About 600 feet upstream of upstream county boundary	*1,102
	Maps available at Sarpy County Courthouse, Papillion, Nebraska.			
	Send comments to Mr. Blase Cupich, Chairman of the County Board of Commissioners, Sarpy County, Sarpy County Courthouse, Papillion, Nebraska 68046.			
New Hampshire	Antrim, Town, Hillsborough County.	Contoocook River	Downstream Corporate Limits	*595
			Upstream Second New Hampshire Turnpike	*598
			Downstream North Bennington Bridge	*604
			Downstream Depot Street	*606
			Upstream Corporate Limits	*608
		North Branch Contoocook River	Upstream Steels Pond Dam	*850
			Approximately 1,900 feet upstream of State Route 9	*854
			Upstream College Road	*882
			Approximately 3,500 feet upstream of College Road	*896
			Upstream Liberty Farm Road	*981
			Approximately 900 feet upstream of Liberty Farm Road	*1,007
			Downstream Private Road	*1,018
			Approximately 630 feet upstream of Private Road	*1,056
			Approximately 7,250 feet upstream of Private Road	*1,079
			Upstream Corporate Limits	*1,119
		Great Brook	Confluence with Contoocook River	*608
			Approximately 175 feet upstream of Water Street	*614
			Approximately 125 feet upstream of Main Street	*643
			Upstream Private Dam	*653
			Approximately 400 feet upstream of High Street	*662
			Approximately 50 feet upstream of Pedestrian Bridge	*673
			Upstream Summer Street	*701
			Upstream Footbridge	*703
			Approximately 50 feet upstream of West Street	*706
			Approximately 25 feet upstream of Dam	*709
			Approximately 580 feet upstream of Dam	*714
	Maps available at the Town Office.			
	Send comments to Mr. Edward Clark, Chairman of the Board of Selectmen of Antrim, Town Office, Antrim, New Hampshire 03340.			
New Jersey	Phillipsburg, Town, Warren County.	Delaware River	Downstream Corporate Limits	*180
			Approximately 6,100 feet upstream of Downstream Corporate Limits	*188
			Upstream side of Upstream Conrail bridge	*192
			Upstream side of North Hampton Street bridge	*195
			Upstream Corporate Limits	*198
		Lopatcong Creek	Confluence with Delaware River	*184
			Approximately 160 feet upstream of private drive bridge	*184
			Approximately 470 feet upstream of private drive bridge	*189
			Approximately 760 feet upstream of private drive bridge	*193
			Approximately 90 feet downstream of South Main Street bridge	*199
			South Main Street bridge	*202
			Upstream side of spillway, located approximately 320 feet upstream of the South Main Street bridge.	*205
			Upstream side of Lock Street bridge (first crossing)	*210
			Upstream of Chestnut Street bridge	*215
			Approximately 280 feet downstream of downstream private road bridge.	*218
			Upstream side of downstream private road bridge	*221
			Approximately 360 feet downstream of Lock Street bridge	*224
			Upstream side of Lock Street bridge (second crossing)	*228
			Upstream private road bridge	*233
			Upstream Corporate Limits	*234
	Maps available at the Zoning Department, Phillipsburg, New Jersey.			
	Send comments to Hon. James Bianchi, Municipal Building, Phillipsburg, New Jersey 08865.			
New Jersey	West Long Branch, Borough, Monmouth County.	Turtle Mill Brook	Downstream Corporate Limits	*9
			Upstream side of Victor Avenue	*10
			Downstream side of Cemetery Access Road	*11
			Downstream side of Monmouth Road	*13
		Whale Pond Brook	Downstream Corporate Limits	*21
			Upstream side of Larchwood Avenue	*24
			Upstream side of Monmouth Road	*26
			Ridge Drive (Extended)	*32
			Downstream side of Whale Pond Road	*35
		South Shrewsbury River	Tidal flooding on Turtle Mill Brook (Downstream Corporate Limits)	*9
	Maps available at the Borough Clerk's Office, West Long Branch, New Jersey.			
	Send comments to Hon. Henry Shaheen, Mayor of West Long Branch, 95 Poplar Avenue, West Long Branch, New Jersey 07764.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
North Dakota	Grafton (City), Walsh County	Park River	100 feet upstream from center of Burgamont Avenue Bridge	*826
			100 feet upstream from center of Kittson Avenue	*830
		Shallow Flooding	100 feet northwest of intersection of State Highway 17 and western corporate limits.	*830
	Maps available at City Hall, Grafton, North Dakota.			
	Send comments to the Honorable Warner Taylor, Mayor, City of Grafton, City Hall, Box 547, Grafton, North Dakota 58237.			
North Dakota	Minto (City), Walsh County	Forest River	Intersection of creek and center of First Street Bridge	*817
			Intersection of Gillespie Avenue and 4th Street	*819
	Maps available at City Hall, Minto, North Dakota.			
	Send comments to the Honorable Gerald Misialek, Mayor, City of Minto, Box 364, Minto, North Dakota 58261.			
Ohio	(C) Fairlawn, Summit County	Shocalog Run	Downstream corporate limits	*980
			Just downstream of Trunko Road	*986
			Just upstream of Trunko Drive	*991
			Upstream corporate limits	*995
	Maps available at Village Hall, 3487 S. Smith Road, Fairlawn, Ohio.			
	Send comments to Hon. Joseph Hartlaub, Mayor, City of Fairlawn, Village Hall, 3487 S. Smith Road, Fairlawn, Ohio 44313.			
Ohio	(C) Barberton, Summit County	Tuscarawas River	At southern corporate limit	*961
			150 feet downstream of confluence of Wolf Creek	*962
			175 feet upstream of Snyder Avenue	*963
			85 feet upstream of Tuscarawas Avenue	*964
			40 feet upstream of Fairview Avenue	*965
			At eastern corporate limit	*966
		Wolf Creek	At confluence of Tuscarawas River	*962
			Approximately 2340 feet downstream of Wooster Road	*965
			Just upstream of Wooster Road	*966
			Approximately 232 feet downstream of Brady Avenue	*967
			At northern corporate limit	*967
		Hudson Run	120 feet downstream of Wooster Road	*974
			120 feet upstream of Wooster Road	*978
			610 feet upstream of Wooster Road	*977
			710 feet upstream of Wooster Road	*980
			420 feet downstream of 31st Street	*980
			360 feet downstream of 31st Street	*983
			At western corporate limit	*983
Ohio	(C) Barberton, Summit County	Pancake Creek	At Eastern Road (southern corporate limit)	*1,047
			60 feet upstream Eastern Road	*1,050
			800 feet upstream Eastern Road	*1,050
			*460 feet downstream of western corporate limit	*1,054
			260 feet downstream of western corporate limit	*1,057
			Just downstream of western corporate limit	*1,060
		Mud Run	At confluence of Tuscarawas River	*966
			At Waterloo Road	*968
			Just upstream of Waterloo Road	*967
			60 feet downstream of Coventry road	*967
			Just upstream of Coventry Road	*968
			Just upsteam of U.S. Route 224	*969
			Just upstream of Kenmore Avenue	*970
			At northern corporate limit	*970
	Maps available at Municipal Building, 576 W. Park Avenue, Barberton, Ohio.			
	Send comments to Hon. Lawrence A. Mauer, Mayor, City of Barberton, Municipal Building, 576 W. Park Avenue, Barberton, Ohio 44203.			
Ohio	(Uninc.) Lorain County	West Branch, Black River	City of Elyria corporate limits (Just upstream of Chessie System)	*722
			Just upstream U.S. Route 20	*729
			Just uptream State Route 10	*739
			About 1800 feet upstream, of confluence of Plum Creek	*745
		East Branch Black River	City of Elyria corporate limits (about 2600 feet downstream of Fuller Road).	*719
			Just upstream of dam (dam is located about 3,000 feet upstream of Fuller Road.	*731
			About 2900 feet upstream of Midina-Elyria Road	*747
			About 1350 feet downstream of Village of Grafton corporate limits	*778
			Village of Grafton corporate limits	*781
			About 4900 feet downstream State Route 303	*795
			Just upstream Vermont Street	*805
			Centerline of Webster Road extended	*814
		Willow Creek	Confluence with East Branch Black River	*742
			Just upstream of Durkee Road (about 350 feet south of intersection of Durkee Road and Giles Road).	*761
			Just upstream State Route 83	*785
			Just downstream Island Road	*792
Ohio	(Uninc.) Lorain County	Plum Creek	Just downstream U.S. Route	*744
			Just upstream Wastewater Treatment Plant Service Road	*768
			Just downstream South Crosby Street	*781
		Vermilion River	Downstream county boundary	*585
			Just upstream State Route 2	*593
			About 930 feet upstream of City of Vermilion corporate limits	*600

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		Beaver Creek	At City of Amherst corporate limit	*646
			Just upstream Middle Ridge Road	*670
			Just downstream Interstate 80	*679
		East Branch Beaver Creek	Just upstream North Ridge Road	*646
			City of Amherst corporate limits (about 1100 feet downstream Park Avenue).	*669
		Tributary No. 1	City of Amherst corporate limits (about 2400 feet downstream Middle Ridge Road).	*700
			About 1200 feet upstream Middle Ridge Road	*731
		Shallow flooding (ponding on Plum Creek-Columbia Township).	Plum Creek at Jaquay Road	*790
			Plum Creek at Osborne Road	*790
		Shallow flooding (overflow from Plum Creek-Columbia Township).	Plum Creek at upstream county boundary	#1
			Plum Creek at Elyria Twinsburg Road	#1
			Plum Creek at downstream county boundary	#1
	Maps available at Lorain County Administration Building, Elyria, Ohio.			
	Send comments to Mr. Jeresmo Keron, President of County Board of Commissioners, Lorain County, Lorain County Administration Building, Elyria, Ohio 44035.			
Ohio	(C) Norton, Summit County	Pigeon Creek	Confluence with Wolf Creek	*970
			At corporate limits	*970
		Tributary No. 1 to Pigeon Creek	Confluence with Pigeon Creek	*970
			At corporate limits	*971
		Wolf Creek	At corporate limits	*967
			Barber Road	*968
			Just upstream of Interstate 80	*969
			Approximately 1,000 feet upstream of Akron-Wadsworth Road	*970
			Just downstream of Summit Road second crossing	*971
			Approximately 500 feet upstream of Summit Road second crossing	*973
		Pancake Creek	At corporate limits	*1,061
			Just downstream of Taylor Road	*1,065
			Just upstream of Taylor Road	*1,070
			At corporate limits	*1,073
		Tuscarawas River	South corporate limits	*960
			North corporate limits	*961
		Hudson Run	Corporate limits	*983
			Approximately 1,000 feet downstream of Dorothy Lake	*986
			Approximately 600 feet downstream of Lake Dorothy	*987
			At Lake Dorothy	*989
	Maps available at Municipal Building, 4060 Columbia Woods Road, Norton Ohio.			
	Send comments to Honorable Edward Williams, Mayor, City of Norton, Municipal Building, 4060 Columbia Woods Road, Norton, Ohio 44203.			
Ohio	(V) Obetz Franklin County	Big Walnut Creek	Approximately 36 miles downstream from Alum Creek Drive	*722
			Just downstream from Alum Creek Drive	*723
			Just upstream from Alum Creek Drive	*724
			Just downstream from Groveport Road	*725
			Upstream corporate limit	*726
			Approximately 2.0 miles upstream of Groveport Road	*728
	Maps available from the Village Hall, 50 Obetz Avenue, Obetz, Ohio.			
	Send comments to Honorable Ralph Hubner, Mayor, Village of Obetz, Village Hall, 50 Obetz Avenue, Obetz, Ohio 43207.			
Oregon	Portland (City), Multnomah, Clackamas, and Washington Counties.	Columbia River	Along shoreline approximately 1,000 feet upstream of the confluence with Willamette River.	*27
			Approximately 250 feet north of the intersection of Northeast 13th Avenue and Marine Drive.	*29
		Willamette River	Confluence with Columbia Slough	*27
			Intersection of Rivergate Boulevard, Union Pacific Railroad, and Columbia Slough with the corporate limits.	*27
			Approximately 1,500 feet west along North Victory Boulevard from its intersection with North Denver Avenue.	*27
			Intersection of St. John's Bridge and the channel	*28
			Intersection of Burlington Northern Railroad and the channel	*28
			Intersection of Marquam Bridge and Southwest MacAdam Avenue	*29
			Intersection of Sellwood Bridge and the channel	*30
		Johnson Creek	Upstream side of Southeast Ochoco Street at intersection with channel.	*45
			Intersection of Southeast 21st Avenue and Southeast Tenino Street	*51
			Approximately 60 feet upstream from center of Southeast Harney Street Bridge over the channel.	*98
			Upstream side of Southeast 92nd Avenue at intersection with channel	*199
			Intersection of Southeast 97th Avenue and Southeast Ellis Street	*208
			Intersection of 110th Drive and Southeast Foster Road	*213
			Approximately 1,600 feet northeast of intersection of Southeast Foster Road and 159th Drive.	*248
		Peninsula Drainage District No. 2	Approximately 150 feet north of the intersection of Schmeer Road and Minnesota Freeway.	*5
			Approximately 1,400 feet east along Gertz Road from its intersection with Vancouver Way.	*5
			Approximately 600 feet south along Northeast 13th Avenue from its intersection with Gertz Road.	*5

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		Multnomah Drainage District No. 1.	Intersection of 33rd Street and Riverside Way	*17
			North side of intersection of Argyle Drive and Northeast 21st Street	*17
			Southern side of eastern end of Elrod Road	*17
			Intersection of Northeast 47th Avenue and Columbia Slough	*17
			Approximately 1,000 feet north along Cascade Avenue from its intersection with Lombard Avenue.	*17
			Western end of Lombard Street at Airport boundary	*17
			Intersection of Northeast Saratoga Street and 96th Avenue	*17
			Intersection of Argyle Drive and 11th Avenue	*17
Maps available at City Hall, 1220 Southwestern 5th Avenue, Portland, Oregon.				
Send comments to the Honorable Connie McCready, Mayor, City of Portland, City Hall, 1220 Southwest 5th Avenue, Portland, Oregon 97201.				
Pennsylvania	Adamstown, Borough, Berks and Lancaster Counties.	Little Muddy Creek	Downstream Corporate Limits	*450
			Private Drive (extended)	*462
			Willow Street (Upstream side)	*479
			Lancaster Avenue (Upstream crossing)	*497
			Upstream Corporate Limits	*500
		Lees Creek	Downstream Corporate Limits	*456
			Upstream Corporate Limits	*462
Maps available at the Adamstown Fire House, Adamstown, Pennsylvania.				
Send comments to Mr. David Woods, Council President of Adamstown, 32 East Washington Street, Adamstown, Pennsylvania 19501.				
Pennsylvania	Brecknock, Township, Berks County.	Muddy Creek	Downstream Corporate Limits	*497
			Approximately 1,500' downstream of Maple Grove Road	*502
			Upstream side of Maple Grove Road	*508
			Culvert outlet of Maple Grove Drag Strip	*514
			Culvert inlet of Maple Grove Drag Strip	*520
			Approximately 2,800' upstream of Maple Grove Drag Strip	*524
			Approximately 3,600' upstream of Maple Grove Drag Strip	*528
		Allegheny Creek	Approximately 1,200' downstream of Subdivision Road	*481
			Approximately 800' downstream of Subdivision Road	*487
			Approximately 250' downstream of Subdivision Road	*493
			Culvert inlet of Subdivision Road	*502
			Approximately 800' upstream of Subdivision Road	*508
			Approximately 150' downstream of Kurtz Mill Road	*515
			Upstream side of Kurtz Mill Road	*519
			Culvert inlet of Township Route 317	*523
			Approximately 600' upstream of Township Route 317	*531
		Tributary No. 2	Upstream of Kramer Road	*398
			Approximately 600' upstream of Kramer Road	*405
			Approximately 1,000' upstream of Kramer Road	*411
			Approximately 1,400' upstream of Kramer Road	*419
			Approximately 1,600' upstream of Kramer Road	*425
			Approximately 2,200' upstream of Kramer Road	*429
		Tributary No. 3	Approximately 300' downstream of Alleghenyville Road	*480
			Upstream of Alleghenyville Road	*488
			Approximately 400' upstream of Alleghenyville Road	*493
			Approximately 900' upstream of Alleghenyville Road	*500
			Approximately 1,100' upstream of Alleghenyville Road	*506
			Culvert outlet of Private Lane approximately 1,230' upstream of Alleghenyville Road.	*512
			Culvert inlet of Private Lane approximately 1,300' upstream of Alleg<henyville Road.	*517
			Approximately 1,500' upstream of Alleghenyville Road	*525
			Approximately 1,800' upstream of Alleghenyville Road	*533
			Approximately 2,050' upstream of Alleghenyville Road	*541
			Approximately 2,300' upstream of Alleghenyville Road	*549
			Approximately 2,500' upstream of Alleghenyville Road	*557
			Approximately 2,700' upstream of Alleghenyville Road	*565
			Approximately 3,000' upstream of Alleghenyville Road	*574
			Approximately 3,200' upstream of Alleghenyville Road	*585
			Culvert inlet of Private Lane approximately 3,250' upstream of Alleghenyville Road.	*590
			Approximately 3,500' upstream of Alleghenyville Road	*601
Maps available at the Brecknock Municipal Building.				
Send comments to Mr. Mark Stauffer, Chairman of the Board of Supervisors of Brecknock, R. D. 3494, Mohnton, Pennsylvania 129540.				
Pennsylvania	Caernarvon, Township, Berks County.	Conestoga River	Downstream Corporate Limits	*501
			Private Road Upstream	*505
			Mill Road Downstream	*510
			Mill Road Upstream	*514
			Township Route 308/Mast Road Upstream	*518
			Approximately 1,050 feet upstream of Township Route 308/Mast Road.	*519
		Tributary No. 1 to Conestoga River.	Mill Road/Township Route 304 Downstream	*503
			Private Road Upstream	*508
			Pennsylvania Turnpike Downstream	*526
Maps available at the Caernarvon Township Building, Main and Chestnut Streets.				
Send comments to Mr. Earl Grubb, Chairman of the Board of Supervisors of Caernarvon, Morgantown, Pennsylvania 19543.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Colerain, Township, Lancaster County.	Ball Run	Upstream side of Maple Shade Road	*397
			Approximately 2,700 feet upstream of Maple Shade Road	*425
			Approximately 4,800 feet upstream of Maple Shade Road	*453
			Approximately 1,500 feet downsteam of Upstream Corporate Limits	*477
		West Branch Octoraro Creek	Approximately 350 feet upstream of extension of Private Road near Octoraro Lake.	*291
			Downstream side of Academy Road	*298
			Downstream side of Noble Road	*314
			Approximately 1,800 feet downstream of Legislative Route 36010	*340
	Maps available at the Colerain Township Building, Route 472, Kirkwood, Pennsylvania.			
	Send comments to Mr. Richard Hastings, Chairman of the Board of Supervisors of Colerain, R. D. 1, Kirkwood, Pennsylvania 17536.			
Pennsylvania	Elizabeth, Township, Lancaster County.	Middle Creek	Downstream Corporate Limits	*355
			U.S. Route 322 (Downstream)	*356
			Confluence of Furnace Run	*360
		Furnace Run	Confluence with Middle Creek	*360
			Yummerdale Road (Upstream)	*363
	Maps available at the Elizabeth Township Building, 217 East 28th Division Highway, Lititz, Pennsylvania.			
	Send comments to Mr. Jay R. Ober, Township Secretary, 217 East 28th Division Highway, Lititz, Pennsylvania 17543.			
Pennsylvania	Hepburn, Township, Lycoming County.	Lycoming Creek	Confluence of Mill Creek	*574
			Upstream side of U.S. Route 15 (Downstream crossing)	*584
			Confluence of Long Run	*598
			Upstream side of State Route 973	*600
			Upstream side of U.S. Route 15 (Upstream crossing)	*618
			Upstream Corporate Limits	*638
		Mill Creek	Confluence with Lycoming Creek	*574
			Upstream side of State Route 973 (Downstream crossing)	*592
			Upstream side of State Route 973 (Upstream crossing)	*606
			Confluence of Tributary A	*628
			Confluence of Tributary C	*653
			Upstream side of Legislative Route 41045	*670
			Confluence of Tributary E	*676
			2,005 feet upstream from confluence with Tributary E	*701
	Maps available at the Schon Brothers Hardware Store, R. D. 3, Cogan Station, Pennsylvania.			
	Send comments to Mr. John Schon, Chairman of the Board of Supervisors of Hepburn, R. D. 1, Box 488, Cogan Station, Pennsylvania 17728.			
Pennsylvania	Sadsbury, Township, Lancaster County.	Williams Run	Downstream Corporate Limits	*473
			Private Road approximately 1,500 feet above Corporate Limits (Upstream side).	*478
			Private Road approximately 1,000 feet above confluence of Tributary A (Upstream side).	*486
			Private Road approximately 430 feet downstream of Williams Run Road (Upstream side).	*503
			Williams Run Road (Downstream side)	*505
		Back Run	Downstream Corporate Limits	*470
	Maps available at the Sadsbury Township Building, White Oak and Noble Roads.			
	Send comments to Mr. Girard Stapleton, Chairman of the Board of Supervisors of Sadsbury, R. D. 2, Box 177, Christiana, Pennsylvania 17509.			
Rhode Island	Scituate, Town, Providence County.	North Branch, Pawtuxet River	0.45 mile downstream of Access Road	*146
			Approximately 50 feet downstream of Access Road	*159
			Approximately 70 feet upstream of Access Road	*162
			Upstream side of dam located 340 feet upstream of Access Road	*174
			490 feet downstream of State Route 116	*184
			Downstream side of dam located 215 feet upstream of State Route 116.	*189
			Upstream side of dam located 215 feet upstream of State Route 116..	*201
			1.77 miles upstream dam located 215 feet upstream of State Route 116.	*205
	Maps available at the Town Hall.			
	Send comments to Mr. Thomas Weaw, President of the Town Council of Scituate, Town Hall, Main Street, Scituate, Rhode Island 02857.			
South Dakota	Flandreau (City), Moody County	Big Sioux River	Intersection of North Eleventh Street and West Bridge Street	*1,535
			40 feet upstream from center of North Crescent Street	*1,539
			Intersection of Water Street and East Second Avenue	*1,541
	Maps available at City Office Building, 136 2nd Avenue East, Flandreau, South Dakota.			
	Send comments to the Honorable Milne A. Duncan, Mayor, City of Flandreau, City Office Building, 136 2nd Avenue East, Flandreau, South Dakota 57028.			
Texas	City of Terrell Hills, Bexar County.	Crestwood Drive Ditch	Just upstream of Seford Drive	*703
			Just upstream of Crestwood Drive (Inlet Crestwood Drive Culvert)	*717
			Just upstream of Vandiver Road (Inlet Vandiver Road Culvert)	*744
			Just downstream of Morningside Drive (Outlet Morningside Drive Culvert).	*736
		Tuttle Road Ditch	Approximately 200 feet upstream of Eastern Corporate Limits	*692

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		New Braunfels, Austin Highway, Broadway Drain.	Approximately 100 feet upstream of Albany Street	*740
Maps available at Terrell Hills City Hall, 5100 North New Braunfels Street, Terrell Hills, Texas.				
Send comments to Mayor Robert Travis or Mr. Meredith E. Murphy, City Manager, Terrell Hills City Hall, 5100 North New Braunfels Street, San Antonio, Texas 78209.				
Vermont	(T) Royalton, Windsor County	White River	At the eastern corporate limits	*457
			Approximately 4600 feet upstream of the eastern corporate limits	*463
			Approximately 150 feet downstream of State Route 110	*472
			Approximately 150 feet upstream of State Route 110	*475
			Approximately 250 feet downstream of Royalton Road	*489
			Just upstream of Royalton Road	*494
			Just downstream of Sewall Brook Road	*501
			Approximately 150 feet upstream of Sewall Brook Road	*505
			Approximately 2150 feet downstream of western corporate limits	*526
			Approximately 1550 feet downstream of western corporate limits	*532
			At the western corporate limits	*535
		First Branch, White River	Mouth at White River	*476
			Just upstream of State Route 14	*485
			Just downstream of first of 2 dams	*487
			Just upstream of second of 2 dams	*503
			Just downstream of first of 2 farm bridges	*508
			Just upstream of first of 2 farm bridges	*513
			At northern corporate limits	*516
		Second Branch, White River	Mouth at White River	*507
			Just downstream of State Route 14 (second crossing)	*516
			Just upstream of State Route 14 (second crossing)	*528
			At western corporate limits	*530
Maps available at the Town Clerk's Office, South Royalton, Vermont.				
Send comments to Mr. James Blakeman, Chairman of the Board of Selectmen, Town of Royalton, c/o Town Clerk's Office, South Royalton, Vermont 05068.				
Vermont	(T) Wallingford, Rutland County	Otter Creek	Northern corporate limits	*554
			About 800 feet downstream of County Route 2	*556
			Just upstream of Elm Street	*566
			Just upstream of Depot Street	*572
			About 500 feet downstream of U.S. Route 7	*577
			Just upstream of Vermont Railway (upstream of County Route 34)	*583
			About 1600 feet downstream of Vermont Railway (downstream of South Wallingford Brook).	*589
			About 90 feet downstream County Route 99	*618
			About 75 feet upstream County Route 99	*628
			Southern corporate limits	*644
		Roaring Brook	Confluence with Otter Creek	*570
			About 40 feet downstream of Vermont Railway	*576
			About 40 feet upstream of Railroad Street	*580
			Just upstream of Main Street	*603
			About 2200 feet upstream of Main Street	*678
		Mill River	Northern corporate limits	*1,037
			Just upstream of Green Mountain Railroad	*1,107
			Just downstream of State Route 155	*1,173
			Southern corporate limits	*1,199
		Homer Stone Brook	Confluence with Otter Creek	*633
			About 35 feet downstream of Vermont Railway	*635
			Just upstream of Vermont Railway	*639
			Just upstream of County Route 34	*671
			About 370 feet upstream of County Route 34	*685
Maps available at the Town Clerk's Office, Wallingford, Vermont.				
Send comments to Mr. Irving Smith, Town Clerk and Administrative Assistant, Town of Wallingford, Town Office, Wallingford, Vermont 05773.				
Washington	Kittitas County, Unincorporated Areas.	Yakima River	Confluence with Wilson Creek	*1,422
			Intersection of Damman Road and Schaake Road	*1,503
			75 feet upstream from center of Thorp Highway	*1,538

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
			Intersection of Ellensburg Power Canal and Chicago, Milwaukee, St. Paul and Pacific Railroad.	*1,603
			Intersection of Thorp Highway and Dudley Road	*1,679
			Fork in McDonald Road	*1,857
			100 feet upstream from center of Chicago, Milwaukee, St. Paul and Pacific Railroad; near confluence with Cle Elum River.	*1,959
			100 feet upstream from confluence with Big Creek	*2,064
			75 feet upstream from center of Railroad Street	*2,144
			75 feet upstream from center of Cabin Creek Road	*2,209
			Area bounded by State Route 10, Cle Elum Airport Road and U.S. Highway 97.	#2
			Area east of intersection of U.S. Highway 97 and Lambert Road	#2
			Area bounded by U.S. Highway 97 and Woodhouse Road	#2
		Kachess River	350 feet downstream from center of Kachess Dam	*2,197
			Area approximately 400 feet north of Kachess River crossing of Interstate Highway 90.	#2
		Silver Creek	40 feet upsteam from center of westbound lane, Interstate Highway 90.	*2,161
			20 feet upstream from center of Sparks Road	*2,176
			25 feet upstream from center of County Road	*2,231
		Cle Elum River	20 feet upstream from center of Burlington Northern Railroad	*1,965
			40 feet upstream from center of Old Bull Frog Road	*1,996
			100 feet downstream from center of Abandoned Bridge, downstream of Cle Elum Lake Dam.	*2,117
		Manastash Creek	40 feet upstream from center of Manastash Road	*2,072
			120 feet upstream from center of South Riggs Canyon Road	*2,176
			Area at South Branch Canal confluence with Manastash Creek	#2
			Area from approximately 2600 feet upstram from Cove Road crossing of Manastash Creek to the South Branch canal confluence with Manastash Creek.	#2
			Area at the intersection of Cove Road and Hanson and Manastash Road.	#1
		Crystal Creek	110 feet upstream from Cle Elum corporate limit, northwest corner	*1,985
		Naneum Creek	120 feet upstream from center of Interstate Highway 82, most downstream crossing.	*1,435
			160 feet upstream from center of Interstate Highway 82, most upstream crossing.	*1,454
		Left Channel, Naneum Creek	20 feet downstream from center of Wilson Creek Road	*1,469
		Wilson Creek	60 feet downstream from center of U.S. Highway 97	*1,423
			Intersection of creek and center of Thrall Road	*1,425
			220 feet upstream from center of Tjossem Road	*1,464
			Intersection of Creek and center of Berry Road	*1,475
		Right Channel, Wilson Creek	25 feet downstream from center of U.S. Highway 97 (Canyon Road)	*1,472
			Intersection of creek and center of Damman Road	*1,490
			Area approximately 1300 feet northeast of intersection of Anderson and Damman Roads.	#1
			Area approximately 200 feet north of confluence of Right Channel Wilson Creek with Mercer Creek.	#1
		Reecer Creek	75 feet downstream from center of Burlington Northern Railroad	*1,544
			135 feet downstream from center of Dry Creek Road	*1,563
			Area between Interstate Highway 90 and Dollarway Road	#2
			Area north of intersection of Dollarway Road and Potts Road	#2
		Currier Creek	20 feet upstream from center of Burlington Northern Railroad	*1,542
			120 feet downstream from center of Dry Creek Road	*1,564
			Area south of Currier Creek crossing of Cascade Way	#2
		Whiskey Creek	Area just south of an unnamed road, which is located southeast of the intersection of Dry Creek Road and Reecer Creek Road.	*1,546
			Area between the Town Canal and Cascade Canal	#1
		Mercer Creek	100 feet upstream from center of Anderson Road	*1,497
			Area extending east and west of the intersection of Bender Road and North Walnut Street.	#1
			Area approximately 700 feet east of intersection of Water Street and B Street.	#2

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
Area from Mercer Creek crossing of Cascade Canal east to and along				#1
			Look Road to the intersection with Brick Mill Road.	
		Caribou Creek	15 feet upstream from center of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*1,649
			Area at intersection of Tjossem Road and Denmark Road	#1
			Area at Caribou Creek crossing of Ferguson Road	#1
		Teanaway River	100 feet upstream from center of Lambert Road	*1,830
			Confluence with Mason Creek	*2,011
			Confluence with Story Creek	*2,187
			Area between U.S. Highway 97 and Masterson Road, west of the crossing of Teanaway River.	#1
		North Fork, Teanaway River	Intersection of river and center of Teanaway Road	*2,208
			130 feet upstream from center of North Fork, Teanaway Road	*2,388
			25 feet downstream from confluence with Rye Creek	*2,545
		Middle Fork, Teanaway River	120 feet upstream from center of West Fork Teanaway Road	*2,257
			200 feet downstream from center of Middle Fork Teanaway Road	*2,636
		West Fork, Teanaway River	100 feet upstream from center of Camp Iliahee Road	*2,268
			75 feet upstream from confluence of river with Sandstone Creek	*2,532
		Cooke Creek	Area at Cooke Creek crossing of Chicago, Milwaukee, St. Paul and Pacific Railroad.	#1
			Area west of intersection of H Clerf Road and No. 81 Road	#1
			Area north of Cooke Creek crossing of Tjossem Road	#1
			Area at Cooke Creek crossing of Ferguson Road	#1
		Coleman Creek	Area between Chicago, Milwaukee, St. Paul and Pacific Railroad and Kittitas Highway.	#1

Maps available at the Office of the County Commissioner, 5th and Main, Ellensburg, Washington.

Send comments to Mr. Roy A. Lumaco, Chairman, Board of County Commissioners, Kittitas County, Office of the County Commissioner, P.O. Box 1040, Ellensburg, WA 98926.

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

Issued: April 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-13346 Filed 4-30-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-06; Notice 1]

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Safety Standard No. 209, *Seat Belt Assemblies,* to alter the test apparatus specified under the "resistance to light" requirements of the standard. The current test procedure was designed for nylon belt webbing and has proven to be in appropriate for the new dacron and polyester webbing materials that have been introduced into the market in the past several years. The proposed amendment would alter the test apparatus by replacing the currently required "Corex B" filter with a plain glass filter. The proposed amendment is intended to create an equivalent strength test for both nylon and polyester webbing material.

DATES: Proposed effective date: Six months after completion of a final rule. Comment closing date: June 16, 1980.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours: 8:00 a.m. to 5:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration Washington, D.C. 20590 (202–426–2242)

SUPPLEMENTARY INFORMATION: Safety Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), specifies performance requirements for seat belts to ensure their structural integrity over an expected useful life. One of the requirements that a belt assembly must pass is the "resistance to light" test (paragraph § 4.2(e)). This test is intended to measure the ability of the belt webbing to withstand degradation resulting from exposure to sunlight.

The procedure specified in the standard for the resistance to light" test was originally developed by a joint government/industry group under the guidance of the Bureau of Standards. The procedure was designed specifically to test nylon seat belts since that was the only material used at the time. Over the past several years, however, manufacturers have introduced polyester seat belt webbing, for several reasons. Polyester webbing elongates less under stress than nylon webbing and thus more effectively reduces the forward motion of occupants in a crash. Polyester also has a higher tensile strength than nylon, which allows the use of less webbing material and smaller retractor reels. Despite the fact that polyester webbing may in many ways be the superior material, it has been found that the webbing fails or barely passes the "resistance to light" test of Standard No. 209.

The test apparatus specified in the standard uses a carbon arc light source in combination with a "Corex B" filter. Except for certain radiations peculiar to carbon arc lights and not present in natural sunlight, this light/filter combination effectively simulates the effects of sunlight. Those unrepresentative radiations degrade or destroy polyester material, but do not affect nylon. Therefore, the failure of polyester webbing under the test procedure results from factors that will

not occur in realworld conditions. In view of this fact, the agency issued an interpretation to celanese Fibers Marketing Company in July of 1976 stating that the agency would not enforce the "resistance to light" requirements with respect to polyester webbing since the test procedure did not produce meaningful results. The letter also stated that joint agency and industry efforts would be undertaken to develop an appropriate test apparatus for belt assemblies made of polyester material. The new procedure has been developed and is the subject of this proposal.

The Narrow Fabrics Institute, in conjunction with the Society of Automotive Engineers Task Force on Webbing (which included all of the major yarn and webbing manufacturers as well as representatives of the three largest automobile manufacturers), conducted laboratory tests to find an alternative test apparatus for the "resistance to light" requirements. The Institute found that by substituting a plain, soda lime glass filter for the "Corex B" filter currently specified in the standard, the polyester fibers are protected from the damaging radiations of the carbon arc light. Comparison tests with the soda lime filter were conducted with both polyester and nylon webbings and equivalent performance were obtained. (The test data have been placed in the NHTSA docket section under the docket number of this notice.) Therefore, this notice proposes to amend the test procedure of the standard to make this substitution.

The proposed amendment would be effective six months after the issuance of a final rule. This should give manufacturers sufficient time to adopt the new test apparatus and to arrange for compliance testing of their belts.

The agency's preliminary evaluation has determined that the proposed amendment would have minimal, if any, economic impact and does not qualify as a significant proposed regulation under Executive Order 12044, "Improving Government Regulations." Most manufacturers would not have to make any changes in their belts. Polyester belts are currently being designed to meet the performance requirements of the resistance to light test, since manufacturers have been aware that the requirement would be reinstated as soon as an appropriate test apparatus was developed.

The engineer and lawyer primarily responsible for the development of this proposal are William Smith and Hugh Oates, respectively.

In consideration of the foregoing, it is proposed that the first sentence in paragraph § 5.1(e) of Safety Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), be amended to read as follows:

S 5.1(e) *Resistance to Light.* Webbing at least 20 inches or 50 centimeters in length from three seat belt assemblies shall be suspended vertically on the inside of the specimen rack in a Type E carbon/arc light-exposure apparatus as described in Recommended Practice for Operating Light and Water Exposure Apparatuse (Carbon-Arc Type) for exposure of non-metallic material, ASTM Designation: G23–69, published by the American Society for Testing and Materials, except that the filter used shall be plain glass as described in paragraph 3.1.2 of Recommended Practice for Conducting Matural Light (Sunlight and Daylight) Exposures under Glass, ASTM Designation G24–66.

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. 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. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

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.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on April 24, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80–13148 Filed 4–30–80; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1102

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Commission intends to replace its current procedures for the filing of railroad general rate increases. It intends to establish a zone of reasonableness within which increased costs could be recovered without challenge. The top of the zone would be the average increase in rail carrier costs. The zone would be available for single-line rates. All or part of the zone would be available for joint line rates depending on whether such rates were established independently or collectively.

The purpose of the proposal is to reduce filing and reporting burdens on carriers, encourage independent rate filings, and foster an environment in which individual carriers have greater

opportunities to respond promptly to changes in market conditions.

DATES: Comments must be filed by June 2, 1980.

ADDRESS: An original and 15 copies, if possible, of comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275–7693.

SUPPLEMENTARY INFORMATION: The Commission wishes to adopt new procedures to encourage carriers to take independent action in recovering increased costs. The new procedures would permit carriers to recover cost increases without elaborate regulatory procedures or the threat of regulatory intervention. The Commission wants to adopt a zone of reasonableness for recovering cost increases. To do this, it must be able to measure average cost increases experienced by the railroad industry.

The first phase of this rulemaking is designed to gather information that will enable us to measure cost increases accurately. Cost indices currently used by the railroad industry may provide the basis for a cost-based zone of reasonableness. Other available indices or combinations of indices may also be useful or preferable. All suggestions for the best way of measuring increases in railroad costs are welcome. We also solicit views on how frequently the zone should be revised to account for cost increases.

Apart from the interest in reducing the uncertainty and paperwork which surround the present general increase procedures, there is an interest in providing a cost recovery mechanism which accommodates and possibly rewards independent pricing of railroad service. In a separate decision to be issued soon, single line rates will be removed from consideration in general rate increases.[1] That decision is premised on the adoption of a fair and expeditious procedure for carriers to recover cost increases. This proceeding will establish that procedure. Carriers will be able to increase their single-line rates to recover increased costs up to the level of the average increase in railroad industry costs.

Joint-line rates would also be covered by the new procedure. The major question which the comments should address is whether different treatment for independently and collectively set joint rates is appropriate. We believe that independently established joint rates should be treated the same way as single-line rates. Joint rates which are established collectively in rate bureaus might, however, be limited to a lesser percentage of what would be available for independently set rates. For example, the formula might indicate that, in a given period, an increase of up to ten percent should be authorized to offset railroad cost increases. Single-line and independently set joint-line rates could then be increased up to ten percent. Collectively set joint-line rates might be limited to ninety-five percent of that amount in the first year of the new procedures and be reduced five percent each succeeding year. The purpose of such a procedure would be to provide for a transition to an environment where most joint-line rates would be set independently. Public views on this method or alternative methods of achieving a transition to such an environment are welcome.

It appears that any action taken in this proceeding to reduce regulatory burdens and enhance independent pricing opportunities should have beneficial environmental and energy effects. Comments on these issues are invited.

This advanced notice is issued under the authority of 49 U.S.C. 10321, 10701, 10706, 10707 and 5 U.S.C. 553 and 559.

Dated: April 22, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, and Alexis. Commissioner Stafford dissented with a separate expression. Commissioner Clapp reserves his right to submit a separate expression at a later date.

Agatha L. Mergenovich,

Secretary.

Commissioner Stafford (Dissenting)

I believe that the institution of this proceeding is inappropriate both from a timing and a place standpoint. The Commission is not the legislative branch. Time and time again, it has announced that it will not prejudge issues. But in this instance it chooses to completely disregard those long established principles for economic concepts that cannot stand the light of day, even in this "brave new world."

I am opposed to the elimination of the consideration of single and joint-line rates in general increases. The small carrier will be severly disadvantaged. We can ill afford more bankrupt carriers.

My position with respect to the proposed zone of reasonableness is well known. Cf., Ex Parte No. MC–137, *No Suspend Zone—Motor Common Carriers of Property*, notice of proposed rulemaking, served January 28, 1980. In a word, I do not believe that this Commission should surrender its statutory obligations on the altar of convenience.

No matter how the proposals are explained, they still lead to the ultimate conclusion that this is one of the first steps in eradicating rate bureaus from surface transportation. Thus, it seems apparent that rate bureaus are somehow considered an evil. I do not join in those views. To me, rate bureaus have served a useful function, have contributed towards the development of the finest rail network in the world, and have provided the industry with the ability and incentive to adapt to changing circumstances.

Several other serious defects in the proposal are readily apparent. The proposed indexing on single-line traffic will leave the captive shipper with virtually no recourse. In a like vein, the small shipper will be unable to challenge the index in a proposed increase in rates. It should be recognized that the Commission refused to adopt similar cost formulas in No. 34013, *Rules to Govern Assembling & Presenting Cost Evidence*, 337 I.C.C. 298. Cost finding is still not an exact science.

[FR Doc. 80–13356 Filed 4–30–80; 8:45 am]

BILLING CODE 7035–01–M

[1] Section 5b Application No. 2, *Western Railroads-Agreement.*

---

49 CFR Parts 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, and 1279

[No. 37392]

Elimination of Regulation Over Passes and Free Transportation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the elimination of the Commission's regulations governing passes and free transportation for railroads, water carriers and motor carriers. The proposed rule will reduce the additional recordkeeping for passenger carriers under the Commission's jurisdiction by eliminating long-standing requirements now considered unnecessary.

DATES: Comments should be filed on or before June 16, 1980.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275–7448.

SUPPLEMENTARY INFORMATION: The regulation governing passes and free transportation for railroads was orginally issued in 1911. At that time, the issuing of passes was common to carrier

operations. The regulations were formulated to prevent any substantial financial burden from loss of passenger revenue and to forestall other possible abuses, such as concessions.

Today, the majority of railroad passes are issued by the National Railroad Passenger Corporation (Amtrak) and no longer regulated by the Commission. The significance of free transportation for carriers under the Commission's jurisdiction has declined considerably. The proposed rule will eliminate requirements that we consider unnecessary in fulfilling our regulatory responsibilities.

The proposed action does not significantly affect the quality of the human environment.

Accordingly, we propose to elimininate 49 CFR Parts 1270–1279, *Passes and Free Transportation.*

This action is proposed under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: April 21, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum and Alexis. Commmissioner Stafford absent and not participating in the disposition of this proceeding.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13357 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 45, No. 86
Thursday, May 1, 1980

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, Jefferson National Forest; Intent to Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare an environmental impact statement on the Land and Resource Management Plan for the Jefferson National Forest (Bedford, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Montgomery, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazwell, Washington, Wise, and Wythe Counties, Virginia; Letcher and Pike Counties, Kentucky; and Monroe County, West Virginia).

The Land and Resource Management Plan is being prepared in accordance with requirements of the Secretary's regulations promulgated pursuant to the National Forest Management Act of 1976. The resulting plan will provide for the mulitiple use and sustained yield of goods and services from the Jefferson National Forest.

The planning process will integrate all resource planning—timber, range, fish and wildlife, water, wilderness, and recreation—together with resource protection and resource use activities. The process will be issue-oriented, i.e., public issues, management concerns, and development opportunities will be analyzed continually throughout the process.

A reasonable range of alternatives will be formulated by an inter-disciplinary team to provide different ways to address and respond to the major public issues, management concerns, and resource opportunities identified during this planning process.

Alternatives will reflect a range of resource outputs and expenditure levels. In formulating these alternatives, the following criteria will be met:

(1) Each alternative will be capable of being achieved;

(2) A no-action alternative will be formulated, that is the most likely condition expected to exist in the future if current management direction would continue unchanged;

(3) Each alternative will provide for orderly elimination of backlogs of needed treatment for the restoration of renewable resources as necessary to achieve the multiple-use objectives of that alternative.

(4) Each identified major public issue and management concern will be addressed in one or more alternatives; and

(5) Each alternative will represent to the extent practicable the most cost efficient combination of management practices examined that can meet the objectives established in the alternative. Each alternative will state at least:

(1) The conditon and uses that will result from long-term application;

(2) The goods and services to be produced, and the timing and flow of these outputs;

(3) Resource management standards and guidelines; and

(4) The purposes of the management direction proposed.

As an early step in the planning process, Federal, State, and local agencies, organizations, and individuals who may be interested in, or be affected by the decision will be invited to participate in a scoping process which will involve a review of tentative issues identified from previous public responses to Forest proposals. The public will be invited to review, appraise and comment on the tentative issues during a comment period of May 10-June 15, 1980. To accomplish this scoping effort, the Jefferson National Forest will send out information packets in early May, 1980. The packets will be sent to and comments solicited from Federal, State, and local agencies, orginizations, and individuals who may be interested or have expressed an interest in National Forest Planning.

Written comments should be sent to: Mr. Robert Spivey, Jefferson National Forest, 210 Franklin Road, S.W., Roanoke, Virginia 24001. The commercial telephone number is (703) 982–6270.

The draft environmental impact statement and plan will be available by January 1983 for a 90 day comment period. The final environmental impact statement and plan is scheduled for completion in December 1983.

Lawrence M. Whitfield, Regional Forester, Southern Region of the Forest Service, is responsible for approval of the environmental impact statement and plan.

For further information about the planning project, or the availability of the environmental impact statements, or other documents relevant to the planning process, contact H. D. Powell, Jr., 210 Franklin Road, SW, Roanoke, Virginia 24001, (phone: 703–982–6266).

Dated: April 23, 1980.

James S. Sabin,

Acting regional Forester.

[FR Doc. 80-13320 Filed 4-30-80; 8:45 am]

BILLING CODE 3410-11-M

Feasibility of Alpine Skiing Development on Tower Mountain; Manistee National Forest, Wexford County, Mich.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service will prepare an environmental impact statement to assess the feasibility of alpine skiing development on Tower Mountain.

Alternative management possibilities will be considered, ranging from a highly developed winter sports area to a nondeveloped area with emphasis on dispersed recreation.

The statement will include an analysis of the area's potential for providing an alpine skiing opportunity, and will further consider the social, economic, cultural, and environmental impacts of each alternative.

Scoping meetings have been held to determine issues as viewed by the affected public. This early identification of issues will ensure that public participation is an integral and continuing part of the entire decisionmaking process.

Steve Yurich, Regional Forester of the Eastern Region, is the responsible official and William. F. Spinner, District Ranger (616–775–8539), is the information contact for the project.

It is expected that the analysis will require 15 months to complete with the draft environmental impact statement available in January 1981, followed by a 2 month review period. The final environmental impact statement is scheduled for filing in June 1981.

Written comments on this Notice of Intent or on the project may be sent to Forest Supervisor, Huron-Manistee National Forests, 421 S. Mitchell Street, Cadillac, Michigan 49601.

James H. Freeman,

Director, Planning, Programing and Budgeting.

April 22, 1980.

[FR Doc. 80-13407 Filed 4-30-80; 8:45 am]

BILLING CODE 3410-11-M

Forest Land and Resource Management Plan; Bridger-Teton National Forest; Teton, Lincoln, Sublette, Fremont, and Park Counties, Wyo.; Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement on the Land and Resource Management Plan for the Bridger-Teton National Forest. This Forest Plan will be developed in accordance with Section 6 of the National Forest Management Act of 1976 and Regulations issued pursuant to the Act.

The Bridger-Teton National Forest is located in Teton, Lincoln, Sublette, Fremont, and Park Counties, northwest Wyoming. The Forest Supervisor has administrative authority over approximately 3.4 million acres of National Forest System lands.

The Forest Plan will provide management direction for these National Forest System lands and will replace the existing Forest and District Multiple Use Plans, and other functions plans, such as the Timber Management Plan.

Preliminary public issues have been identified by analysis of comment received through previous planning efforts initiated on the Forest. These issues focus on mineral and energy development; tree management; wildlife and fish habitats; transportation systems; livestock grazing; water supply quality and development; recreation activities; access; and off-road vehicle use.

Alternatives will consider different ways of managing the Forest's resources within the scope of the Regional Plan. Alternatives will also address public issues, management concerns, and the Forest's land and resource objectives; the ability to achieve assigned RPA output levels of goods and services; and development opportunities.

Pamphlets explaining the planning process and preliminary issues and concerns will be prepared and mailed to interested individuals, previous respondents, special interest groups and organizations, elected officials, and local, state, and federal agenices. Media releases will be prepared when the pamphlets are available, and they will also request public participation in order to further identify and finalize issues within the planning process. A number of open house meetings and briefings will be announced at that time.

The Bridger-Teton National Forest is beginning to gather and organize data and information for the planning effort as well as develop procedures for analyzing, evalutaing, and updating planning information.

The anticipated release date for the Draft Environmental Impact Statement (DEIS) is September 30, 1981. A 90-day period for public review and comments will follow. The Final Environmental Impact Statement (FEIS) is tentatively scheduled for filing with the Environmental Protection Agency by April 30, 1982, with implementation of the Forest Plan thereafter. All dates are in accordance with requirements of the NFMA Regulations and directions from the Chief of the Forest Service.

The Regional Forester, Intermountain Region, is the Responsible Official. Mr. F. Carl Pence, Forest Planner, Bridger-Teton National Forest, will lead the interdisciplinary team in preparing the Forest Land and Resource Management Plan and DEIS.

For further information, contact Reid Jackson, Forest Supervisor Box 1888, Jackson, Wyoming 83001 (Phone (307) 733-2752).

Dated: April 23, 1980.

Claude Elton,

Acting Regional Forester.

[FR Doc. 80-13403 Filed 4-30-80 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Action on IATA Agreements

The Board has taken the following action certain Agreements filed by the International Air Transport Association:

Order 80-4-129, Docket 32660, Agreement C.A.B. 28140 R-13 through R-24; Agreement C.A.B. 28161 R-1 through R-13

Agreements between various member air carriers of the International Air Transport Association (IATA) have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations. The agreements were adopted by the Composite Meetings of Passenger Tariff Coordinating Conferences held in Cannes during October-November of 1979.

Proposed for effect April 1980 through March 1981, the agreements adopt new fare structures for transportation between Mexico and Central America, between Mexico and the Caribbean, between the Caribbean and South/Central America, and between Central and South America as well as within the Caribbean and Central America sub-areas; and, as far as air transportation as defined by the Act is concerned, affect only Puerto Rico and the U.S. Virgin Islands, both of which lie in the IATA Caribbean sub-area. In comparison to those now in effect, fares from these U.S. points to Mexico are increased about 12 percent for first-class and about 6 percent for normal economy and most promotionals; fares to South/Central America are increased about 19 percent for first-class and promotional and by 26 to 29 percent for normal economy; and fares to other Caribbean points are increased by 6 to 21 percent for first-class, 11-36 percent for normal economy and 7-36 percent for promotional.

We will approve the agreement. However, we will condition our approval of the proposed normal economy fares (NEF's).

By Order 80-2-69, January 29, 1980, we established a Standard Foreign Fare Level (SFFL). In general, the SFFL is comprised of fare ceilings below which we will not suspend a fare on grounds of unreasonableness. These ceilings are expressed in terms of percentage increases over fare levels in force on October 1, 1979, and are being adjusted every 60 days to account for cost changes. At present, we are applying the SFFL ceilings to NEF's only and, in most instances, permitting international carriers the broadest possible pricing flexibility with respect to their other fares.

We recently adjusted these ceilings for the period April 1—May 31, 1980. As they pertain to the agreement at hand, we determined that we would permit maximum NEF increases over levels in effect on October 1, 1979, of 15.44 percent in Latin American markets. The instant agreement, however, appears to contemplate NEF levels somewhat above our SFFL ceilings. When NEF's proposed for Puerto Rico are compared with their respective October 1, 1979, levels, the percentage change exceeds

the 15.44 percent ceiling by about 3 percentage points to the Mexico area, and 4 to 13 percentage points to the South/Central America area. While some of the proposed NEF's to other Caribbean points fall within the SFFL range, still there are a number which exceed the permissible ceiling by as much as 20 percentage points. In these circumstances, we will approve those portions of the agreements governing NEF's to and from U.S. points subject to the condition that each IATA carrier, in filing tariffs implementing NEF's contained in the agreements, may file NEF's for each city-pair market at levels no higher than the applicable SFFL ceiling prevailing at the time of filing. In doing so, each IATA carrier must also submit, for comparative purposes, its NEF levels in effect on October 1, 1979, for each market, as well as the percentage change over such levels comtemplated by its filing.

Order 80–4–131, Docket 32660, Agreement C.A.B. 28203 R–1 Through R–41

An agreement between various members of the International Air Transport Association (IATA) has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Regulations. It was adopted at the Reconvened Meeting of Passenger Tariff Coordinating Conference 12 held in Geneva during January 1980, and is intended for effectiveness April 1, 1980, through March 31, 1981.

The agreement proposes a revised Mid Atlantic fares structure,[1] and directly affects air transportation as defined by the Act insofar as fares to/from San Juan and the U.S. Virgin Islands are concerned. Under the agreement, San Juan-Madrid fares, for example, would be increased by about 20 to 40 percent over currently effective levels.

We will approve the agreement. However, we will condition our approval of the proposed normal economy fares (NEF's).

By Order 80–2–69, January 29, 1980, we established a Standard Foreign Fare Level (SFFL) in conformance with the International Air Transportation Competition Act. In general, the SFFL is comprised of fare ceilings below which we may not suspend a fare on grounds of unreasonableness. These ceilings are expressed in terms of percentage increases over fare levels in force on or after October 1, 1979, and are being adjusted every 60 days to account for cost changes. At present, we are applying the SFFL ceilings to NEF's only and, in most instances, permitting international carriers the broadest possible pricing flexibility with respect to their other fares.

We recently adjusted these ceilings for the period of April 1 through May 31, 1980. As they pertain to the instant agreement, we found that we would permit maximum NEF increases over levels in effect on or after October 1, 1979, of 14.06 percent in Atlantic markets. We also decided to permit an additional 5 percent upward flexibility in U.S.-Europe markets, producing a ceiling in these markets of 19.76 percent above the October 1, 1979 fare levels.[2]

The instant agreement appears to contemplate NEF levels well above our SFFL ceilings. For example, the San Juan-Madrid NEF on October 1, 1979, was set at one-way levels of $531 and $442 for the peak and basic seasons, respectively. The agreement proposes levels of $720 (peak) and $615 (basic)—nearly 40 percent above those in force last October 1.

In these circumstances, we will approve that portion of the agreement governing NEF's to/from U.S. points subject to the condition that each IATA carrier, in filing tariffs implementing NEF's contained in the agreement, may file NEF's for each city-pair market in which it provides direct service at levels no higher than the applicable SFFL ceiling prevailing at the time of filing. In doing so, each IATA carrier must also submit, for comparative purposes, its NEF levels for each market in effect on October 1, 1979, as well as the percentage change over such levels contemplated by its filing.

Order 80–4–137, Docket 32660, Agreement C.A.B. 28210

An agreement between various members of the International Air Transport Association has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations. The agreement was adopted by mail vote after a meeting on Resolution 015 held January 16–18, 1980 in Geneva and is proposed for April 1, 1980 effectiveness

The agreement readopts IATA Resolution 015 which establishes proportional fares used to construct through international fares between U.S. interior points and points in Europe. This resolution was disapproved earlier by the Board becaue of IATA's continued practice of constructing all through fares over the traditional New York gateway without regard to direct services from interior U.S. gateway points to Europe.[3] The instant agreement now offers, in addition to the traditional New York gateway, a total of seven interior U.S. points for use as alternative gateway points.[4] However, the fares from the alternative gateways to Europe continue to be constructed over New York. As shown in the agreement, through transatlantic fares from many other interior U.S. points may then be constructed over one, or in some cases two, of these seven alternative construction points as well as over New York.[5] Finally, the subject proportional fares are established at levels reflecting the latest approved increases in U.S. domestic fares.

We will disapprove the agreement.

In Order 79–11–67, we indicated our belief that proportional fares should reflect the realities of the marketplace. With the proliferation of new direct international services to/from many interior U.S. points, the continued construction of through U.S.-Europe fares solely by means of proportional fares over the traditional New York gateway could not be considered in the public interest. We therefore: (1) urged the IATA carriers to file point-to-point fares to U.S. interior cities reflecting the economics of direct service to these cities; and (2) if necessary, to establish proportional fares for service over these cities.

In providing for seven alternative gateways, in addition to New York, for construction of through U.S. interior point fares, the agreement does address the second point. However, it appears to ignore the first, and, we believe, most important point. Fares to and from interior U.S. cities, such as Chicago, Houston and Washington, D.C., which have direct non-stop services to Europe provided by at least one IATA member are still proposed to be established by use of proportional fares over a fictitious New York routing. While we have no objection to this situation for IATA

[1] The IATA Mid Atlantic area is the Caribbean, Central America and northern South American countries, on the one hand, and Europe, Africa and the Middle East, on the other.

[2] Order 80–3–50, March 10, 1980. 1.1406×1.05=1.1976.

[3] Orders 79–11–67, November 7, 1979; 79–11–212, November 29, 1979; and 80–1–31, January 4, 1980.

[4] These are Anchorage, Chicago, Houston, Los Angeles, Miami, Seattle and San Francisco.

[5] To illustrate, for through transatlantic one-way normal economy fares from New Orleans, which does not have direct non-stop transatlantic service, the agreement establishes an alternative $68 proportional fare which may be added to the appropriate fare over Houston and a $109 proportional fare which may be added to the fare over Miami. The agreement stipulates that the through fare resulting from the lowest construction may be applied in cases where alternative construction points are shown for the same city.

members who *do not* provide direct non-stop services to U.S. interior points, approval of the agreement would continue to permit those IATA members providing such non-stop services to construct their through fares from these interior points over New York. This means, in essence, that the economies of direct service will not be passed on or shared with passengers. Because of this, we are unable to approve this agreement.

Order 80–4–138, Docket 32660, Agreement C.A.B. 28191 R–1 Through R–10

An Agreement between various U.S. and foreign carriers of the International Air Transport Association (IATA) has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations. Adopted at the Composite Meeting of Passenger and Cargo Tariff Coordinating Conferences (Fuel) held in Geneva, January 15–23, 1980, the agreement is proposed for April 1, 1980, effectiveness.

The agreement proposes a fourth round of worldwide increases in passenger fares applicable between the United States and its territories, on the one hand, and foreign points, on the other, to offset still increasing fuel prices. In the Western Hemisphere, fares to and from the Mexico and Caribbean subareas are increases by 10 percent, except for the Netherlands Antilles which remain at *status quo*; and fares to and from the South/Central America (longhaul) sub-area are generally increases by 11 percent.[6] In the Atlantic, fares to and from TC2 (Europe/Middle East/Africa) and TC3 (Asia/Australasia/Pacific) over North Atlantic routings are increased by 10 percent with allowance for individual carriers to vary its magnitude by two percent, thus providing for a range of increases of 8 to 12 percent, while Mid Atlantic fares between Puerto Rico/U.S. Virgin Islands and TC2 and TC3 are increased by 8 percent. Finally, in the Pacific, fares to and from Japan/Korea over North/Central Pacific routings are increased by 10 percent; fares to and from points in the South Pacific, by 8 percent; and fares between Guam/American Samoa and TC3, by 9 to 10 percent.

The Board will approve the increases as proposed for first class and promotional fares. We will also approve the proposed normal economy fare (NEF) increases but will make this approval subject to certain conditions as explained below.

In late January of this year, the Board, in acting on passenger fare increases proposed by several U.S. carriers, introduced a new methodology for analyzing the reasonableness of international fare increase proposals.[7] The new system, similar to the Standard Industry Fare Level (SIFL) that has been used for several years in domestic markets, established a Standard Foreign Fare Level (SFFL) to set ceiling fare levels in most major international geographic regions, except Mexico,[8] based on the costs of all U.S. carriers in each region. Expressed as a percentage, each SFFL calculation represents the amount we will permit carriers to increase their fares over their October 1, 1979, effective fares without further review.[9] Each such calculation covers a two month period, starting with February 1–March 31, 1980, and will be recalculated every 60 days for fuel costs and every 6 months for non-fuel costs.

As it relates to the overall structure of fares, the international ceilings apply, at present, to NEF levels only. In our January order, we refrained from applying these ceilings to international first-class fare increases for essentially the same considerations which led us to refrain from applying SIFL ceilings to domestic first-class fares. Moreover, while our January order did not specifically address the general question of promotional fares, our action in Order 80–2–136, February 15, 1980, effectively removes consideration of these fares from the international ceiling levels for at least the present time.

However, notwithstanding our intention to apply these guidelines to IATA fare and rate agreements, one of the things we will continue to take into account in their evaluation are any unreasonable regulatory actions by foreign governments with regard to fare filings of U.S. carriers. In such cases, we will not hesitate to disapprove any portion of any IATA agreement in order to protect the long-term interest of both U.S. carriers and U.S. consumers.

Against this background, we will approve all proposed first-class and promotional fare increases. With regard to proposed NEF levels, we have now determined the permissible SFFL ceilings for the period April 1–May 31, 1980. These allow maximum increases over October 1, 1979, NEF base levels of 15.44 percent in all Latin American markets, except Mexico; 19.76 percent in European markets; 14.06 percent in other Atlantic markets; and 17.20 percent in Pacific markets. For Mexico, as we have noted earlier, the domestic SIFL guidelines will apply. Order 80–2–130, February 25, 1980, established the following SIFL formulas for the period March 1–April 30, 1980: terminal charge of $23.86 plus 13.05 cents per mile for linehauls of 500 miles or less; 9.95 cents per mile for linehauls of 501 to 1,500 miles, or 9.57 cents per mile for linehauls for over 1,500 miles. With this in mind, we will also approve the IATA-agreed NEF increases subject to the condition that when each IATA carrier files its implementing tariffs, each such carrier's revised NEF's for each city-pair market where it provides direct service must be no higher than the applicable maximum ceiling in effect at the time of filing. As a further condition, except in the case of Mexico filings, each IATA carrier must submit, at the time of filing and for comparative purposes, its NEF's in effect on October 1, 1979, as well as the percentage by which its proposed NEF's exceed the October 1, 1979, base, for each city-pair market for which it files revised NEF's.

By the Civil Aeronautics Board: April 17, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–13418 Filed 4–30–80; 8:45 am]

BILLING CODE 6320–01–M

[80–4–203; Docket 37551]

Order To Show Cause; Ohio/Indiana/Michigan Subpart Q Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (80–4–203) Ohio/Indiana/Michigan Subpart Q Proceeding, Docket 37551.

SUMMARY: The Board is instituting the *Ohio/Indiana/Michigan Subpart Q Proceeding* and is proposing to grant unrestricted authority to Wright between the terminal point Cleveland, Ohio, the intermediate points Columbus, Ohio, Toledo, Ohio, Ft. Wayne, Indiana,

[6] However, Colombia takes a 10 percent increase; Brazil, an 8 percent increase; U.S.–Venezuela, *status quo*; and Venezuela-Puerto Rico/U.S. Virgin Islands, an 8 percent increase. Moreover, these longhaul area increases apply only to fares specified for Miami. Fares specified for other U.S. points will be increases by the dollar amount resulting from application of the agreed percentage increases to Miami fares.

[7] Order 80–2–69, January 29, 1980. This action was in anticipation of passage of the International Air Transportation Competition Act which was signed by the President on February 19, 1980, and is now law.

[8] In Order 80–2–136, February 15, 1980, we decided that since market conditions for U.S.-Mexico transborder fares were more nearly comparable to U.S. domestic circumstances, their comparison with the already established domestic SIFL was more appropriate, at least as an interim measure.

[9] In a limited number of markets, we may establish different SFFL bases if we determine that fares in effect on that date are unjust or unreasonable. In the *Standard Foreign Fare Level Investigation*, Docket 37730, we are examining the appropriate SFFL base in 12 markets.

South Bend, Indiana, Lansing, Michigan, Grand Rapids, Michigan, Flint, Michigan and Saginaw, Michigan, and the terminal point Detroit, Michigan, under expedited procedures of Subpart Q of its Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed.

The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than May 28, 1980, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 37551, which we have entitled the *Ohio/Indiana/Michigan Subpart Q Proceeding*. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition copies of such filings should be served upon Air Florida, Air Wisconsin, American Airlines, Braniff International Airways, Britt Airways, Coleman Air Transport, Comair, Delta Air Lines, Eastern Air Lines, Frontier Airlines, Heussler Air Service, Indiana Airways, Midstate Airlines, Midway Airlines, Northwest Airlines, Ozark Air Lines, Pan American World Airways, Republic Airlines, Seaco Airlines, Skyline Motors Aviation Service, Skystream Airlines, Trans World Airlines, United Airlines, USAir and Wright Airlines; Indiana Aeronautics Commission; Michigan Aeronautics Commission; Ohio Department of Transportation, Division of Aviation; Mayors of Cleveland, Columbus, Detroit, Flint, Ft. Wayne, Grand Rapids, Lansing, Saginaw, South Bend and Toledo; Airport Authority, Cleveland Hopkins International Airport; Airport Authority, Port Columbus International Airport; Airport Authority, Detroit Airport Department; Airport Authority, Municipal Airport, Ft. Wayne, Indiana; Airport Authority, Bishop Airport, Flint, Michigan; Airport Authority, Kent County International Airport, Grand Rapids, Michigan; Airport Authority, Capital City Airport, Lansing, Michigan; Airport Authority, Tri-City Airport, Freeland, Michigan; Airport Authority, Michiana Regional Airport, South Bend, Indiana; and Airport Authority, Toledo Express Airport.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5384.

SUPPLEMENTARY INFORMATION: The complete text of Order 80-4-203 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 80-4-203 to that address.

By the Civil Aeronautics Board: April 25, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-13415 Filed 4-30-80; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-4-168; Docket 38077]

Pocatello-Salt Lake City Subpart Q Show Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80-4-168, Pocatello-Salt Lake City Subpart Q Show Cause Proceeding, Docket 38077.

SUMMARY: The Board is instituting the *Pocatello-Salt Lake City Subpart Q Proceeding* and is proposing to grant Pocatello-Salt Lake City nonstop authority to Sky West Aviation and Cascade Airways under the expedited procedures of Subpart Q of its Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing the proposed authority shall file and serve upon all persons listed below, no later than May 12, 1980, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 38077, which we have entitled the *Pocatello-Salt Lake City Subpart Q Proceeding*. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C., 20428.

In addition, copies of such filings should be served on Sky West Aviation, Cascade Airways Western Air Lines, the Mayors of Pocatello and Salt Lake City, the airport Managers of Pocatello and Salt Lake City, the Idaho Division of Aeronautics and Public Transportation and the Utah Department of Transportation, Division of Aeronautical Operations.

FOR FURTHER INFORMATION CONTACT: James Ransom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., N.W., Washington D.C. 20428, (202) 673-5197.

SUPPLEMENTARY INFORMATION: The complete text of Order 80-4-168 is available from our distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the D.C. metropolitan area may send a postcard request for Order 80-4-168 to that address.

By the Bureau of Domestic Aviation: May 27, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-13416 Filed 4-30-80; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-4-187, Docket 37989]

Scheduled Skyways, Inc.; Petition for Advance Compensation for Losses; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23rd day of April, 1980.

On February 25, 1980, Scheduled Skyways, Inc. filed a 30-day notice under section 419(a)(3)(B) of the Act announcing its intent to suspend service at Harrison, Arkansas, effective April 1, 1980. By Order 80-3-157, March 25, 1980, we prohibited Scheduled Skyways' suspension for 30 days, or until an alternate service pattern can be arranged that is agreeable to the carriers and the community, whichever comes first.

On April 4, 1980, Scheduled Skyways petitioned for advance compensation for losses pursuant to section 419 of the Act and Part 324 of our Procedural Regulations. The carrier provided a detailed explanation of its estimated traffic, revenue, and cost, and seeks compensation for April 1980 of $16,562. It alleges that advance compensation is required because of the need for an immediate cash payment if it is to be able to continue to provide Harrison service; that traffic expectations have not been met during the past three months, partly as a result of seasonal traffic and partly as a result of recessionary demand for air service; that this came at a time when aircraft ordered in 1978 have been added to the fleet; that it is adapting to a recessionary traffic environment by reducing flying and by disposing of Beech 99 aircraft; that the 30-day notice at Harrison was one of many self-help measures taken to restore the company to profitability; that it has not so far been able to generate sufficient cash from its cutbacks to cover operating losses; that it has payables due to suppliers in April which cannot be

covered out of operations; and that efforts have been underway to raise additional capital from the existing stockholders, but so far these efforts have not produced agreement on whether and in what amount any additional capital will be provided.

We have reviewed Scheduled Skyways' petition and find that it reasonably supports the requested compensation on an interim basis, with but two exceptions. First, its costs are based on flight hours for 46 flights. However, only 44 flights are scheduled during the initial force-in period. Adjusting for this reduces its estimated operating expenses by $783. Second, we will not compensate the carrier for the $4,540 claimed as the cost for filing its compensation request. Scheduled Skyways' decisions to terminate service at Harrison and to petition for compensation for losses are management decisions. Since we have accepted the carriers' allocation of system general and administrative expenses to its Harrison service, we are compensating the carrier for its management costs. All of its estimates of costs for providing essentail air service at Harrison are, in fact, portions of system costs allocated on the basis of related statistics. It would not, therefore, be reasonable to recognize, in addition, costs directly assigned to any expense category.[1]

Finally, we will not make the payment in advance as requested by Scheduled Skyways. As we stated in the preamble to our interim rule governing compensation for losses sustained in providing forced service (Regulation PR-209, page 4), advance compensation will be made in instances where a carrier shows that without the advance its financial difficulties in continuing service are of a magnitude that it might not survive the 30-day period. While Scheduled Skyways claims that by the end of April it will have incurred payables which cannot be covered completely out of operations, it provides neither any support for this claim, nor any indication that it has exhausted other possible resources.[2] Scheduled Skyways simply has not made a compelling showing that its ability to provide service is in jeopardy in the absence of advance compensation.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 419, and 1002(b), and the regulations promulgated in 14 CFR 302 and 324:

1. We set the interim level of compensation for losses sustained by Scheduled Skyways, by virtue of its provision of essential air service between Harrison, Arkansas and Memphis, Tennessee at $255.43 for each scheduled flight completed,, subject to a maximum payment of $11,239, for each 30-day period beginning April 1, 1980;

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate set here.

3. We shall serve this order upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.[3]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-13419 Filed 4-30-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37936; Order 80-4-182]

United Air Lines, Inc.; Application for Compensation for Losses; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23rd day of April, 1980.

On October 10, 1979, United Air Lines, Inc. filed a 90-day notice under sections 401(j) (1) and (2) of the Act announcing its intent to suspend air service at Salem, Oregon effective January 8, 1980. By Order 79-12-121 the Board prohibited United's suspension in the Salem-Portland/Medford markets for 30 days.[1]

On March 27, 1980, United filed a request for compensation for losses at Salem. United claims a cumulative loss, including a profit element, of $121,022 for the period January 8, 1980 through February 9, 1980. United alleges that its compensation request was calculated on the basis of the most recent cost and investment data available—fourth quarter, 1979—applied to actual operations to Salem; that is costing conforms with the Board's Version 6 methodology used in all major rate investigations; that its revenue includes an allocation for passengers using through or connecting service on a joint or through fare; and that its profit was calculated by assigning system capital costs to each point as has been done by the Board in rate and route cases.

We have reviewed United's petition and find that the information contained therein reasonably supports the requested compensation on an interim basis except for the profit element. Since interim compensation rates are subject to adjustment, we elect to treat them as temporary rates and recognze only operating losses and interest on long term debt, which is consistent with 399.30 of our Economic Regulations. A profit element will be considered when we propose a final settlement of the carrier's claim.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 102, 204, 419, and 1002(b), and the regulations promulgated in 14 CFR 302 and 324;

1. We set the interim level of compensation for losses sustained by United Air Lines, Inc., by virtue of its provision of essential air service to Salem, Oregon, at $113,333 for the period January 8, 1980 through February 9, 1980;

2. The proceeding shall remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rae of compensation set here; and

3. We shall serve this order upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.[2]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-13417 Filed 4-30-80; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Kansas Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Kansas Advisory Committee (SAC) of the Commission will convene at 9:00 a.m. and will end at 1:30 p.m., on May 27, 1980, at the Holiday Inn, Terrace Room, 240 West Douglas, Wichita, Kansas.

---

[1] Although we are, implicitly, recognizing Scheduled Skyways' costs associated with filing its petition—since we did not disallow any system costs before allocating costs to Harrison—it could be argued that we should not. Under Section 419(7)(c) of the Act, when the Board prevents a commuter carrier from suspending service, "then the Board shall compensate such air carrier for any losses that such air carrier incurs in complying with this paragraph after the last day of such 30-day period." We interpret this to mean compensation for losses incurred in providing forced *service*. Filing costs, are not costs of providing service, but costs incurred in an effort, first, to terminate such service and, second, to receive compensation for being required to provide that service.

[2] It only mentions an attempt to raise additional equity from existing stockholders and, while not optimistic that this will resolve the problem, it apparently has not completed even that effort.

[3] All members concurred.

[1] We later extended this obligation.

[2] All members concurred.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Kansas City, Missouri 64106.

The purpose of this meeting is to develop program planning and follow-up for the Wichita police report.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 28, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-13398 Filed 4-30-80; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Supplement to the Final Environmental Impact Statement (EIS) of Petit Anse, Tigre and Carlin Bayous, La., Enlargement

AGENCY: U.S. Army Coprs of Engineers, DOD, New Orleans District.

ACTION: Notice of Intent To Prepare a Draft Supplement to the Final EIS.

SUMMARY: 1. *Proposed Action.* The proposed work to be analyzed in this statement is the enlargement of Bayous Petit Anse and Carlin and provision of greater bridge clearances at the railroad and highway bridges crossing Bayou Carlin at Delcambre, LA. The navigation feature will consist of enlargement of Bayou Petit Anse from the Gulf Intracoastal Waterway (GIWW) to the Avery Island salt mine canal to 12- by 125-feet, and enlargement of Bayou Carlin from Bayou Petit Anse to Lake Peigneur to 12- by 125-feet except through the developed portion of Delcambra, LA, beginning at the upper end of the mooring basin where enlargement will be to 12- by 80-feet and extending to the second street north of the bridges. The project feature comprising replacement of the railroad bridge, to provide a 73-foot vertical clearance and 80-foot horizontal clearance, would be accomplished under the Truman-Hobbs Act, in coordination with the U.S. Department of Transportation. Replacement of the highway bridge, to provide the same clearances as the railroad bridge, would be accomplished by the Louisiana Department of Highways, as part of their bridge replacement program, and is therefore considered in place in this project analysis.

2. *Alternatives.* Four alternative structural plans are being considered.

a. Plan 1 proposes replacement of the railroad bridge with a lift structure having the same horizontal and vertical clearances as the replacement highway bridge, and excavation of the existing channel to 9- by 80-feet through the bridges under the existing project.

b. Plan 2 proposes replacement of the railroad bridge as in Plan 1 with enlargement of Bayous Petit Anse and Carlin to 12- by 80-feet.

c. Plan 3 proposes replacement of the railroad bridge as in Plan 1 and enlargement of Bayou Petit Anse and Bayou Carlin to 12- by 125-feet.

d. Plan 4 proposes replacement of the highway and railroad bridges with new structures providing horizontal and vertical clearances of 125 feet and 73 feet, respectively, and enlargement of Bayous Petit Anse and Carlin to 12- by 125-feet throughout.

e. A no action alternative is also being considered. However, there exist no non-structural alternatives that would provide for more efficient use of the waterway. Restrictive channel dimensions and bridge clearances are constraints which prohibit more efficient channel use. Relocation of existing economic activities to locations below the restrictive bridges is considered impracticable because of costs involved and the lack of connecting transportation facilities. Otherwise, this action would have already been adopted by waterway users. Therefore, the only non-structural alternative is the no action plan.

3. *Scoping Process.* a. Three public meetings were held in connection with the survey study which resulted in the authorization of navigation improvements on Bayous Petit Anse and Carlin, LA. The meetings were held on 9 April 1968; 2 March 1971; and 26 October 1971. Various informal meetings have been held with Federal fish and wildlife authorities in evaluating project effects on fish and wildlife resources. Informal meetings have also been held and more will be held with representatives of various wildlife groups, landowners, environmentalists, and other special interest groups. Another public meeting is scheduled for April 1981.

b. Significant issues to be addressed in the draft supplemental EIS include: project costs, real estate requirements for disposal areas, impingement of new construction on existing navigation in the bayous, and impacts on the human environment, water quality, and cultural and historical resources.

c. The U.S. Fish and Wildlife Service will provide a Coordination Act Report for the alternative plans for inclusion in the draft supplemental EIS.

d. Periodic reviews will be held with the U.S. Fish and Wildlife Service, other Federal, State, and local agencies; they will be kept informed of the progress.

4. *Scoping Meetings.* The meeting scheduled for April 1981 is considered a scoping meeting. Public distribution of notices relative to the study will be provided. The first notice, announcing the initiation of the study, was distributed in early 1979. At least two additional notices will be distributed during the course of the Phase I study.

5. *Availability.* The draft supplemental EIS is scheduled to be available to the public in January 1981.

ADDRESS: Questions concerning the proposed action and draft supplemental EIS can be directed to Mr. Jedfrey M. Carlton, U.S. Army Corps of Engineers, Environmental Quality Section (LMNPD-RE), P.O. Box 60267, New Orleans, LA 70160, telephone (504) 838-2521.

Dated: April 15, 1980.

Charles B. Deweese,

LTC, CE, Deputy District Engineer.

[FR Doc. 80-13321 Filed 4-30-80; 8:45 am]

BILLING CODE 3710-84-M

Corps of Engineers, Department of the Army

Revision to Notice of Intent To Prepare Draft Supplement to Final Environmental Impact Statement for Proposed Upstream Works on Minnesota River, Big Stone Lake-Whetstone River Project, Minnesota and South Dakota

AGENCY: St. Paul District, Corps of Engineers.

SUMMARY: The following revision applies to the Notice of Intent published in the Tuesday, February 26, 1980 issue of the **Federal Register** (Vol. 45, No. 39, pp. 12473-12474):

"We estimate that the Draft Supplement to the FEIS will be available to the public during the third quarter of Fiscal Year 1980 (April-June 1980)."

Dated: April 22, 1980.

William W. Badger,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 80-13406 Filed 4-30-80; 8:45 am]

BILLING CODE 3710-CY-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of April 1980. The Consent Orders represent resolutions of outstanding compliance investigations or proceedings by the DOE and the firms which involve a sum of less than $500,000 in the aggregate, excluding penalties and interest. For Consent Orders involving sums of $500,000 or more, Notice will be separately published in the **Federal Register.** These Consent Orders are concerned exclusively with payment of the refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, 1075 South Yukon Street, Lakewood, Colorado 80226, telephone number 303/234–3195.

Firm name and address	Refund amount	Product	Period covered	Recipients of refund
J.J. Bardesonna Co., 211 So. Teller, Gunnison, CO 81230	$1,044.40	Motor gasoline	Mar.31 to Dec. 31, 1979	Art Seckman.
Do	407.00	do	do	Char-B-Resort.
Do	12,390.08	do	do	Howard A. Crane.
Do	1,416.59	do	do	Lefeure Enterprises.
Do	2,268.90	do	do	Dave Grubbe.
Do	3,857.01	do	do	Sportsman Texaco.
Do	265.27	do	do	Sapinero Trading Post.
Do	213.90	do	do	Neil & Betty Graham.
Do	21.32	do	do	Thomas Richards.
Do	18.36	do	do	Monarch Auto Body.
Do	110.19	do	do	Richard Guerrieri.
Do	142.89	do	do	Electrical Dynamics.
Do	54.26	do	do	Ralph Sangosti.
Do	40.19	do	do	Bill Rhodes.
Do	30.95	do	do	Frank Zanatell.
Do	18.26	do	do	Art Szallar.
Do	41.95	do	do	John L. Rozman.
Do	17.19	do	do	F.A.A.
	22,358.71			

George C. Brancucci,
Acting Manager, Office of Enforcement, Rocky Mountain District.
Chas. Dewey,
Regional Counsel.
April 24, 1980.

[FR Doc. 80-13437 Filed 4-30-80; 8:45 am]
BILLING CODE 6450-01-M

Decision Concerning Shell Oil Co.'s Jet Fuel Pricing Practices at JFK International Airport

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of decision concerning Shell Oil Company's jet fuel pricing practices at JFK International Airport.

SUMMARY: The Economic Regulatory Administration (ERA) has had under consideration certain allegations submitted to it by El Al Israel Airlines (El Al), Air India, Alitalia Airlines (Alitalia), and Lufthansa German Airlines (Lufthansa) concerning Shell Oil Company's (Shell) pricing practices in its sales of jet fuel at JFK International Airport (JFK). These international airlines have charged that Shell is engaging in discriminatory pricing practices by selling only imported jet fuel to its customers (including U.S. flag carriers) providing international air service from JFK, while supplying its airline customers flying domestic routes with less expensive domestically produced jet fuel. These carriers have asked the ERA to consider a limited reimposition of controls on jet fuel to eliminate Shell's price differential between foreign and domestic air service customers at JFK, pursuant to ERA's authority under section 12(f) of the Emergency Petroleum Allocation Act of 1973.

It is the judgment of ERA, following a careful review of the carriers' requests, the information which ERA has gathered relative to Shell's pricing practices at JFK, and the comments received both during and subsequent to the public conference, that a reimposition of controls on jet fuel is not warranted at this time.

A copy of the letters to representatives of the four international air carriers, with proprietary information deleted, is available for public inspection in the Office of Public Information, ERA, Room B–110, 2000 M Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Romulo L. Diaz, Jr. (Office of Petroleum Operations), Economic Regulatory Administration, Room 6128, 2000 M Street NW., Washington, D.C. 20461, (202) 653–3374.
William Webb (Office of Public Information), Economic Regulatory

Administration, Room B–110, 2000 M Street NW., Washington, D.C. 20461, (202) 653–4055.

Issued in Washington, D.C., on April 28, 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80–13435 Filed 4–30–80; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CS80–64, etc.]

Winter Hawk, Ltd., et al.; Renotice of Applications for "Small Producer" Certificates [1]

April 28, 1980.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 8, 1980, 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 1.8 or 1.10). 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 petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the 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 on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission in 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No., Date filed, Applicant

CS80–64, December 31, 1979, Winter Hawk, Ltd., 5680 South Syracuse Circle, #520, Englewood, Colorado 80111.

CS80–65, December 27, 1979, Larry A. Nermyr, 2438 Whitmire Blvd., Apt. 9E, Midland, Texas 79701.

CS80–66, December 27, 1979, William P. Ozanus, 709 Godfrey, Midland, Texas 79703

CS80–67, January 7, 1980, D. G. Haney, Inc., 1562 Dixie St., Charleston, W. Va. 25311

CS80–68, January 8, 1980, The Fourth National Bank of Tulsa, as Agent for John Leavell Investment Co. prior Leavell Corporation, Fourth National Bank of Tulsa, P.O. Box 2360, Tulsa, OK 74101.

CS80–69, January 8, 1980, The Fourth National Bank of Tulsa, as Trustee of the Patti Stebbins Wilson Trust, Fourth National Bank of Tulsa, P.O. Box 2360, Tulsa OK 74101

CS80–70, January 17, 1980, JFG Enterprises, P.O. Box 100, Artesia, New Mexico 88210.

CS80–71, January 18, 1980, Dominion Corporation, P.O. Box 491, Houston, Texas 77001.

CS80–72, January 21, 1980, A.L.P. Company, P.O. Box 1517, Roswell, NM 88201.

CS80–73, January 28, 1980, Hillin Oil Company, 1212 Main Street, Suite 861, Houston, Texas 77002.

CS80–74, January 30, 1980, Robert E. Kibbe, Box 121, Falurrias, Texas 78355.

CS80–75, February 4, 1980, Robert U. Parish, 2400 Fountain View, Suite 100, Houston, Texas 77057.

CS80–76, February 1, 1980, R. E. Smith—Interests, P.O. Box 976, Snyder, Texas 79549.

CS80–77, February 4, 1980, E. L. Roberts, 2211 Harrison, Amarillo, Texas 79109.

CS80–78, February 12, 1980, Russell J. Ramsland, Jr., P.O. Drawer 10505, Midland, Texas 79702.

CS80–79, February 4, 1980, Reeda Wood Pool, 2708 South Harrison, Amarillo, Texas 79109.

CS80–80, February 4, 1980, Stonewall 79–1 Joint Venture, P.O. Box 2190, Clarksburg, WV 26301.

CS80–81, February 4, 1980, Stonewall 78–1 Joint Venture, P.O. Box 2190, Clarksburg, WV 26301.

CS80–82, February 12, 1980, Dinero Operating Company, P.O. Drawer 10505, Midland, Texas 79702.

CS80–83, February 11, 1980, E. L. Pinkston Estate Operating Account (Operator) et al., P.O. Box 1351, Jacksonville, Texas 75766.

[FR Doc. 80–13427 Filed 4–30–80; 8:45 am]

BILLING CODE 6450–85–M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

S–SW–56, United States to Sweden, 100 milligrams of uranium enriched to 89.38% in U–236, to be used as target material for basic nuclear research at the accelerator at Uppsala Universitet.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than May 16, 1980.

For the Department of Energy.

Dated: April 28, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80–13431 Filed 4–30–80; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland.

The subsequent arrangement to be carried out under the above mentioned agreements involve approval of the following retransfer.

RTD/SD(EU)–29, from West Germany to Switzerland, 24,544.110 kilograms Uranium.

containing 882. 230 kilograms U–235 (3.350%), to be used as fabricated fuel elements for the Goesgen power reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer will nto be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: April 28, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80–13432 Filed 4–30–80; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1482–5; OPTS 62008 (PCB/PEI)]

Polychlorinated Biphenyls (PCB's); Expiration of the Open Border Policy for PCB Disposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Open Border Policy for PCB disposal will expire on May 1, 1980. Exporting and importing of PCBs for disposal after May 1, 1980, will be prohibited.

FOR FURTHER INFORMATION CONTACT: Pamela A. Moore, Chemical Regulations Branch, Control Action Division (TS–794), Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 755–1188; or John B. Ritch, Jr., Director, Office of Industry Assistance (TS–799), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone toll free (800) 424–9065, (in Washington, D.C. Call 554–1404).

SUPPLEMENTARY INFORMATION: The Final PCB Processing, Distribution in Commerce, and Use Prohibition Rule (PCB Prohibition Rule) (40 CFR Part 761.30(b)) promulgated May 31, 1979 established an Open Border Policy permitting the export and import of PCBs for disposal until May 1, 1980. EPA has reviewed the results of this Policy and has decided not to extend the Open Border Policy. EPA is concerned that the improper disposal of PCBs will pose a threat to health or the environment. As the Agency pointed out in the Preamble to the Final PCB Prohibition Rule, the success of an Open Border Policy is dependent upon the availability of acceptable disposal facilities in other nations. The experience of the last year has demonstrated that an extension of the Open Border Policy would be inappropriate because most other nations do not have proper disposal facilities.

Although EPA has decided not to extend the Open Border Policy beyond May 1, 1980, within a month EPA will publish a Proposed Rule governing the export and import of PCBs for disposal and for use. At this time it is expected the proposed rule will include a mechanism by which other nations may enter a bilateral agreement or memorandum of understanding with the U.S., setting forth mutually agreed upon criteria for the transportation, storage, and disposal of PCBs. By means of entering into such agreements or memoranda of understanding with other nations, the Agency can be assured that disposal will be accomplished properly in those nations.

With respect to disposal activities, after May 1, 1980, no PCBs may be exported or imported for disposal until new rules are in effect. With respect to export for use there has been no change in the requirements that must be met prior to export. Persons wishing to export for use must continue to file a TSCA Section 12 export notice and file an exemption petition, in accordance with the requirements of § 761.30(c), for processing and distribution in commerce. No PCBs may be exported until and unless EPA grants an exemption to export. EPA may grant an exemption to export if the Agency finds pursuant to Section 6(e)(3) of TSCA (1) an unreasonable risk of injury to health or environment would not result, and (2) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

EPA will not grant an exemption unless the nation to which export is destined has proper disposal facilites for ultimate disposal. EPA also will not grant an exemption for export for a use not authorized in the Untited States. In the context of exports, good faith efforts to find a substitute means the burden is on the petitioner to show that there are no substitutes for the PCBs, produced by either the petitioner or a competitor; and that the petitoner proves that it has expended substantial amounts of time and money searching for a substitute.

Dated: April 29, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80–13457 Filed 4–30–80; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 80–230]

Processing of Pending Space Station Applications in the Domestic Fixed Satellite Service; Memorandum Opinion and Order

Adopted: April 24, 1980.

Released: April 28, 1980.

By the Commission: Commissioners Fogarty and Jones concurring in the result.

1. The Commission presently has on file a number of applications which are listed in Appendix A, requesting authority to construct and/or launch new domestic satellite space stations. These satellites are variously proposed for the purposes of replacing satellites presently in orbit as they approach the ends of their nominal design lifetimes, expanding the in-orbit capacity of operating systems to meet growing traffic requirements, and establishing the initial in-orbit facilities for new entrants into the domestic satellite market. These applications propose a diverse array of facilities and services. We recognize the need to act promptly on them since customers of the presently operating systems have a need for continued reliable service, and the demand for increased capacity and new services is growing rapidly. At the same time we recognize the need at this time to review our present policies so as to insure the most efficient use of the geostationary orbit. In light of the need to balance these competing concerns, we are today adopting a procedure which will allow us to process current applications for domestic satellite space stations and facilitate the orderly implementation of a new generation of satellites more efficiently utilizing the limited orbital spectrum.

2. Our processing of domestic satellite space station applications since our *First Report and Order* in Docket No. 16495, 22 FCC 2d 86 (1970), has proceeded on the basic premise that all proposed satellites could be accommodated in orbit. This premise was confirmed in our *Second Report and Order*, 35 FCC 2d 844 (1972), with respect to the initial domestic satellite system proposals. We later stated in *Western Union Telegraph Company*, 46 FCC 2d 162, 165 (1974):

Thus, under the policies adopted in Docket No. 16495, an applicant's request for a particular orbital location is not dispositive of what orbital location will be assigned and conflicting requests by different applicants do not necessarily give rise to comparative hearing rights. We undertook to accommodate all of the pending system applicants by assigning orbital locations in accordance with specified criteria, and retained flexibility to shift initial assignments during the life of the satellites.

This basic regulatory framework, which recognizes the unique character of satellite service, has been successfully applied to date in our authorization of domestic satellite space station facilities, thus permitting early implementation of our domestic satellite policy objectives as set forth in our *Second Report and Order*, supra at 846–847, without the needless delays of protracted proceedings.

3. The need to avoid delays in the authorization of domestic satellite services is even more critical today than it was at the time of our *Second Report and Order*. Several systems upon which customers are dependent are presently in orbit. At the same time, some of the earlier systems are declining in reliability as the facilities approach the end of their design lifetimes.[1] In addition to current service requirements there is a rapidly growing demand which appears to be approaching (and in some cases surpassing) in-orbit capacity. The services and facilities proposed in the applications presently on file would apparently meet the need for such continued and expanded capacity. We need, therefore, to act quickly to allow some expansion of domestic satellite facilities and continuation of the competitive benefits of such services.[2] We note that a sufficient number of orbital locations may be available to accommodate the satellites presently being proposed without any significant changes to our current satellite spacing and orbital assignment policies.

4. In light of this growing demand for satellite services and the increasing congestion in the geostationary orbit, however, we also need to establish new parameters for the next generation of satellite facilities to promote more efficient use of that orbit. We anticipate the initiation in the near future of a general proceeding looking toward longer-term policies and technical means of increasing the number and capacity of domestic satellites to meet growing consumer demand.

5. Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, give the Commission wide discretion to establish procedures to facilitate the orderly conduct of its business. In the exercise of its licensing authority, the Commission has the power to determine the manner and sequence in which it will consider applications.[3] In particular, we must be able to tailor our processes to the unique character of each service. Satellite services have characteristics that are distinctly different from other terrestrial services that are regulated by the Commission. For example, they require exceptionally long lead times to become operational; they cannot be incrementally modified or expanded; their life span is finite and they are non-repairable; the use of the radio spectrum is assigned in a different manner from terrestrial facilities and frequency coordination is international in scope. Thus, our processing procedures are time consuming and the inter-relationship between orbital assignments, satellite design, and intended service areas makes it important for us to review co-pending applications and existing or previously authorized satellites before taking final action on any application. In the *First Report and Order*, supra, we required applications for the initial generation of domestic communications satellites to be filed within a specified time period to facilitate orderly and comprehensive treatment of the issues presented and the policies required. Likewise, we now must have a finite, well-defined set of proposals that will be considered together in connection with issues relating to the availability and assignment of orbital locations to best serve the public interest. Otherwise, the uncertainty and the administrative difficulty of considering the overall current need for orbital assignments, which could change at any time by the filing of a new application, could significantly complicate and delay the authorization process.

6. Therefore, in order to insure the continued availability of a wide variety of services to the public consistent with our open entry policies for domestic satellite services, we must fashion a processing procedure that is reasonable and will allow us to proceed in an orderly manner to consider and act on pending applications. Thus, we believe we should consider the currently pending applications in a group.

7. As indicated in paragraph 3 above, it is essential that we act promptly on current applications if the burgeoning demand for satellite service in the next 2 to 5 year period is to be met. An extended period for filing applications to be considered with the current group may well encourage a large number of speculative new filings that would defeat our purpose and substantially impair our ability to act expeditiously on currently pending applications. The applications now on file were submitted in accordance with our open entry policy.[4] They propose a wide variety of new services as well as needed replacement of existing satellite facilities that should fill the near to mid-term public need.[5] At the same time, we believe that it is in the public interest to begin encouraging the development of a new generation of satellites that will be more efficient and made more effective use of scarce radio spectrum for satellites. As indicated above, in the near future we intend to initiate a proceeding to develop new rules and policies that will address satellite technology, frequency use, orbital spacing, processing procedures,[6] and other factors which will improve the use of the spectrum and insure the continued growth of a wide variety of satellite services. In light of such new rules and policies, it is obviously not in the public interest to encourage the excessive development of satellites of the current generation since they might well thwart an early phase-in of the new policies and facilities. Thus, the processing procedures that we are implementing herein should not only insure the early deployment of satellite facilities as necessary to meet the

[1] This situation has been exacerbated by the recent loss of the SATCOM III satellite. The period of time required to construct and launch a satellite, once the Commission grants a construction permit, is typically two to three years because of the technical complexity of satellite design and manufacture, the need for extensive quality assurance testing, start-up time required, and procurement of "long lead time" items, among other factors.

[2] New satellite facilities have made possible significant new services to many customers, especially those interested in video distribution to cable systems and broadcast stations. We are particularly concerned that these important public benefits of our domestic satellite policies not be jeopardized by delays in processing new satellite applications.

[3] FCC v. Pottsville Broadcasting Company, 309 U.S. 134, 138 (1940); Kessler v. F.C.C., 326 F.2d 673 (D.C. Cir. 1963); Mesa Microwave, Inc. v. Federal Communications Commission, 262 F.2d 723 (1958); Ranger v. Federal Communications Commission, 294 F.2d 240 (1961).

[4] First Report and Order, supra. During the period since we approved the first group of applicants, potential providers of service have been free without restriction to submit proposals which they believe would meet existing demand in the market place.

[5] The applications listed in Appendix A represent a wide variety of proposed service offerings (e.g., video relay, private line and switched voice, and data networks) and satellite technologies.

[6] In this respect we anticipate that we will evaluate, among other things, the effectiveness of the group processing approach and determine what other changes can be implemented to regularize and improve our processing procedures.

current and near term demand but should facilitate the implementation of more advanced and efficient satellite systems consistent with the new rules. Accordingly, in consideration of these factors, we will process together all applications received by the date this Memorandum Opinion and Order is published in the **Federal Register.**

8. This processing policy will apply to all applications for authority to construct and/or launch domestic satellites except for: (a) Applications to launch domestic satellites for which orbital locations have been tentatively assigned in the construction permit; or (b) Applications to launch a satellite for an emergency replacement of an existing in-orbit satellite that has failed prematurely. We wish to emphasize, however, that our action here is not to be construed as a freeze on the filing of new space station applications. Applications filed after the cut-off date will still be accepted for filing, but processing of such applications will be generally deferred until after we have completed action on the current group of applications. By that time we anticipate that we will have proposed new rules and policies. Where such later filed applications do not conflict with the proposed rules or prejudice the rights of others, we may act on them prior to the finalization of the new rules and policies. We do not believe that such a course of action would be prejudicial to any party or result in undue delay in establishing new satellite facilities. We emphasize, however, that our overriding concern is to see that users have access to adequate facilities and services.

9. An application to be currently considered must be complete with respect to the requirements of Appendix B,[7] and must demonstrate with specificity the applicant's legal, technical and financial qualifications and its ability to immediately proceed with the construction and operation of the proposed domestic satellite system. Applicants listed in Appendix A should also review their applications to insure that all of the required information is on file with the Commission and must promptly amend their applications as may be necessary.

10. It is therefore ordered, That the policies and procedures specified herein are adopted pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, and that applications be submitted no later than the publication date of this Order in the **Federal Register,**[8] in order to be considered in conjunction with the applications listed in Appendix A of this Order.

11. It is further ordered, That the Secretary of the Federal Communications Commission shall cause this Order to be published in the **Federal Register** at the earliest date practical.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A.—Currently Pending Domestic Satellite Space Station Applications

Hughes Communications, Inc.
- 485-DSS-P-80
- 486-DSS-P-80
- 487-DSS-P-80
- 488-DSS-LA-80
- 489-DSS-LA-80
- 490-DSE-P/L-80

RCA American Communications, Inc.
- 1008-DSS-P-79
- 286-DSS-P-80
- 732-DSS-P/LA-80
- 1977-DSS-LA-79

Satellite Business Systems
- 881-DSS-MP-80
- 882-DSS-MP-80

Western Union Space Communications, Inc.
- 4-DSS-P-78
- 5-DSS-P-78
- 6-DSS-P-78
- 7-DSS-P-78
- 8-DSS-P-78
- 9-DSS-P-78
- 10-DSS-P-78
- 263-DSE-P-78

Western Union Telegraph Company
- W-P-C-1752
- 483-DSS-P-80
- 768-DSS-LA-80

Southern Pacific Communications Company
- 887-DSS-P/LA-80
- 888-DSS-P/LA-80
- 889-DSS-P/LA-80

GTE Satellite Corporation
- 1025-DSS-P/LA-80
- 1026-DSS-P/LA-80
- 1027-DSS-P-80

Appendix B.—Information Required for Domestic Satellite Space Station Applications

1. Section IV, particularly paragraphs 30, 32 and 33, and Appendix D of the *First Report and Order* in Docket No. 16495, 22 FCC 2d 86 (1970), covering the procedures for filing and content of space station applications remain generally applicable at this time.[9] [10] However, unlike the situation that existed in 1970, applications filed at this time should present a complete and well-defined system proposal, including details of the types and volume of proposed services and geographical distribution of earth stations to be served.

2. With respect to Section II of Appendix D, it should be noted that the frequency bands 5925–6425 MHz, 14.0–14.5 GHz and 27.5–30 GHz are presently available for uplinks; and 3700–4200 MHz, 11.7–12.2 GHz and 17.7–20.2 GHz are presently available for downlinks.

3. With respect to Section III of Appendix D, frequency coordination procedures for earth stations have been subsequently incorporated into Part 25 of the Rules and Regulations.

4. The technical constraints of Section IV of Appendix D have also been updated and applicants should refer to the present international Radio Regulations for the current values for power and power flux density limits. Satellite stationkeeping of $\pm 0.1°$ is now considered to be the present state of the art; and orbital separations of 4° at 4/6 GHz and 3° at 12/14 GHz are appropriate at the present time. The earth station antenna directivity standards have been superseded by Section 25.209 of the rules and our decision in *American Broadcasting Companies*, 72 FCC 2d 750 (1979).

5. The information requirements of Section V.A and V.B of Appendix D are still applicable for space station applications with the following observations.

6. In order to adequately describe the coverage of the space station, contours of EIRP, G/T and required saturating flux density should also be provided for each antenna beam.

7. Although applicants may request the assignment of specific orbital assignments, the Commission reserves the right to make individual orbital assignments in a manner that best serves the overall public interest.[11] Thus, applicants should include a detailed explanation of all factors that would limit the orbital arc over which they could adequately serve their customers and the impact on them if such orbital locations are not in fact assigned to them. In this regard, applicants should state whether or not their proposed satellite design includes the capability of serving Alaska, Hawaii and/or Puerto Rico/Virgin Islands and, if so, the specific technical characteristics of such capabilities.[12]

8. With respect to Section V, Item A.6. a and b, an applicant should make its best effort to provide interference analyses to demonstrate the required orbital separations between its proposed satellite and the others presently on file. In order to allow such analyses to be completed by the Commission and other applicants in the course of future consideration of these applications, applicants should also provide details of their proposed r.f. carriers which they believe should be taken into account in such

[7] Appendix B requires essentially the same information specified for the filing of applications in our First Report and Order, and clarifies these requirements in light of experience to reflect the minimum amount of information required to process such applications under current circumstances. Applicants may, of course, supply any other information they believe relevant to their proposals.

[8] We anticipate that this Order will be published in the **Federal Register** on May 1, 1980.

[9] With respect to paragraph 33(h), FCC Form 430 should be used to present legal qualifications.

[10] Application procedures for transmitting earth stations (e.g. TT&C) are contained in our August 8, 1975 Public Notice (FCC 75-932) as modified by Public Notices dated August 10, 1978 (Mimeo 6044) and January 9, 1979 (Mimeo 11345). Receive-only earth stations are governed by the policies adopted in our decision in Deregulation of Domestic Receive-Only Satellite Earth Stations, 74 FCC 2d 205 (1979). These decisions supersede the information specified in Section V.C of Appendix D.

[11] See the discussion in paragraph 2 of the Memorandum Opinion and Order.

[12] See Memorandum Opinion and Order adopted April 24, 1980 in Satellite Business Systems, File Nos. 7-DDS-P-76 et al., for a discussion of the Commission's present policies in this regard.

analyses. At a minimum, such details should include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis.

9. Existing space station applicants must review their applications to determine if the points mentioned above are adequately treated in their pending applications. Failure to promptly file supplemental information as may be required may result in dismissal of the application. Where such information has been previously filed with the Commission in an earlier application, applicants should simply supplement their pending applications with cross-references to the previous filings (including dates and file numbers) where such current information is to be found.

[FR Doc. 80-13430 Filed 4-30-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 80-4]

Matson Navigation Co.; Proposed 5.67 Percent Bunker Surcharge in the Hawaii Trade; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Environmental Analysis (OEA) has determined that the environmental issues relative to the referenced docket do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

This investigation was instituted to determine whether Matson's proposed bunker surcharge is unjust, unreasonable or otherwise unlawful under section 18(a) of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933. The surcharge applies to Matson's Tariffs FMC-F Nos. 164, 165, 166, 167, 168 and 169 under which Matson provides service in the Pacific Coast/Hawaiian trade. The OEA considered whether this surcharge will adversely affect: the movement of recyclables; the use of energy; air, water and noise pollution; and the biological community. The OEA has determined, however, that any decision made by the Commission in this proceeding would have no significant impact on these environmental factors and believes it is appropriate to satisfy the requirements of NEPA by issuing the instant Notice.

The associated environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725. Interested parties may comment on the environmental assessment on or before May 21, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Copies of all future correspondence and pleadings filed in this proceeding shall be served on the Chief, Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

Francis C. Hurney,

Secretary.

[FR Doc. 80-13328 Filed 4-30-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-25]

Emmett I. Sindik d.b.a. Emmett I. Sindik, Customs Broker—Independent Ocean Freight Forwarder License Application and Possible Violation of Section 44, Shipping Act, 1916; Order of Investigation and Hearing

Emmett I. Sindik, a sole proprietor using the trade name Emmett I. Sindik, Customs Broker and located at International Trade Mart No. 926, New Orleans, Louisiana 70130, has filed an application for a license as an independent ocean freight forwarder with the Commission.

During the course of the investigation of the applicant, it was disclosed that he may have performed ocean freight forwarder services on at least three shipments even though he did not hold a license issued by the Commission. All instances of the alleged unlicensed freight forwarding occurred after the applicant had received written notice in the form of a letter, conveying application blanks to him, that such unlicensed freight forwarding was not permitted and could prejudice the issuance of a license.

Section 44(b) of the Shipping Act, 1916, requires that applicants be found fit, willing and able properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, and the requirements rules and regulations of the Commission issued thereunder. Otherwise, such application shall be denied.

The applicant's conduct noted above would appear to reflect adversely upon his fitness.

By letter dated February 19, 1980, the Commission notified Emmett I. Sindik of its intent to deny his application for a license unless the applicant requested a hearing on the grounds that such a denial was not warranted.

In a letter dated February 29, 1980, the applicant requested that he be given an opportunity to show at a hearing that such a denial was unwarranted.

Now therefore *it is ordered,* That pursuant to sections 22, 32 and 44 (46 U.S.C. 821, 831, and 841(b)) of the Shipping Act, 1916, and section 510.8 of the Commission's General Order 4 (46 CFR 510.8) a proceeding is hereby instituted to determine:

1. Whether Emmett I. Sindik d/b/a Emmett I. Sindik, Customs Broker, violated section 44(a), Shipping Act, 1916, by engaging in unlicensed forwarding activities;

2. Whether civil penalties should be assessed against Emmett I. Sindik d/b/a Emmett I. Sindik, Customs Broker, pursuant to section 32 and Part 505.3 of the Commission's regulations (46 CFR 505.3) for violations of the Shipping Act, 1916, and if so, the amount of any such penalty which should be imposed, taking into consideration factors in possible mitigation of such penalties; and

3. Whether in light of the evidence adduced pursuant to the first issue, together with any other evidence adduced, Emmett I. Sindik d/b/a Emmett I. Sindik, Customs Broker, possesses the requisite fitness, within the meaning of section 44(b), Shipping Act, 1916, to be licensed as an independent ocean freight forwarder.

It is further ordered, That Emmett I. Sindik, Customs Broker, be named Respondent in this proceeding.

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the proceeding shall initially be limited to the submission of affidavits of fact and memoranda of law.

It is further ordered, That the following schedule be adhered to: June 9, 1980—Opening memorandum of law, request for penalty, and affidavits of facts from Hearing Counsel; July 9, 1980—Opening memorandum of law and affidavits of fact from Respondent; July 29, 1980—Reply memorandum of law and affidavits of fact of Hearing Counsel.

It is further ordered, That within two weeks following the reply memorandum of law of Hearing Counsel, the parties will submit to the Administrative Law Judge written statements identifying any unresolved issues of fact and specifying the type of procedure they feel is best suited to resolve them. After

consideration of these recommendations, the Administrative Law Judge will issue an appropriate order establishing the procedure for their resolution. Any additional procedure, however, shall include oral testimony and cross-examination at the discretion of the Presiding Officer, only upon showing that there are issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents, or that the nature of the matters in issue is such that an oral hearing and a cross-examination are necessary for the development of an adequate record.

It is further ordered, That any person other than Respondent and Hearing Counsel, having an interest in and desiring to become party to this proceeding and to participate therein, may do so by filing a timely petition to intervene pursuant to Rule 72 (46 CFR 502.72) of the Commission's Rules of Practice and Procedure.

It is further ordered, That a notice of this Order be published in the **Federal Register** and that a copy thereof be served upon Respondent and Hearing Counsel.

It is further ordered, That except as provided in Rules 159 and 201(a) (46 CFR 502.159, 46 CFR 502.201(a)) of the Commission's Rules of Practice and Procedure, all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 (46 CFR 502.118) of the Commission's Rules of Practice and Procedure, as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80-13329 Filed 4-30-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Manufacturers Hanover Corp.; Proposed Acquisitions

Manufacturers Hanover Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of MH financial corporation, First Pennsylvania Financial Services, Inc., Philadelphia, Pennsylvania; Continental Finance Corporation of America, Aurora, Colorado; and Ellwood Consumer Discount Company, Inc., Ellwood City, Pennsylvania; and to acquire the mortgage servicing protfolio, and certain other assets, of Pennamco, Inc., Bala-Cynwyd, Pennsylvania.

Applicant states that the proposed subsidiaries would engage in the activities of consumer financing, sales financing, industrial banking, and second mortgage lending, the sale, as agent, of credit life, accident and health insurance and property and casualty insurance directly related to such extensions of credit, and the underwriting, as reinsurer, of such credit life, accident and health insurance. these activities would be performed from offices of Applicant's proposed subsidiaries located in the states of Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Indiana, Kansas, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia, and doing business under the names of Termplan or Termplan Mortgage, and variations thereof; Alliance Finance, and variations thereof; Continental Financial or Continental Finance, and variations thereof; Continental Industrial Bank, and variations thereof; Capitol Industrial Co; Investors Loan Corporation, and variations thereof; IF&T Incorporated; Investors Mortgage Company, Inc., and variations thereof; Ellwood Consumer Discount Company, Inc.; Investors Consumer Discount Company of Pennsylvania; Tempco Life Insurance Company; and Eastern Life Insurance Company. The areas to be served by Applicant's proposed lending subsidiaries are the counties/cities in which these offices are located, and portions of certain contiguous counties/cities. The reinsurance activities would relate to insurance sold through the lending offices described above. A complete list of the locations of all of the offices involved is contained in the application filed by Manufacturers Hanover Corporation, and this list is available for inspection at the offices of the Board of Governors and at the Federal Reserve Bank of New York. The application also indicates which of the above-mentioned activities are to be performed at which offices of the companies to be acquired. Applicant's subsidiary, Manufacturers Hanover Mortgage Corporation, would acquire the assets of Pennamco involved, and would engage in mortgage servicing on a nationwide basis from its office in Southfield, Michigan. All of the activities in which Applicant proposes to engage have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 16, 1980.

Board of Governors of the Federal Reserve System, April 28, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-13306 Filed 4-30-80; 8:45 am]

BILLING CODE 6210-01-M

Harper Associates Bancshares Limited; Formation of Bank Holding Company

Harper Associates Bancshares Limited, Bucklin, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 85.54 per cent of the voting shares of Bucklin State Bank, Bucklin, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 23, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation

would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 24, 1980.

Cathy L. Petryshy,

Assistant Secretary of the Board.

[FR Doc. 80-13340 Filed 4-30-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Karl Eller is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of the Bulletin Company from Robert & William McLean. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Robert & William McLean. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: April 21, 1980.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-13409 Filed 4-30-80; 8:45 am]

BILLING CODE 6750-01-M

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: The Charter Company is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of the Bulletin Company from Robert and William McLean. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Robert & William McLean. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: April 21, 1980.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-13410 Filed 4-30-80; 8:45 am]

BILLING CODE 6750-01-M

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Karl Eller is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed formation of a joint venture between Mr. Eller and the Charter Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: April 21, 1980.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-13411 Filed 4-30-80; 8:45 am]

BILLING CODE 6750-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on April 22, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before May 19, 1980, and should be addressed to Mr. John M.

Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

Civil Aeronautics Board

The CAB requests clearance of a new, voluntary, single-time Survey to Determine Eligibility for Guaranteed Essential Air Service. The survey will be issued by the Board as part of a program established under section 419 of the Airline Deregulation Act for the guarantee of essential air service to eligible communities throughout the United States. The data collected by the survey will help the CAB determine communities' isolation and communities' historical traffic generation and traffic potential. The survey will be mailed to approximately 280 municipal and state representatives and time to fill out the survey is estimated by CAB to average 8 hours per survey.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-13425 Filed 4-30-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services
Administration for Children, Youth, and Families

[Program Announcement No. 13.647–ODV–802]

Demonstration Projects for State and Local Domestic Violence Resource Networks, Region III and Region IV; Availability of Grant Funds

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of availability of grant funds for demonstration projects for State and local domestic violence resource networks, Region III and Region IV.

SUMMARY: The Office of Human Development Services announces that applications are being accepted from Federal Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia) and Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) for grants under Section 1110 of the Social Security Act for a Demonstration Project for State and Local Domestic Violence Resource Networks in each of the above regions.

DATES: Closing date for receipt of applications is June 30, 1980.

Scope of this Announcement

This Program Announcement covers the Fiscal Year 1980 grant program for State and local domestic violence resource network projects for Regions III and IV. Grants under this program have already been awarded under Section 1110 of the Social Security Act on March 1, 1980, for a demonstration project in each of the other Federal regions. Competition for grant awards in other Office on Domestic Violence demonstration projects will be announced separately in the **Federal Register.**

Program Purpose

The purpose of the demonstration projects for State and local domestic violence resource networks is to develop State and local networks of resource experts who can provide technical assistance, information, training and available resource materials to traditional and non-traditional service providers in an effort to increase the delivery of service to victims of domestic violence and their families. Non-traditional service providers can include but not be limited to organizations such as women's self-help groups and other volunteer organizations. Because available funds do not allow support on a State-by-State basis, regional centers will be used to coordinate activities and develop networks within the States in each region.

Program Goal and Objective

The goal of the projects is to demonstrate that State and local networking can provide a mechanism by which existing resources can be more effectively used to meet the range of needs of victims of domestic violence. Applications for projects would indicate that the proposed project will achieve or is capable of achieving the following program objectives:

- To develop a network of resource experts with representation from each State in the region;
- To provide information and on-site assistance to those providing or developing services for victims of domestic violence and their families. Resource areas will include but not be limited to:

—Organization and management of shelters.

—Development of funding sources.

—Community education.

—Development of coordinated community services (including existing health, social, legal service and child protective service).

—Effecting legislation (including State plans and local priorities).

—Staff training.

—Development of volunteer efforts.

—Information on relevant Federal, State and local programs.

- To share models of other programs and service designs among those in the region;
- To work with ACTION's National Technical Assistance Center on Family Violence to obtain and provide resource materials to those in the region and to obtain information on model programs and resource consultants from other regions;
- Using State and local resource experts and service providers to work with State and local agencies to improve the range and effectiveness of health and social services in responding to the needs of victims of domestic violence and their families;
- To provide community education or provide assistance and resource materials to others providing community education;
- To assist groups that are targeting family violence services to low income populations; and
- To develop a profile on available services, barriers to services, and regional activities and developments in meeting the needs of victims of domestic violence.

Eligible Applicants

Any public or nonprofit private agency or ogranization in Regions III or IV having demonstrated ability in working with traditional and non-traditional service providers in the area of domestic violence, familiarity with the present level of services and service providers in the area of domestic violence in their region, and experience in providing technical assistance may apply for a grant under this program.

Available Funds

The Office on Domestic Violence will award one new demonstration grant in each region for $40,000. Projects will be supported for one year. Grants for Regions I, II, V, VI, VII, VIII, IX, X, have already been awarded in Fiscal Year 1980 for a total of $320,000.

At least $15,000 of the budget must be used for developing and maintaining a network of regional, state and local resource experts to provide information and assistance to existing potential service providers. Such experts are primarily to be volunteers. However, where service is required and cannot be obtained through volunteer resources, experts may be utilized on a fee for

services basis. Volunteers can be reimbursed for travel and subsistence.

Grantee Share of the Project

This project requires no cost-sharing or matching of federal funds.

The Application Process

Availability of Forms

Application for a grant under the demonstration projects for state and local domestic violence resource networks must be submitted on standard forms provided for this purpose. Application kits which include the forms and other information may be obtained by writing to: Office on Domestic Violence, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013, Telephone: (202) 472–4205.

Application Submission

One signed original and two copies of the grant application, including all attachments, mut be submitted to: Department of Health, Education, and Welfare, Office of Human Development Services/Humphrey Building, Grants Management Branch, Room 345F, Attn.: Ms. Mary White, 200 Independence Avenue, S.W., Washington, D.C. 20201.

A–95 Notification Process

Notice to A–95 state and area-wide clearinghouses is *not* required under this grant program.

Application Consideration

The Director of the Office of Planning, Research and Evaluation determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families. The results of this review assist the Director of the Office on Domestic Violence in considering competing applications. Unsuccessful applicants are notified in writing of this decision. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, and the total period of which project support is contemplated.

Criteria for Review and Evaluation of Applications

Competing grant applications from Regions III and IV will be reviewed and evaluated against the following criteria:

1. Staffing and Resources (35 points). Project staff will be determined to be well qualified by the following criteria:
- •Experience in providing information and resource materials;
- •Knowledge of experience with state and community agencies;
- •Familiarity with domestic violence issues;
- •Knowledge of and experience with traditional and non-traditional service providers;
- •Experience in management and coordination;
- •Appropriateness of level of staffing, including consultants; and
- •Adequacy of facilities.

2. Experience of Applicant Organization (40 points):
- •Current activities in field of domestic violence, information dissemination and on-site assistance;
- •Knowledge and description of special concerns and needs of region;
- • Knowledge and description of present level of services, and barriers to services within the region; and
- • Demonstated ability to work with grassroots/voluntary groups of diverse ethnic and cultural backgrounds working in the area of domestic violence.

3. Budget (10 points)
- • Reasonableness; and
- • Compatibility with work plan.

4. Methodology (50 points)
- • Compatibility of project objectives with those outlined in the program announcement;
- • Capability of proposed methodology to attain project objectives;
- • Reasonabless of timetable;
- • Degree of work plan develops on-site assistance at state and local level;
- • Compatability of work plan with needs of region; and
- • Degree work plan includes both traditional and non-traditional service providers.

5. Evaluation Plan (10 points)
- • Description and appropriateness of plan for 6-month self-assessment; and
- • Description and appropriateness of plan for project evalution (submmitted at the end of the first year).

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is June 30, 1980.

Applications may be mailed or hand-delivered. Hand-delivered applications will be accepted during regular working hours of 9:00 a.m. to 5:00 p.m. The applications must be taken to Room 345–F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.

Mailed applications will be considered to be received on the time if: (1) The application is *received on or before the closing date* by the DHEW mail room in Washington, D.C., or (2) the application is *mailed* by registered or certified mail *not later than five days before the closing date,* as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the U.S. Postal Service, unless the mailed application arrives too late to be considered by the independent review panel. Mailed applications must be addressed to: Departmenmt of Health, Education, and Welfare, Office of Human Development Services/ Humphrey Building, Grants Management Branch, Room 345F, Attn.: Ms. Mary White, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Applications may be submitted at any time prior to the closing date and applications received after the closing date will be returned to the applicant without being reviewed.

(Program Announcement Number: 13.647–ODV–802—Social Services Research and Demonstration)

Dated: April 21, 1980.

Jerry Turem,

Director, Office of Planning, Research and Evaluation.

Approved: April 25, 1980.

Manuel Carballo,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 80–13426 Filed 4–30–80; 8:45 am]

BILLING CODE 4110–92–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Las Vegas District To Hold Public Hearing on Wild Horse Roundups by Helicopter

The Las Vegas (NV) District will conduct a public hearing May 14, 1980 at 2 p.m. in its Las Vegas office (4765 W. Vegas Dr.) to receive public comment on its plans to use helicopters to aid in the gathering of wild horses and burros in the Caliente Planning Unit and in the Ash Meadows area. The planning unit is located in southern Lincoln County, NV. Ash Meadows is about 72 miles west-north-west of Las Vegas.

Copies of the plans are available for public review in the Caliente (NV) Resource Area Office, the Las Vegas District Office, and the Nevada State Office (300b Booth St.)

Persons wishing to give testimony at the hearing should notify the District Manager by May 13, 1980. Depending on the number of persons wishing to be

heard, the district manager may set a per-person time limit.

Transcripts of the hearing will be availabe for public review at the aformentioned locations during regular business hours (7:30 a.m. to 4:15 p.m.), within 15 days after the meeting.

Frank E. Bingham,

District Manager.

April 22, 1980.

[FR Doc. 80-13404 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-84-M

[F-19155-39]

Alaska Native Claims Selection

This decision approves for convenience certain lands in the vicinity of Slate Creek, Alaska to Doyon, Limited.

On November 26, 1975, Doyon, Limited filed selection application F-19155-39, as amended, under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(c) (1976)) (ANCSA), for the surface and subsurface estates of certain lands withdrawn pursuant to Sec. 11(a)(3) of ANCSA by Public Land Order (PLO) 5173 as amended by PLO 5321.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to Sec. 12(c) of ANCSA, aggregating approximately 19,831 acres, are considered proper for acquisition by Doyon, Limited and are hereby approved for conveyance pursuant to Sec. 14(e) of ANCSA:

Fairbanks Meridian, Alaska (Unsurveyed)

T. 4 S., R. 25 E.,
Secs. 23 to 26, inclusive, all;
Secs. 35 and 36, all.
Containing approximately 3,840 acres.

T. 4 S., R. 26 E.,
Sec. 1, all;
Secs. 11 to 16, inclusive, all;
Secs. 19 to 36, inclusive, all.
Containing approximately 15,991 acres.
Aggregating approximately 19,831 acres.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands; and

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

To date approximately 1,874,293 acres of land, selected pursuant to Sec. 12(c) of the Alaska Native Claims Settlement Act, have been approved for conveyance to Doyon, Limited.

There are not inland water bodies considered to be navigable within the above described lands.

In accordance with Departmental regulations 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until May 30, 1980 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtaind from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Doyon, Limited, First and Hall Streets, Fairbanks, Alaska 99701.

Ricky M. Elliott,

Chief, Branch of Adjudication.

[FR Doc. 80-13339 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-84-M

Arizona State Office; Redelegation of Authority

ACTION: Redelegation of authority.

EFFECTIVE DATE: May 1, 1980.

Pursuant to Section 1.1 of Bureau Order No. 701 of July 23, 1964, as amended, I hereby redelegate to the Chief, Division of Technical Services, authority to take all actions associated with Special Instructions, Supplemental Special Instructions, and Assignment Instructions for Cadastral Survey.

The State Director may, in his discretion, personally exercise any authority hereby delegated to the Chief, Division of Technical Services.

The Chief, Division of Technical Services, may redelegate the authority vested in him by this delegation to any qualified employee under his jursidiction. Any order of redelegation must be approved by the State Director and published in the **Federal Register.**

Clair M. Whitlock,

State Director.

[FR Doc. 80-13322 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-84-M

[DEIS 80-28]

Draft Ironside Grazing Management Environmental Impact Statement; Public Hearings and DEIS Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearings on ironside grazing management DEIS.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental impact statement for the Ironside EIS area. The proposal involves implementing a livestock grazing program on public lands within portions of the Baker and Vale Districts in eastern Oregon.

Public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 18th and C Streets, NW, Washington, D.C.

Bureau of Land Management, Office of Public Affairs, 729 N.E., Oregon Street, Portland, Oregon

Bureau of Land management, Baker District Office, Federal Building, Baker, Oregon
Bureau of Land Management, Vale District Office, 365 A Street West, Vale, Oregon
Library, Treasure Valley Community College, Ontario, Oregon
Library, Eastern Oregon State College, LaGrande, Oregon
Library, Portland State University, Portland, Oregon
Library, Oregon State University, Corvallis, Oregon
Baker County Library, Baker, Oregon
Malheur County Library Ontario, Oregon

A limited number of copies are available upon request to the Oregon State Director or the Baker and Vale Districts at the above addresses.

Oral and/or written comments will be received at formal public hearings held at the following locations:

June 3, 1980 7:00 p.m.

Treasure Valley Community College, Weese Building, Room 10, Ontario, Oregon

June 4, 1980 2:00–4:00 p.m. and 7:00 p.m.

Baker Community Center, 2610 Grove Street, Baker, Oregon.

DATES: June 3, 1980—Public hearing in Ontario.

June 4, 1980—Public hearing in Baker.

ADDRESS: Written comments on the Draft EIS may be sent to: State Director (911.1), Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208.

All comments must be postmarked no laterthan June 27, 1980.

FOR FURTHER INFORMATION CONTACT: Gerry Fullerton, Team Leader, Oregon State Office, Telephone: (503) 231–6951.

Dated: April 18, 1980.

Ed Nastey,

Associate Director.

[FR Doc. 80–13389 Filed 4–30–80; 8:45 am]

BILLING CODE 4310–84–M

Utah; Final Wilderness Decision in Effect on Deep Creek Mountains

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the BLM Utah State Director's final decision to identify 68,910 acres as a Wilderness Study Area within the Deep Creek Mountains inventory unit (UT–020–060, UT–050–020) became effective April 14, 1980 as published in the March 14, 1980 **Federal Register** notice, volume 45, No. 52, pages 16569 and 16570. Formal protests were not filed during the protest period, therefore the decision is now in effect on this unit. The decision is as follows: 68,910 acres within the Deep Creek Mountains wilderness inventory unit is designated as a Wilderness Study Area.

The Wilderness Study Area identified herein will remain under BLM interim management as required in Section 603 of Public Law 94–579 during the period of review and until the Congress has determined otherwise. The remaining areas inventoried within this unit, but not identified herein as a Wilderness Study Area, will no longer be subject to management restrictions imposed by Section 603 of Public Law 94–579.

Pursuant to the authority delegated by the Director, Bureau of Land Management, the accelerated inventory on this unit has been conducted according to provisions of Section 201(a) and 603 of the Federal Land Policy and Management Act of 1976, and Section 2(c) of the Wilderness Act of 1964. The appropriate inventory and associated public participation have been conducted.

FOR FURTHER INFORMATION CONTACT: Kent Biddulph, Utah BLM State Office, (801) 524–5326.

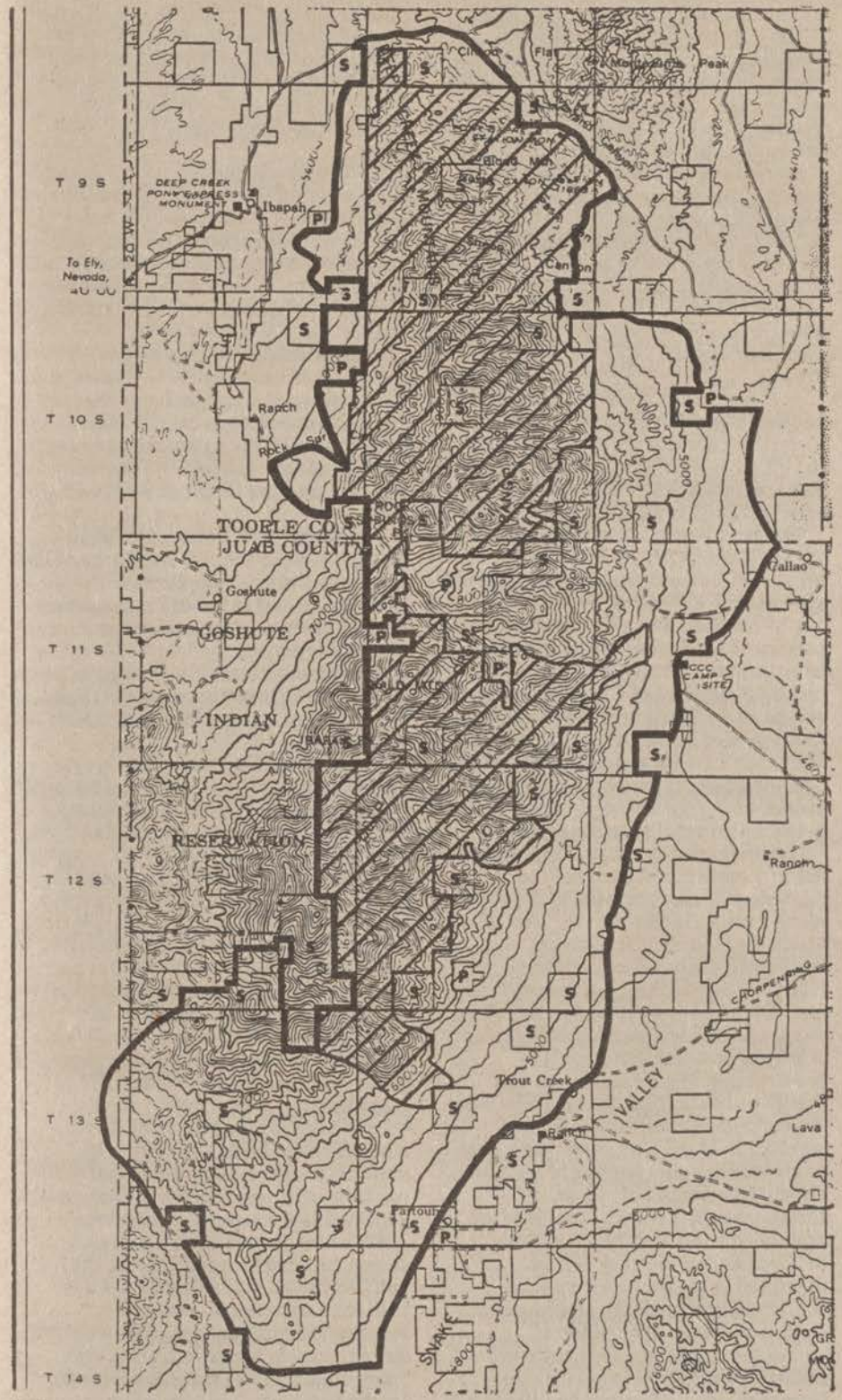
Dated: April 24, 1980.

Gary J. Wicks,

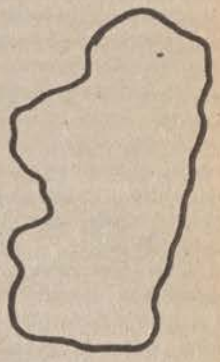
State Director.

BILLING CODE 4310–84–M

DEEP CREEK MOUNTAINS



INVENTORY UNIT BOUNDARY



WILDERNESS STUDY AREA



S = STATE LANDS
P = PRIVATE LANDS

[FR Doc. 80-13323 Filed 4-30-80; 8:45 am]
BILLING CODE 4310-84-C

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on Additions to Blackwater National Wildlife Refuge, Maryland

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice is to announce that the Fish and Wildlife Service will prepare an Environmental Impact Statement for a proposal to preserve and protect fish and wildlife resources in the vicinity of the Blackwater National Wildlife Refuge in Dorchester County, Maryland. The proposal could result in Federal acquisition of approximately 5,000 acres of marsh and woodland as additions to the Refuge.

Authorities for acquisition are derived from the Fish and Wildlife Act of 1956, the Land and Water Conservation Fund Act of 1965, as amended, and the Migratory Bird Treaty Act of 1927, as amended. This notice solicits public comment on the Service's preparation of an environmental impact statement.

DATES: Written comments should be received by (30 days after publication). A public meeting will be held at the Blackwater National Wildlife Refuge on June 9, 1980.

ADDRESS: Send written comments to Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service. One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The public meeting on June 9, will be held at the Refuge Visitor's Center at 7:30 p.m.

For further information Contact Mr. Stephen Drown, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, telephone No. (617) 965–5100, ext. 300.

SUPPLEMENTAL INFORMATION: The U.S. Fish and Wildlife Service is conducting this environmental impact study to determine what action could be taken by the Service, other Federal, State, and local agencies. conservation groups, and private citizens to protect important wildlife and wildlife habitat in the vicinity of the Blackwater National Wildlife Refuge. The area contains a diversity of habitat including fresh and brackish marshes, wet and dry woodlands in various stages of maturity, rivers, streams, and croplands. In addition to waterfowl and endangered species identified above, this diverse area is important for various wading and shorebirds, furbearers and deer, ospreys and other birds of prey, and a wide variety of songbirds, reptiles and amphibians, and the fish and smaller aquatic organism and plant species forming the base of the chain for the entire ecosystem.

This study will also serve to delineate a final acquisition boundary for Black Refuge. Approval of such a boundary will aid in future land planning by identifying, for all interested parties, the extent of the interest of the Fish and Wildlife Service in land use and ownership for this area.

Blackwater National Wildlife Refuge, located 12 miles south of Cambridge, Maryland, was established in 1932 as a refuge for migratory waterfowl. Much of its 14,270 acres is composed of rich tidal or freshwater marsh. Originally established for ducks, Blackwater has become one of the chief wintering areas for Canada geese using the Atlantic Flyway.

In recent years, the Refuge has become especially important for two Federally-listed endangered species—the bald eagle (*Haliaeetus leucocephalus*) and the Delmarva fox squirrel (*Sciurus niger cinereus*).

The most important wildlife values of the Blackwater Refuge area can be divided into two categories: endangered species and waterfowl.

1. *Waterfowl.* Roughly seventy-five percent of the Refuge is waterfowl habitat, part of the vast system of fresh and tidal marshes of Chesapeake Bay. It serves as a migration resting area for thousands of geese and ducks, a wintering area for approximately 30,000 Canada geese, snow geese and whistling swans, and provides nesting habitat for geese and several species of ducks.

However, due to causes not yet entirely understood, much of the marshland is disappearing under rising water levels. As this occurs, areas of unaffected marsh will become increasingly critical for waterfowl habitat. Some of these other areas may also hold the key to retarding or halting the overall loss of marsh, and therefore warrant consideration for future preservation and management.

2. *Endangered Species.* The Recovery Team for the Chesapeake Bay population of the bald eagle has a goal to provide suitable nesting habitat for about 175 pairs of bald eagles in the Chesapeake Bay Region, plus feeding and roosting habitat. Much of this habitat that has been or will be identified is in private ownerships scattered from southern Delaware to central Virginia. Acquisition of particular nesting areas is probably not realistic or practical in most cases. However, acquisition can be effective if relatively large blocks of habitat in the vicinity of other large holdings of land in public ownership are acquired and managed since much of the attractiveness of this type of habitat to bald eagles appears to be its relative serenity, isolation, and permanency. Such is the case in southern Dorchester County. Eagles use the large tracts of public land—Blackwater Refuge and Fishing Bay State Wildlife Management Area—and tracts of woodland and marsh immediately surrounding these areas.

Many of these nesting, roosting, and concentration sites are subject to human disturbance at critical periods, are destroyed in the process of clearing lands for planting or home construction, or are lost to timber cutting operations. These disturbance factors are the most serious limiting factors on the Chesapeake Bay Region's eagles. Successes in reducing these threats in the Blackwater area can be applied as appropriate to other areas of eagle habitat in the Bay region to ensure the survival of this species and its eventual removal from the Endangered Species List.

The Blackwater National Wildlife Refuge is one of the few reservoirs of the Delmarva fox squirrel. These mammals have responded to habitat management through timber stand improvement on selected tracts on the Refuge. Several wooded areas outside the Refuge have small or declining squirrel populations which are threatened by future timber cuts.

A goal of the Delmarva Fox Squirrel Recovery Team is to restore the squirrel throughout its former range by locating suitable woodlands and managing them to provide optimum habitat. This type of management is normally only possible on public lands since it is not generally compatible with high yield, short cycle timber production methods now used.

Blackwater Refuge is located at the northern limits of the breeding area of the red-cockaded woodpecker, and sightings have been infrequent. This bird is associated with open, mature pine forests and nests only in older, living pines infected with a fungal disease known as redheart. Management of lands for eagles and Delmarva fox squirrels would also be beneficial to the red-cockaded woodpecker and could be expected to increase their number.

Area landowners have historically shown concern for protection of the rich wildlife values of Dorchester County both for aesthetic and economic reasons. But continued high demand and strong markets for timber, grain and home building sites make it necessary for the Service to actively influence future land use decisions and initiate protective action for these wildlife

resources while the area still maintains its natural character and wildlife values.

At the current time, a preferred alternative is to include all these areas within the Refuge acquisition boundary so all or any part of the tracts could become additions to the Refuge at some future time. In the short-term, specific acreages or specific use or development rights considered most critical to successful wildlife management concerns would be acquired through easements, partial or full fee acquisition, or rarely, condemnation.

Copies of a Preliminary Assessment are being provided prior to the public meeting, to landowners affected by the proposed boundary change, local and national environmental groups, interested Federal agencies, and State and local government.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations. A Draft Environmental Statement will be prepared after comments have been received from this notice and the public meeting. We estimate the DEIS will be made available to the public by July 15, 1980. The availability of the DEIS and notice of a public hearing will be announced in the **Federal Register.** The primary author of this document is Stephen Drown, U.S. Fish and Wildlife Service, Regional Office, Newton Corner, MA.

Dated: April 21, 1980.

Howard N. Larsen,

Regional Director.

[FR Doc. 80-13324 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Ocean Production Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Ocean Production Company, has submitted a Supplemental Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 1023 and OCS–G 1526, Blocks 224 and 223, Ship Shoal Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans 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 a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-13408 Filed 4-30-80; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilites of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(1) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicted the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonabley be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may

have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 ofthe Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed on or before June 1,1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before June 1, 1980, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 129

Decided: April 2, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen, Member Jensen not participating.

MC 1494 (Sub-28F), filed November 23, 1979. Applicant: GROSS COMMON CARRIER, INC., 660 West Grand Ave., Wisconsin Rapids, WI 54494. Representative: Rolfe E. Hanson, 121 West Doty St., Madison, WI 53703. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Milwaukee and Portage, WI, from Milwaukee over WI Hwy 190 to junction U.S. Hwy 16, then over U.S. Hwy 16 to Portage, and return over the same route, serving all intermediate points, (2) between Milwaukee and Madison, WI, over Interstate Hwy 94, serving no intermediate points, and (3) between Madison and Portage, WI, from Madison over Interstate Hwy 90 to junction WI Hwy 78, and then over WI Hwy 78 to Portage, and return over the same route, serving no intermediate points. (Hearing site: Madison or Milwaukee, WI.)

Note.—Applicant intends to tack the above authority with MC–1494.

MC 8535 (Sub-117F), filed March 3, 1980. Applicant: GEROGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth St. NW., Washington, DC 20036. Transporting *iron and steel articles, and spring accessories,* from the facilities of Stanley Spring Works, Inc., at Harrisburg, PA, to points in the United States (except AK and HI). (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 19105 (Sub-58F), filed May 17, 1979. Applicant: FORBES TRANSFER CO., a corporation, P.O. Box 3544, Wilson, NC 27893. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting (1) *adhesives, building materials, composition boards, mineral fiber products, paper, wood fiber products, gypsum and gypsum products, and lime* (except liquid commodities in bulk), and (2) *materials and supplies* as are used in the manufacture, installation and distribution of the commodities named in (1) above (except commodities in bulk), between points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, VA, and WV, restricted to traffic originating at or destined to the facilities of United States Gypsum Company. (Hearing site: Washington, DC.)

MC 30374 (Sub-30F), filed October 26, 1979. Applicant: TRI-STATE TRANSPORTATION CO., INC., P.O. Box 488, Bellmawr, NJ 08031. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting (1) *wearing apparel,* and (2) *materials, equipment, and supplies* used in the manufacture of wearing apparel (except commodities in bulk), between Secaucus NJ, and Buffalo, NY. (Hearing site: New York, NY.)

MC 30844 (Sub-657F), filed October 29, 1979. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 5000, Waterloo, IA 50704. Representative: John P. Rhodes (same address as applicant). Transporting (1)(a) *air cleaners and filters* for combustion engines, *mufflers, tail pipes,* and *exhaust pipes,* and (b) *parts and accessories* for the commodities named in (1) above, from the facilities used by Donaldson, Co., Inc., at or near Quincy, IL, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named facilities; (2) *air cleaner filter paper,* from West Groton, CT, Greenwich and Watertown, NY, Rochester, MI, and Madisonville, KY, to Frankfort, IN, restricted to the transportation of traffic destined to the named destination; and (3)(a) *air cleaners* and *filters* for internal combustion engines, and (b) *parts and accessories* for the commodities named in (3)(a) above, from the facilities used by Donaldson Co., Inc., at or near Cresco and Oelwein, IA, to Laredo, TX, restricted to the transportation of traffic originating at the named facilities. (Hearing site: St. Paul, MN.)

MC 52704 (Sub-254F), filed October 17, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., Post Office Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting *such commodities* as are dealt in or used by grocery and discount stores, (except commodities in bulk), between the facilities of Southeastern Bonded Warehouse, Inc., at or near Atlanta, GA, on the one hand, and, on the other, points in AL, FL, GA, KY, LA, MS, NC, SC, and TN. (Hearing site: Atlanta, GA.)

MC 56244 (Sub-105F), filed March 3, 1980. Applicant: KUHN

TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. #2, Gardners, PA 17324. Representative: J. Bruce Walter, 410 North Third St., P.O. Box 1146, Harrisburg, PA 17108. Transporting (1) *such commodities* as are dealt in or used by chain grocery and food business houses (except commodities in bulk), between points in KY, OH, and TN, on the one hand, and, on the other, points in DE, MD, NJ, PA, and DC, restricted to the transportation of traffic originating at or destined to the facilities used by the Drackett Company. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 59655 (Sub-39F), filed January 15, 1980. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *general commodities* (except commodities in bulk), between points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities used by Union Camp Corporation, of Wayne, NJ. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance. (Hearing site: New York, NY, or Washington, DC.)

MC 66124 (Sub-12F), filed November 16, 1979. Applicant: PACIFIC NORTHWEST MOTOR FREIGHT LINES, INC., 600 South Edmunds St., Seattle, WA 98108. Representative: Henry C. Winters, 525 Evergreen Bldg., Renton, WA 98055. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in CA, ID, OR, and WA, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA.)

MC 97394 (Sub-29F), filed March 3, 1980. Applicant: BOWLING GREEN EXPRESS, INC., P.O. Box 13303, Louisville, KY 40213. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. Transporting *tire fabric*, from the facilities of the Firestone Textiles Co., Division of the Firestone Tire & Rubber Company, at Bowling Green, KY, to the facilities of Dayton Tire and Rubber Co., at Dayton, OH. (Hearing site: Bowling Green, KY.)

MC 105045 (Sub-139F), filed January 2, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania St., Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting *iron and steel articles*, and *knocked-down steel buildings*, from the facilities of Atlantic Building Systems and Atlantic Steel Company, at or near Atlanta, and Tallapoosa, GA, to points in AL, AR, CT, DE, FL, IN, IL, KY, LA, MA, MD, ME, MI, MO, MS, NC, NH, NJ, NY, OH, PA, SC, TX, VA, VT, WV, and DC. (Hearing site: Washington, DC.)

MC 106674 (Sub-439F), filed October 17, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Highway 24 West, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *liquid fertilizer*, in bulk, in tank vehicles, from Francesville, IN to points in IL and MI. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 107064 (Sub-142F), filed March 3, 1980. Applicant: STEERE TANK LINES, INC., P.O. Box 220998, Dallas, TX 75222. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Transporting *petroleum products*, in bulk, from Artesia and Roswell, NM, to points in Rio Blanco, Mesa, La Plata and Garfield Counties, CO, and points in Grand County, UT. (Hearing site: Dallas, TX.)

MC 107295 (Sub-971F), filed March 3, 1980. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Todd A. Peterman (same address as above). Transporting *refined vermiculite and perlite*, and *potting soil*, (except commodities in bulk), from Pine Bluff, AR, and DeKalb, IL, to points in the United States (except AK and HI). (Hearing site: Little Rock, AR.)

MC 107515 (Sub-1345F), filed March 4, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *meats, meat products* and *meat byproducts*, (1) from the facilities of Armour & Company at Huron, SD, to those points in the United States in and east of MN, IA, MO, AR, and LA, and (2) from the facilities of Armour & Company at Worthington, MN, to those points in the United States in and east of MN, IA, MO, AR, and LA (except AL, FL, GA, LA, MS, NC, SC, and TN, restricted in (1) and (2) to traffic originating at the named facilities. (Hearing site: Phoenix, AZ.)

Note.—Dual operations may be involved.

MC 107605 (Sub-25F), filed October 9, 1979. Applicant: ADVANCE-UNITED EXPRESSWAYS, INC., 2601 Broadway Road N.E., Minneapolis, MN 55413. Representative: William S. Rosen, 630 Osborn Bldg. St. Paul, MN 55102. Over regular routes, transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (1) between Milwaukee and Two Rivers, WI: from Milwaukee over Interstate Hwy 43 to Sheboygan, WI, then over U.S. Hwy 141 to junction WI Hwy 42, then over WI Hwy 42 to Two Rivers, and return over the same route, serving the intermediate and off-route points of Sheboygan, Kohler, Sheboygan Falls, and Manitowoc, WI; (2) between Milwaukee and Bristol, WI: from Milwaukee over WI Hwy 15 to junction WI Hwy 50, then over WI Hwy 50 to junction U.S. Hwy 45, then over U.S. Hwy 45 to junction WI Hwy 11, then over WI Hwy 11 to junction WI Hwy 15, and then over WI Hwy 15 to Milwaukee, and return over the same route, serving the intermediate and off-route points of East Troy, Elkhorn, Delavan, Burlington, and Union Grove, WI; (3) between Milwaukee and Bristol, WI, over U.S. Hwy 45, serving the intermediate point of Union Grove, WI; (4) between Milwaukee and Burlington, WI, over WI Hwy 36, serving no intermediate points; (5) between Milwaukee and Dalavan, WI: (a) over WI Hwy 15, serving the intermediate points of Elkhorn, and East Troy, WI, (b) from Milwaukee over Interstate Hwy 94 to junction WI Hwy 11, then over WI Hwy 11 to junction WI Hwy 15, then over WI Hwy 15, to Delavan, and return over the same route, serving the intermediate points of Elkhorn, Burlington and Union Grove, WI, and (c) from Milwaukee over Interstate Hwy 94 to junction WI Hwy 50, then over WI Hwy 50 to Delavan, and return over the same route, serving the intermediate point of Bristol, WI; (6) between Milwaukee and Madison, WI, over Interstate Hwy 94, serving no Intermediate points: (7) between Chicago, IL, and Madison, WI, over Interstate Hwy 90, serving no intermediate points, but serving junction U.S. Hwy 14 and Interstate Hwy 90 for purpose of joinder only; (8) between Delavan and Madison, WI: from Delavan over U.S. Hwy 14 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Madison, and return over the same route, serving no intermediate points; and (9) between Manitowoc and Madison, WI, over U.S. Hwy 151, serving no intermediate points. (Hearing site: Minneapolis, MN.)

Note.—Appliant intends to tack this authority with its other regular-route authority.

MC 110325 (Sub-136F), filed March 3, 1980. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative:

Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting general commodities, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in Lapeer, Livingston, Allegan, Kalamazoo, Washtenaw, St. Joseph, Branch, Hillsdale, Lenawee and Monroe Counties, MI; Howard, Grant, Blackford, Jay, Clinton, Tipton, Madison, Delaware, Randolph, Boone, Hamilton, Henry, Wayne, Hendricks, Hancock, Rush, Fayette, Morgan, Johnson and Shelby Counties, IN; Erie, Huron, Lorain, Medina, Lake, Geauga, Ashtabula, Trumbull, Portage, Mahoning, Columbiana, Stark, Wayne, Carroll, Jefferson, Harrison, Tuscarawas, Holmes, Coshocton, Ashland, Richland, Knox, Crawford, Marion, Morrow, Licking, Delaware, Fairfield, Perry, Pickaway, Ross, Fayette, Madison, Union, Champaign, Clark, Miami, and Drake Counties, OH; Erie, Crawford, Mercer, Venango, Lawrence, Butler, Beaver, Armstrong, Indiana, Westmoreland, Washington, Green and Fayette Counties, PA; Jackson, Roane, Mason, Putnam, Cabell, Lincoln, Boone, Raleigh, Fayette, Nicholas, Clay, Ohio, Brooke and Hancock Counties, WV, as off-route points in connections with carrier's otherwise authorized regular-route operations. (Hearing site: Detroit, MI; Pittsburgh, PA; Columbus, OH; or Indianapolis, IN.)

MC 112014 (Sub-28F), filed November 6, 1979. Applicant: SKAGIT VALLEY TRUCKING CO., INC., P.O. Box 400, Mount Vernon, WA 98273. Representative: Milton R. Egbers (same address as applicant). Transporting *frozen foods,* from points in Adams, Benton, Franklin, Grant and Walla Walla Counties, WA, to Seattle, WA. (Hearing site: Seattle, WA.)

MC 114334 (Sub-60F), filed June 21, 1979. Applicant: BUILDING TRANSPORTATION COMPANY, a corporation, 3710 Tulane Rd., Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. Transporting *iron and steel articles,* from Chicago, IL, to points in KY, AL, TN, MS, AR, and MO. (Hearing site: Memphis, TN.)

MC 115554 (Sub-24F), filed October 11, 1979. Applicant: HEARTLAND EXPRESS, INC. OF IOWA, P.O. Box 89B, R.R. 6, Iowa City, IA 52240. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *agricultural and industrial pesticides and chemicals, containers,* and *materials and supplies* used in the distribution, production, and storage of agricultural and industrial pesticides and chemicals (except commodities in bulk, in tank vehicles), between the facilities of Imperial, Inc., at or near (a) Albert Lea, MN, and (b) Shenandoah, IA; (2) *agricultural and industrial pesticides and chemicals,* (except commodities in bulk, in tank vehicles), and *containers,* from the facilities of Imperial, Inc., at or near (a) Albert Lea, MN and (b) Shenandoah, IA, to points in the United States (except AK, and HI); and (3) *materials and supplies* used in the distribution, production, and storage of the commodities in (2) above (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Omaha, NE.)

MC 115865 (Sub-4F), filed October 19, 1979. Applicant: QUIMBY TRUCKING, INC., P.O. Box 807, Hermiston, OR 97838. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *feed* and *feed ingredients,* in bulk, between points in OR, WA, and ID. (Hearing site: Hermiston, OR, or Pasco. WA.)

MC 115904 (Sub-140F), filed March 3, 1980. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Transporting (1) *construction materials* (except in bulk), and (2) *materials and supplies* used in the manufacture and distribution of construction materials (except commodities in bulk), between the facilities of The Celotex Corporation, at or near Tracy, CA, on the one hand, and, on the other, those points in the United States in and west of MN, IA, MO, AR, and LA, (excluding AK and HI). (Hearing site: Washington, DC, or Salt Lake City, UT.)

MC 116915 (Sub-107F), filed March 3, 1980. Applicant: ECK MILLER TRANSPORTATION CORPORATION, Rt. #1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting (1) *wire products, nails, posts,* and *fencing,* and (2) *materials, equipment and supplies* used in the manufacture and installation of the commodities named in (1) above, (except commodities in bulk), between the facilities of Keystone Wire Company, at or near Crawfordsville, IN, on the one hand, and on the other, points in AR, AL, FL, GA, KY, LA, MA, MI, MS, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, and WV. (Hearing site: Louisville, KY, or Indianapolis, IN.)

MC 117765 (Sub-290F), filed March 3, 1980. Applicant: HAHN TRUCK LINE, INC., 1100 S. Mac Arthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and liquid commodities in bulk), between points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities of the United States Gypsum Company. (Hearing site: Oklahoma City, OK or Chicago, IL.)

MC 121664 (Sub-102F), filed November 20, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave., South Birmingham, AL 35233. Transporting *lumber and timbers,* from Cullman, AL, to points in MS, LA, TN, KY, OH, GA, IN, IL, and FL. (Hearing site: Birmingham or Mobile, AL.)

MC 123744 (Sub-80F), filed November 6, 1979. Applicant: BUTLER TRUCKING COMPANY, a corporation, P.O. Box 88, Woodland, PA 16881. Representative: E. Steward Butler (same address as applicant). Transporting *calcium aluminate cement,* in bags, from Chesapeake, VA, to points in PA, NY, OH, and MI. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 126514 (Sub-69F), filed March 3, 1980. Applicant: SCHAEFFER TRUCKING, INC., 5200 West Bethany Home Rd., Glendale, AZ 85301. Representative: Lewis P. Ames, 111 W. Monroe, 10th Floor, Phoenix, AZ 85003. Transporting (1) *ink materials, copying machines, and sorter machines, and (2) materials, equipment, and supplies* used in the manufacture, operation, maintenance, and distribution of copying and sorting machines (except commodities in bulk), between Nashua and Merrimack, NH, and Chelmsford, MA, on the one hand, and, on the other, points in CA. (Hearing site: Nashua, NH.)

MC 133095 (Sub-277F), filed November 1, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Don Duncan (same address as applicant). Transporting *synthetic resin granules,* from the facilities of Ren Plastics, at or near Grand Prairie, TX, to points in the United States (except AK and HI). (Hearing site: Dallas, TX.)

MC 133095 (Sub-282F), filed November 15, 1979. Applicant: TEXAS

CONTINENTAL EXPRESS, INC., P.O. BOX 434, Euless, TX 76039. Representative: Ron Duncan (same address as applicant). Transporting *paint and paint products,* from Houston, TX, to points in OK, AL, MS, LA, CA, and FL. (Hearing site: Dallas, TX.)

MC 113194 (Sub-12F), filed October 29, 1979. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Rd., P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr. (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Dover, AR, and Harrison, AR, over AR Hwy 7 North; (2) between Conway, AR, and Harrison, AR, over U.S. Hwy 65; (3) between Clinton, AR and Fairfield Bay, AR, from Clinton over AR Hwy 16 to junction AR Hwy 330 and then over AR Hwy 330 to Fairfield, and return over the same route; (4) between Marshall, AR and Harriet, AR, over AR Hwy 27; (5) between Harrison, AR and Mountain Home, AR, from Harrison over U.S. Hwy 65 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Mountain Home, and return over the same route; (6) between Flippin, AR and Mountain Home, AR, from Flippin over AR Hwy 178 to Midway, AR, then over U.S. Hwy 5 to Mountain Home, and return over the same route; and (7) serving all intermediate points in (1) through (6) above. (Hearing site: Little Rock or Harrison, AR.)

MC 134064 (Sub-32F), filed November 5, 1979, previously noticed in the **Federal Register** issue of March 27, 1980 as MC 134467 (Sub-32F). Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting (1) *paper* and *paper products* (except commodities in bulk); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products, between the facilities of Scott Paper Company, located in AL, AR, DE, NJ, PA, and WI, on the one hand, and, on the other, points in PA, OH, IN, MI, IL, WI, MN, IA, MO, KS, CO, AR, TX, LA, MS, AL, FL, GA, NC, SC, and TN. (Hearing site: Philadelphia, PA, or Atlanta, GA.)

Note.—This republication indicates that the correct docket number is MC 134064 (Sub-32).

MC 135524 (Sub-43F), filed August 30, 1979, previously noticed in the **Federal Register** issue of March 5, 1980. Applicant: G.F. TRUCKING CO., P.O. Box 229, 1028 West Rayen Ave. Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Rd., Youngstown, OH 44509. Transporting *doors, doorskins, and lumber,* from Mobile, AL, Tupelo, MS, and Cameron, TX, to those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Columbus, OH, or Phoenix, AZ.)

Note.—This republication indicates the correct destinations.

MC 135575 (Sub-2F), filed September 28, 1979. Applicant: J. BRUCE LITTLEFIELD d.b.a. B. LITTLEFIELD & SONS, Lower Main St., North Berwick, ME 03906. Representative: Francis P. Daughan, Box 335, Post Road, Wells, MA 04090. *Contract carrier,* transporting *materials, equipment,* and *supplies* used in the manufacture of jet engines, between North Berwick, ME, on the one hand, and, on the other, points in CT, under continuing contract(s) with Pratt & Whitney Air Craft Group, of North Berwick, ME. (Hearing site: Portland, ME.)

MC 135895 (Sub-69F), filed October 22, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701. Transporting (1) *insulating materials* and (2) *equipment, materials, and supplies* used in the manufacture, distribution, and installation of insulating materials (except commodities in bulk and those requiring special equipment), between the facilities (a) Ganey Industries at or near Monticello, FL and (b) Diversified Insulation, Inc., at or near Dallas, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MO, MS, NC, OK, SC, TN, and TX. (Hearing site: Tallahassee, FL.)

MC 135895 (Sub-86F), filed March 3, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting (1) *reflective traffic control products* and (2) *equipment, materials and supplies* used in the manufacture, distribution, and installation of the commodities named in (1) above, (except commodities in bulk and those requiring special equipment), between the facilities of Pave Mark Corporation, at or near Smyrna, GA, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Atlanta, GA, or Jackson, MS.)

MC 135895 (Sub-87F), filed March 3, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting (1) *prefabricated fireplaces, metal stove pipes, and fireplace fittings;* and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities described in (1) above, (except commodities in bulk and those requiring special equipment), between the facilities of National Fireplace Corp., at or near Dallas, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, LA, MO, MS, NC, NE, OK, SC, and TN. (Hearing site: (1) Dallas, TX, or Jackson, MS.)

MC 135895 (Sub-88F), filed March 4, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting *plastic and metal containers* (1) from the facilities of Thompson Can Company, Inc., at or near Dallas, TX, to points in AL, AR, FL, GA, LA, MO, MS, NC, OK, SC, and TN; and (2) from the facilities of Southeast Plastic Container Co., Inc., at or near Arlington, TN, to points in AL, AR, FL, GA, LA, MO, MS, NC, OK, SC, and TX. (Hearing site: (1) Dallas, TX, or Memphis, TN.)

MC 135895 (Sub-89F), filed March 4, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting (1)(a) *paper and paper products, plastic containers, and metal containers,* and (b) *fittings and closures for the commodities named in (a) above,* and (2) *equipment, materials, and supplies* used in the manufacture, and distribution of the commodities named in (1) above (except commodities in bulk and those requiring special equipment), between the facilities of Container Corporation of America, in AL, FL, GA, IA, IL, LA, MO, NC, OH, OK, TN and TX, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: (1) Atlanta, GA, or Fort Worth, TX.)

MC 138104 (Sub-93F), filed March 3, 1980. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove St., Forth Worth, TX 76106. Representative: Bernard H. English, 6170 Firth Road, Fort Worth, TX 76116. Transporting precast concrete modular burial crypts, from the facilities of Hereford Concrete Products, Inc., at or near Houston, TX, to points in AR, LA,

and OK. (Hearing site: Fort Worth, or Dallas, TX.)

MC 138144 (Sub-53F), filed July 31, 1979. Applicant: FRED OLSON CO. INC., 6022 West State St., Milwaukee, WI 53213. Representative: William D. Brejcha, 10 S. LaSalle, Suite 1600, Chicago, IL 60603. Transporting (1) *commodities* the transportation of which because of size or weight requires the use of special equipment, (2) *parts,* for the commodities in (1) above, and (3) *materials and supplies* used in the installation of the commodities in (1) above, between points in IL and WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 139495 (Sub-529F), filed March 3, 1980. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane Silver Spring, MD 20910. Transporting *canned and preserved foodstuffs,* from Greenville, TN, to points in AL, CT, FL, GA, KY, LA, MD, MA, MS, NJ, NY, NC, OH, PA, SC, VA, WV, and DC. (Hearing site: Washington, DC.)

MC 140024 (Sub-179F), filed March 3, 1980. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: Don L. Bryce (same address as applicant). Transporting *foodstuffs,* (except commodities in bulk), from points in ME, NH, VT, MA, RI, CT, NY, PA, NJ, DE, MD, WV, and VA to those points in the United States in and west of MI, OH, KY, MO, AR, and LA (except AK and HI). (Hearing site: Washington, DC., or New York, NY.)

MC 140024 (Sub-180F), filed March 3, 1980. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: Don L. Bryce (same address as applicant). Transporting *foodstuffs,* except in bulk), from St. Elmo, IL, to points in MN, MO, MI, CA, CO, and TX. (Hearing site: Denver, CO, or Washington, DC.)

MC 140635 (Sub-19F), filed October 9, 1979. Applicant: ADAMS LINES, INC., 2619 N. St., Omaha, NE 68107. Representative: John L. Hornung (same address as applicant). Transporting *meats, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the Report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), (1) from the facilities of Spencer Foods, Inc., at or near (a) Spencer, IA, and (b) Fremont and Schuyler, NE, to points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC, and (2) from Fort Dodge, IA, to points in OH, restricted in both (1) and (2), except on traffic moving in foreign commerce, to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Omaha, NE.)

MC 141205 (Sub-47F), filed March 3, 1980. Applicant: HUSKY OIL TRANSPORTATION COMPANY, a corporation, 600 South Cherry St., Denver, CO 80222. Representative: F. Robert Reeder, James M. Elegante, P.O. Box 11898, Salt Lake City, UT 84147. *Contract carrier,* transporting *crude oil, scrubber oil and condensate,* from points in Fall River County, SD, to the facilities of Mush Creek Station of Wyoming Pipeline Company near Newcastle, WY, under continuing contract(s) with Husky Oil Company, of Denver, CO. (Hearing site: Denver, CO.)

MC 141804 (Sub-288F), filed October 11, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *such commodities* as are dealt in or used by pet shops, (2) *juvenile furniture,* and (3) *playground apparatus,* from Canton, GA, to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-378F), filed March 3, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *wearing apparel,* from Portland and Longview, WA, to Indianapolis, IN, restricted to traffic having a prior movement by water. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-388F), filed March 3, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *household products,* from Chicago, IL, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Los Angeles, CA.)

MC 141914 (Sub-76F), filed March 3, 1980. Applicant: FRANKS AND SONS, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). In foreign commerce only, transporting *forest products, and millwork,* from ports of entry on the international boundary line between the United States and Canada to points in the United States (except AZ, CA, CO, MT, OR, UT, WA, AK, and HI). (Hearing site: Tulsa, OK.)

MC 141955 (Sub-3F), filed November 19, 1979. Applicant: SECURITY FREIGHT LINES, INC., 7971 N.W. 76th Ave., Miami, FL 33166. Representative: Gerard J. Donovan, 4791 S.W. 82nd Ave., Davie, FL 33328. *Contract carrier,* transporting *general commodities* (except commodities in bulk, classes A and B explosives, cement, and foodstuffs), between points in Dade, Broward, and Palm Beach Counties, FL, restricted to traffic having a prior or subsequent movement by air or water, under continuing contract(s) with Security Forwarding Service, Inc., Inter-American Express, Inc., and Hemisphere Warehouse, Inc., all of Miami, FL. (Hearing site: Miami, FL.)

MC 142485 (Sub-7F), filed August 13, 1979. Applicant: KENDRICK MOTOR FREIGHT, INC., P.O. Box 209, Lebanon, OH 45036. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. Transporting (1) *mattresses, upholstered furniture, batting, padding, frames, springs, and molds, and (2) equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of Sterns and Foster Co., at or near Lockland and Mason, OH, on the one hand, and, on the other, points in NY, PA, WV, KY, IN, IL, MI, TN, MO, AR, MS, and WI. (Hearing site: Columbus, OH.)

Note.—Dual operations may be involved.

MC 144844 (Sub-12F), filed March 4, 1980. Applicant: OZARK TRANSPORTATION, INC., P.O. Box 203, Greenville, MO 63944. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. Transporting *iron and steel articles,* from the facilities of Northwestern Steel and Wire Company, at Rock Falls and Sterling, IL, to points in AL, AR, IL, IN, IA, KS, KY, LA, MI, MO, MS, NE, OK, TN, TX and WI, restricted to traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 145235 (Sub-6F), filed November 30, 1979. Applicant: DUTCH MAID PRODUCE, INC., Route 2, Willard, OH 44890. Representative: Stephen J. Habash, 100 East Broad St., Columbus, OH 43215. *Contract carrier,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special

equipment), between points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities of SCM Corporation, under continuing contract(s) with SCM Corporation, of Cleveland, OH. Condition: (1) Applicant shall maintain separate accounts and records for its for-hire carrier operations as distinct from its other business activities, and (2) it shall not at the same time and in the same vehicle transport property both as a private carrier and as a for-hire carrier. (Hearing site: Columbus, OH, or Washington, DC.)

MC 145544 (Sub-2F), filed October 4, 1979. Applicant: W. & M., INC., P.O. Box 2237, East Chicago, IN 46307. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. *Contract carrier,* transporting *such commodities* as are dealt in or used by manufacturers and distributors of air pollution control equipment (except commodities in bulk), between points in the United States (except AK and HI), under continuing contract(s) with Flex-Kleen Corp., of Chicago, IL. (Hearing site: Chicago, IL.)

MC 14524 (Sub-5F), filed August 24, 1979, previously published in the Federal Register issue of February 26, 1980. Applicant: J. V. CARBORNE, INC., 33 Marion Ave., New Providence, NJ 07974. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *roofing spar, irma stone, and roofing aggregates,* from Fairfield and Irvington, NJ, to points in NY and PA. (Hearing site: Washington, DC.)

Note.—This republication modifies the origin description.

MC 145624 (Sub-7F), filed August 24, 1979. Applicant: J. V. CARBONE, INC., 33 Marion Avenue, New Providence, NJ 07974. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. Transporting *stone and stone products,* from points in Robsen Township, (Berks County), PA, to points in NJ and NY. (Hearing site: Washington, DC.)

MC 145815 (Sub-1F), filed July 28, 1979, previously noticed in the Federal Register issue of February 26, 1980. Applicant: COBRA TRUCKING, INC., 132 Highway 80 West, P.O. Box 2137, Clinton, MS 39056. Representative: John A. Crawford, 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Transporting (1) *glass beads, glass spheres and thermal plastic marking materials,* and (b) *materials, equipment, and supplies* used in the installation of the commodities named in (1)(a) above (except commodities in bulk), from the facilities of Cataphote Div. of Ferro Corporation, at or near Jackson, MS, to points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and WI; and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Jackson, MS.)

Note.—This republication indicates MD as a destination State. Dual operations may be involved.

MC 145825 (Sub-2F), filed November 14, 1979. Applicant: MILLER TRANSPORTS, INC., P.O. Box 161, Pryor, OK 74361. Representative: Larry D. Henry, 1606 First National Bank Bldg., Tulsa, OK 74103. *Contract carrier,* transporting (1) *anhydrous ammonia* and *fertilizers,* from (a) Mid-American Pipeline Terminals, at or near Conway and Clay Centers, KS, (b) the Chevron terminal, at or near Friend, KS, (c) the facilities of Agrico Chemical Co., at or near Port of Catoosa, OK, (d) Oklahoma Nitrogen Plant, at or near Woodward, OK, (e) Mid-American Pipeline Terminal, at or near Macane, OK, (f) the facilities of Phillips Petroleum Company, at or near Hoag, NE, (g) the facilities of Camex, at or near Borger, TX, and (h) the facilities of Center Plains Industries, at or near Sheerin, TX, to points in NM, CO, NE, KS, OK, TX, IA, MO, and AR, under continuing contract(s) with Center Plains Industries, of Amarillo, TX, and (2) *anhydrous ammonia* and *fertilizers,* from the facilities of Oklahoma-Kansas Fertilizer, at or near the Port of Catoosa, OK, to points in TX, KS, CO, MO, and AR, under continuing contract(s) with Oklahoma-Kansas Grain Corporation, of Catoosa, OK. (Hearing site: Oklahoma City, OK.)

MC 145875 (Sub-6F), filed October 2, 1979. Applicant: SWAIN AND SONS TRANSPORTS, INC., 208 Poplar Ave., Memphis, TN 38103. Representative: William R. Swain, Jr. (same address as applicant). Transporting (1) *petroleum products,* (except commodities in bulk), and (2) *such commodities* as are dealt in or used by service stations (except petroleum products), from the facilities of Exxon Company U.S.A. at Baton Rouge, LA, to points in TN, those points in AR on, north, and east of a line beginning at the MS–AR State line and extending along US Hwy 82 to El Dorado, AR, then along US Hwy 167 to Little Rock, AR, and then along US Hwy 65 to the AR–MO State line. (Hearing site: Memphis, TN.)

MC 146964 (Sub-9F), filed March 3, 1980. Applicant: RELIABLE TRUCK LINES, INC., 1451 Spahn Ave., York, PA 17403. Representative: Christian V. Graf, 407 North Front St., Harrisburg, PA 17101. Transporting (1) *paper and paper products, chemicals, plastic and plastic products, lumber and lumber products,* and (2) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) above, between points in the United States (except AK and HI), restricted to traffic originating at and destined to the facilities of Union Camp Corporation. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 147604 (Sub-2F), filed September 30, 1979. Applicant: C. T. TRUCKING, INC., 4340 Pinson Valley Pkwy., Birmingham, AL 35215. Representative: Walter R. Chandler, P.O. Box 6273A, Birmingham, AL 35217. *Contract carrier,* transporting *household goods,* as defined by the Commission, and *toys,* (1) from Birmingham, AL, to New York, NY, and points in TN, GA, MS, LA, FL, KY, AR, IN, NC, and SC, (2) from New York, NY, to Miami, FL, and Birmingham, AL, and (3) from Miami, FL, to Birmingham, AL, under continuing contract(s) in (1), (2), and (3), with Associated Sales Agency, Inc., of Birmingham, AL. (Hearing site: Birmingham, AL.)

MC 148515 (Sub-2F), filed October 30, 1979. Applicant: PORT CITY TRUCKING, INC., 3280 Highway 82 East, Greenville, MS 38701. Representative: Douglas C. Wynn, 120 South Poplar St., P.O. Box 1295, Greenville, MS 38701. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Mobile, AL, New Orleans, and Baton Rouge, LA, and Greenville, MS, restricted to the tranportation of traffic having a prior or subsequent movement by water. (Hearing site: Greenville, MS.)

MC 148524 (Sub-2F), filed January 2, 1980. Applicant: C & M DELIVERY, INC., 22 Lakeville St., Petaluma, CA 94952. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between San Francisco, CA, and points in Alameda County, CA, on the one hand, and, on the other, points in Lake, Marin, Mendocino, Napa, and Sonoma Counties, CA. (Hearing site: San Francisco or Oakland, CA.)

MC 148775 (Sub-2F), filed March 3, 1980. Applicant: ARNIE MAKEEFF, d.b.a. MAKEEFF TRUCKING, 1347 Tillamack, Billings, MT 59101.

Representative: (same as applicant). Transporting *motor oils, lubricants, glycols, and antifreeze, solvents, and methane alcohols,* (except commodities in bulk), from Portland, OR, Salt Lake City, UT, Omaha, NE, and Chicago and Wood River, IL, to the facilities of Cross Petroleum Service, in MT, WY, and ND. (Hearing site: Billings, MT.)

MC 150174 (Sub-1F), filed September 21, 1979. Applicant: HIVELY TRANSPORTATION, INC., 1100 Lafayette St., York, PA 17405. Representative: Christian V. Graf, 407 North Front St., Harrisburg, PA 17101. Transporting *confectionery,* from the facilities of M & M Mars at or near Elizabeth, PA, to points in MD. (Hearing site: Washington, DC, or Harrisburg, PA.)

Note.—Dual operations may be involved.

Volume No. 146

Decided: April 7, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

Passenger

MC 1934 (Sub-44F), filed December 10, 1979. Applicant: THE ARROW LINE, INC., 105 Cherry St., East Hartford, CT 06108. Representative: Dominick T. Bisesti (same address as applicant). Transporting *passengers and their baggage,* in special roundtrip operations, between Springfield, MA, and the teletrack at New Haven, CT. (Hearing site: Hartford, CT, or Springfield, MA.)

MC 8535 (Sub-96F), filed August 9, 1979, previously published in the **Federal Register** issue of March 27, 1980, as MC 8538 (Sub-96F). Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth St., NW., Washington, DC 20036.

Note.—This partial republication indicates the correct docket number which is MC 8535 (Sub-96F).

MC 14215 (Sub-83F), filed February 20, 1980. Applicant: SMITH TRUCK SERVICE, INC., 1118 Commercial, Mingo Junction, OH 43938. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. Transporting (1) *Aluminum and aluminum products, and* (2) *equipment, materials, and supplies* used in the manufacture of aluminum and aluminum products, between the facilities of Eastalco Aluminum Company, at or near Frederick, MD, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC. (Hearing site: Washington, DC.)

MC 69224 (Sub-48F), filed October 30, 1979. Applicant: H & W MOTOR EXPRESS COMPANY, a corporation, 3000 Elm St., Dubuque, IA 52001. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102. Transporting *batteries* and *packaged acid solutions,* from Manchester, IA, to Horicon and Milwaukee, WI. (Hearing site: Des Moines, IA.)

Note.—Applicant intends to tack the above authority with its existing regular route authority at Manchester, IA to provide service from MN, WI, IL, and IA, to the destinations named above.

MC 89684 (Sub-110F), filed January 11, 1980. Applicant: WYCOFF COMPANY, INCORPORATED, 560 South 300 West, Salt Lake City, UT 84110. Representative: John J. Morrell (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and those requiring special equipment), between St. George, UT, and the McCarren International Airport over Interstate Hwy 15, serving no intermediate points. (Hearing site: Salt Lake City, UT, and Las Vegas, NV.)

MC 106074 (Sub-148F), filed February 19, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and U.S. Hwy 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *furniture* and *display fixtures,* and (2) *parts and accessories* for the commodities in (1), from Payson, UT, to points in AZ, AR, CA, CO, ID, IA, KS, LA, MI, MO, NE, NV, NM, NC, ND, OK, OR, SD, TN, TX, UT, WA, and WY. (Hearing site: San Francisco, CA, or Washington, DC.)

MC 106674 (Sub-415F), filed August 8, 1979, previously published in the **Federal Register** issue of March 5, 1980. Applicant: SHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *iron and steel articles,* from Newport and Wilder, KY, to points in OH, IL, IN, and those points in MO and IA east of U.S. Hwy 63. (Hearing site: Chicago, IL, or Indianapolis, IN.)

Note.—This republication indicates the correct destinations.

MC 107445 (Sub-33F), filed February 19, 1980. Applicant: UNDERWOOD MACHINERY TRANSPORT, INC., 940 W. Troy Ave., Indianapolis, IN 46225. Representative: Alki, E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *mobile cranes, forklifts,* and *tow trucks,* (2) *parts* for the commodities in (1), and (3) mobile cranes, fork-lifts, and tow trucks in driveaway service, between the facilities of Pettibone Hanson Machinery Co., at Tiffin, OH on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: Indianapolis, IN, or Columbus, OH.)

MC 109825 (Sub-12F), filed January 10, 1980. Applicant: MASHKIN FREIGHT LINES, INC., 64 Oakland Ave., East Hartford, CT 06108. Representative: Hugh M. Joseloff, 80 State St., Hartford, CT 06103. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in MA, RI, CT, NY, NJ, and PA. (Hearing site: Hartford, CT, or Washington, DC.)

Note.—The purpose of this application is to eliminate the Gateways of East Hartford, Essex, Saybrook and Chester, CT.

MC 111594 (Sub-96F), filed February 20, 1980. Applicant: CW TRANSPORT, INC., 610 High St., Wisconsin Rapids, WI 54494. Representative: Donald B. Levine, 39 South La Salle St., Chicago, IL 60603. Transporting *general commodities* (except those of unusual value classes A and B Explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Kimberly-Clark Corporation in Richmond County, GA, on the one hand, and on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Appleton, or Milwaukee, WI.)

MC 112304 (Sub-236F), filed February 19, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner (same address as applicant). Transporting (1) *metal articles,* between the facilities of Lukens Steel Co., at or near Coatesville and Conshohocken, PA, on the one hand, and, on the other, points in the United States (except AK and HI); and (2) *equipment, materials and supplies* used in the manufacture of metal articles, (except commodities in bulk), in the reverse direction. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 112304 (Sub-237F), filed February 19, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner (same address as applicant). Transporting *brick,* from Stanton, KY, to points in IL, IN, MI, MN,

MO, OH, PA, WV, and WI. (Hearing site: Cincinnati, OH, or Washington, DC.)

MC 114334 (Sub-74F), filed February 19, 1980. Applicant: BUILDERS TRANSPORTATION COMPANY, a corporation, 3710 Tulane, Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. Transporting (1) *wallboard, gypsum wallboard,* and (2) *accessories* used in the installation of the commodities in (1), from West Memphis, AR, to points in AL, IL, IN, KY, MS, MO, TN, and OH. (Hearing site: Memphis, TN.)

MC 115975 (Sub-40F), filed December 4, 1979. Applicant: C.B.W. TRANSPORT SERVICE, INC., P.O. Box 48, Wood Rive, IL 62095. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Contract carrier,* transporting *petroleum lubricating oil,* in bulk, in tank vehicles, from St. Louis, MO, to points in IL and IN, under a continuing contract(s) with Pennzoil Company, of Oil City, PA. (Hearing site: St. Louis, MO.)

MC 116254 (Sub-310F), filed February 19, 1980. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Hampton M. Mills (same address as above). Transporting (1) *steel articles* and (2) *equipment, materials, and supplies* used in the installation of steel articles, from the facilities of Bishopric Products Company at or near Cincinnati, OH, to points in the United States (except AK and HI). (Hearing site: Cincinnati, OH, or Washington, DC.)

MC 116254 (Sub-311F), filed February 19, 1980. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL. Representative: Hampton M. Mills (same address as applicant). Transporting *dry commodities,* in bulk, from Greenville, SC, to Decatur, AL. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 116544 (Sub-206F), filed February 20, 1980. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting *meats, meat products, meat by-products,* and *articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of MBPXL, Inc., at or near Friona and Plainview, TX, to points in AZ, CA, NV, OR, and WA. (Hearing site: San Francisco, CA, or Wichita, KS.)

MC 117815 (Sub-331F), filed February 17, 1980. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 29th St., Des Moines, IA 50317. Representative: Jack H. Blanshan, 205 West Touhy Ave., Suite 200, Park Ridge, IL 60068. Transporting (1) *foodstuffs and pet food* (except commodities in bulk), from the facilities of Campbell Soup Company, at Paris, TX, to points in IL, IN, IA, KS, KY, MO, NE, and TN, and (2) *foodstuffs, and materials, equipment and supplies used in the production of foodstuffs and pet food* (except commodities in bulk), from points in IL, IN, IA, KS, KY, MI, MN, MO, NE, OH, TN, and WI, to the facilities of Campbell Soup Company at Paris, TX, restricted in (1) to the transportation of traffic originating at the named origin and in (2) to the transportation of traffic destined to the named destinations. (Hearing site: Dallas, TX, or Chicago, IL.)

MC 120425 (Sub-2F), filed October 22, 1979. Applicant: CROWN TRANSPORTATION, INC., 549 East Cucharras, P.O. Box 1050, Colorado Springs, CO 80901. Representative: J. Albert Sebald, 1700 Western Federal Bldg., Denver, CO 80202. (A) Over regular routes, transporting *passengers and their baggage, newspapers and express,* between Colorado Springs, CO, and Limon, CO, over U.S. Hwy 24, serving all intermediate points, and those points in Lincoln, Elbert, and El Paso, Counties, CO as off-route points, and (B) over irregular routes, transporting *passengers and their baggage, newspapers and express,* in charter operations, beginning and ending at points in Lincoln, Elbert, and El Paso Counties, CO, and extending to points in CO. (Hearing site: Denver, CO.)

MC 121664 (Sub-81F), filed July 22, 1979, previously published in the **Federal Register** issue of February 12, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave., South, Birmingham, AL 35233. Transporting *lumber,* from Gulfport, MS, to those points in the United States in and east of TX, OK, KS, NE, SD, and ND.

Note.—This republication indicates the correct origin. (Hearing site: Birmingham or Montgomery, AL.)

MC 121664 (Sub-112F), filed February 19, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave., South, Birmingham, AL 35233. Transporting *plywood* and *wood products,* from Galveston, TX, to those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Houston, TX, or Birmingham, AL.)

MC 121664 (Sub-114F), filed February 15, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave., South, Birmingham, AL 35233. Transporting (1) *plywood* from West Helena, AR, to those points in the United States in and east of ND, SC, NE, KS, OK, and TX; and (2) *materials and supplies* used in the manufacture and distribution of plywood, in the reverse direction. (Hearing site: Birmingham, AL.)

MC 123805 (Sub-18F), filed February 20, 1980. Applicant: LOMAX TRUCKING SERVICE, INC., R. R. #1, Hannibal, MO 63401. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102. Transporting (1) *cast iron borings,* in bulk, in dump vehicles, from points in Adams County, IL, to points in IA and MO; and (2) *road construction materials* and *building supplies,* in bulk, in dump vehicles, from points in Clark, Lewis, Marion, Ralls, Adair and Macon Counties, MO, to those points in IA on, east, and south of a line beginning at Davenport, IA, and extending along Interstate Hwy 80 to junction U.S. Hwy 63, then over U.S. Hwy 63 to the IA–MO State line. (Hearing site: Jefferson City, or St. Louis, MO.)

MC 124004 (Sub-58F), filed February 19, 1980. Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *lime and limestone products,* and (2) *materials equipment and supplies* used in the manufacture and sale of lime and limestone products, between points in Sussex County, NJ, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NY, NC, SC, OH, PA, RI, TN, VA, WV, and DC. (Hearing site: New York, NY, or Washington, DC.)

MC 124835 (Sub-26F), filed February 21, 1980. Applicant: PRODUCERS TRANSPORT CO., a corporation, P.O. Box 4022, Chattanooga, TN. Representative: David K. Fox (same address as applicant). Transporting *asphalt and Asphalt products,* in bulk, in tank vehicles, from Wilmington, NC, to Chattanooga, TN. (Hearing site: Atlantic, GA, or Washington, DC.)

MC 125335 (Sub-71F), filed July 6, 1979, previously published in the **Federal Register** issue of February 7, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting: *Confectionery,* from the facilities of Just Born, Inc., at or near

Bethlehem, PA, to points in ND, SD, NE, MN, IA, MO, IL, WI, IN, MI, OH, KY, TN, MS, AL, GA, FL, NC, and SC. (Hearing site: Bethlehem or Harrisburg, PA.)

Note.—This republication indicates the correct destinations.

MC 128555 (Sub-44F), filed February 19, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: Raymond P. Keigher, 1400 Gerard St., Rockville, MD 20850. *Contract carrier,* transporting (1) *canned and preserved foodstuffs,* and (2) *equipment, materials, and supplies* used in the manufacture and distribution of canned and preserved foodstuffs (except commdities in bulk), between the facilities of Owensboro Canning Co., Inc., at Owensboro, KY, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Owensboro Canning Co., Inc., of Owensboro, KY. (Hearing site: Tampa, FL, or Owensboro, KY.)

Note.—Dual operations may be involved.

MC 133655 (Sub-209F), filed February 19, 1980. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of chemicals, plastics, food ingredients, and fetilizers (except commodities in bulk), (1) between points in the United States (except AK, HI, ND, SD, NE, MN, IA, WI, IL, MI, IN, KY, OH, WV, VA, PA, MD, NJ, DE, NY, CT, MA, RI, NH, VT, ME, MO, and DC), and (2) between those points in (1) above, on the one hand, and, on the other points in ND, SD, NE, MN, IA, WI, IL, MI, IN, KY, OH, WV, VA, PA, MD, NJ, DE, NY, CT, MA, RI, NH, VT, ME, and DC, retricted to the transportation of traffic originating at or destined to the facilities of Stauffer Chemical Company. (Hearing site: Chicago, IL.)

MC 134064 (Sub-35F), filed February 4, 1980. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *alcoholic liquors,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of alcoholic liquors (except commodities in bulk, in tank vehicles), (a) between Ft. Smith, AR, on the one hand, and, on the other, those points in the United States in and east of MN, IA, NE, CO, OK, and TX, (b) between Bardstown and Louisville, KY, on the one hand, and, on the other, points in AR, IL, IN, MI, OH, NY, PA, GA, SC, FL, LA, MS, KS, CI, NE, MN, CT, MA, IA, NJ, MD, DE, and AK, (c) between New Orleans, LA, on the one hand, and, on the other, points in AR, MS, AK, FL, OK, KS, CO, NE, IA, MN, MO, MI, OH, KY, IN, IL, GA, and SC, and (d) between Plainfield, IL, on the one hand, and, on the other, points in MI, MO, IA, NE, KS, CO, OK, AR, LA, and KY, restricted in (ab), (b), (c) and (d) above to the transportation of traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 134064 (Sub-36F), filed February 11, 1980. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *foodstuffs,* (except in bulk) from the facilities of J. H. Filbert, Inc., (a) at Baltimore MD, and (b) in Anne Arundel, Baltimore, Howard, and Prince Georges Counties, MD, to points in ME, NH, VT, MA, CT, RI, NJ, DE, VA, KY, IL, WI, OH, PA, WV, GA, IN, MI, NY, NC, SC, TN, AL, MS, LA, FL, TX, MO, and AR. (Hearing site: Baltimore, MD, or Atlanta, GA.)

MC 134405 (Sub-99F), filed February 11, 1980. Applicant: BACON TRANSPORT COMPANY, a corporation, P.O. Box 1135, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *sand,* in bulk, in tank vehicles, from Bossier City, LA, to points in TX. (Hearing site: Dallas, TX.)

MC 135524 (Sub-117F), filed February 20, 1980. Applicant: G. F. TRUCKING CO., a corporation, P.O. Box 2295, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Rd., Youngstown, OH 44509. Transporting *composition board,* from Meridian, MS to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Columbus or Toledo, OH.)

MC 136315 (Sub-110F), filed February 19, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting *iron and steel articles,* from the facilities of Ahmsa Steel International, Inc., at or near Laredo and Eagle Pass, TX, to points in AL, AR, GA, IL, IN, KS, LA, MS, MO, OK, TN, and TX, restricted to the transportation of traffic originating at the named facilities. (Hearing site: San Antonio, TX or Washington, DC.)

Note.—Dual operations may be involved.

MC 136315 (Sub-111F), filed February 19, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting (1) *iron and steel articles,* from the facilities of Structural Steel Services, Inc., in Lauderdale County, MS to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials equipment and supplies* used in the manufacture, and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles) in the reverse direction, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Jackson, MS or Washington, DC.)

Note.—Dual operations may be involved.

MC 136315 (Sub-112F), filed February 19, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting *iron and steel articles,* between points in AL, AR, FL, GA, IL, IN, LA, MI, MS, MO, NC, OH, OK, PA, SC, TN, TX, and WI, restricted to the transportation of traffic originating at or destined to the facilities of or used by Henderson Steel Corporation. (Hearing site: Jackson, MS or Washington, DC.)

Note.—Dual operations may be involved.

MC 136315 (Sub-113F), filed February 19, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting *iron and steel articles,* from the facilities of Tommy Webb Contruction Company, in Lauderdale County, MS, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials equipment and supplies* used in the manufacture, and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles) in the reverse direction, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Jackson, MS or Washington, DC.)

Note.—Dual operations may be involved.

MC 136635 (Sub-32F), filed February 15, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *motor vehicles* (except buses), from the facilities of A. M. General Corp., in St. Joseph County, IN, to points in AL, AR, CT, DE, FL, GA, IL, IA, KS, KY, LA, ME,

MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI and DC. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 136635 (Sub-33F), filed February 19, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *glass containers, metal containers, and container ends,* and (2) *disposable paper diapers,* from the facilities of Merchandise Warehouse Co., Inc., at Indianapolis, IN, to points in MI, OH, IA, KY, IL, MO, KS, PA, NJ, NY, WI, MN, AR, TX, OK, TN, VA, WV, MD, DE, CT, MA, RI, and DC. (Hearing site: Indianapolis, IN, or Chicago, IL.)

Note.—Dual operations may be involved.

MC 136635 (Sub-34F), filed February 20, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Rd., South Bend, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *automotive parts,* and (2) *materials* used in the manufacture of motor vehicles (except commodities in bulk), between the facilities of A.M. General Corporation, at Indianapolis, IN, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IA, KS, KY, LA, ME, MO, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, WI, RI, SC, TN, TX, VT, VA, WV, and DC. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 138304 (Sub-20F), filed February 20, 1980. Applicant: NATIONAL PACKERS EXPRESS, INC., 1600 Clinton St., Hoboken, NJ 07030. Representative: Craig B. Sherman, Barnett Bank Bldg., 1108 Kane Concourse, Bay Harbor Islands, FL 33154. Transporting (1) *glass, glass articles, flat glass, and glazing units,* from New York, NY, Charleston, SC, Wilmington, NC, New Orleans, LA, Jeanette, PA; and (2) *wood products,* from New York, NY, to those in the United States in and east of MT, WY, CO, NM, and TX. (Hearing site: New York, NY, or Washington, DC.)

MC 138875 (Sub-256F), filed December 4, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, a corporation, 11900 Franklin Road, Boise, ID 83709. Representative: F. L. Sigloh (same address as applicant). Transporting *doors and door accessories (except commodities in bulk),* from the facilities of Republic Builders Products Corporation at points in TN, to points in ID, UT and OR, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Boise, ID, or Washington, DC.)

MC 140665 (Sub-84F), filed January 4, 1980. Applicant: PRIME, INC., Route 1, Box 115–B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at (a) Albert Lea, MN, and (b) Cedar Rapids, Cherokee, and Des Moines, IA, to points in CA, restricted to the transportation of traffic originating at the above named origins and destined to the named destination. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 141205 (Sub-48F), filed February 11, 1980. Applicant: HUSKY OIL TRANSPORTATION COMPANY, 600 South Cherry St., Denver, CO 80222. Representative: F. Robert Reeder, P.O. Box 11898, Salt Lake City, UT 84147. *Contract carrier,* transporting *crude oil, scrubber oil, and scrubber condensate,* from points in Rice, Pratt, and Harper Counties, KS, to the pipeline injection station of Total Refining Company, at Laverne, OK under continuing contract(s) with Husky Oil Company, of Denver, CO, conditioned to the following: (1) Applicant shall conduct separately its for-hire carriage and other business operations. (2) It shall maintain separate accounts and records for each operation. (3) It shall not transport property as both a private and for-hire carrier in the same vehicle at the same time. (Hearing site: Denver, CO.)

MC 141804 (Sub-374), filed February 19, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *rubber and plastic hose,* and (2) *materials equipment, and supplies* used in the manufacture of hose, between Bucyrus, OH, Stillwater, OK, Dallas, TX, Los Angeles, CA, Lexington and Elkton, TN, and Sparks, NV, restricted to the transportation of traffic originating at or destined for the facilities of Swan Hose. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-375F), filed February 20, 1980. applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *electronic equipment, games and toys;* and (2) *accessories* used in the manufacture and operation of the commodities in between points in the United States (except AK and HI), restricted to traffic originating at or destined for the facilities of Atari, Inc. (Hearing site: Los Angeles, CA.)

MC 142364 (Sub-30F), filed February 19, 1980. Applicant: KENNETH SAGELY, d.b.a. SAGELY PRODUCE, 2802 Kibler Rd., Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *such commodities as are dealt in by chain grocery and food business house (except frozen commodities and commodities in bulk),* from the facilities of the Clorox company, at or near Houston, TX, to points in AR, LA, MS, and OK. (Hearing site: San Francisco, CA, or Ft. Smith, AR.)

MC 142364 (Sub-31F), filed February 19, 1980. Applicant: KENNETH SAGELY, d.b.a. SAGELY PRODUCE, 2802 Kibler Rd., Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *foodstuffs* (except in bulk), from the facilities of American Home Foods, Inc., at or near La Porte, IN to points in AR, IL, and MO. (Hearing site: New York, NY or Ft. Smith, AR.)

MC 142864 (Sub-27F), filed February 19, 1080. Applicant: RAY E. BROWN TRUCKING, INC., P.O Box 501, Massillion, OH 44646. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215. Transporting (1) *coated abrasives* and coated paper products, from Alliance, OH, to points in IL, IN, IA, MI, NJ, NY, PA, and WI, and (2) *equipment materials, and supplies* used in the production or manufacture of the commodities in (1), in the reverse direction. (Hearing site: Columbus, OH, or Washington, D.C.)

Note.—Dual operations may be involved.

MC 143225 (Sub-2F), filed December 12, 1979. Applicant: LOUISIANA MIDLAND RAILWAY COMPANY, a corporation, Highway 8 and Railroad Ave., Jena, LA 71342. Representative: Craig E. Burroughs, Suite 1507, 80 E. Jackson Blvd., Chicago, IL 60604. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of the Louisiana Midland Railway Company, at Packton, Searcy, Jena, Trout, Rhinehart, and Ferriday, LA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL, or New Orleans, LA.)

MC 145465 (Sub-5F), filed December 12, 1979. Applicant: GURN

ENTERPRISES, INC. Route 6, Box 8, Allegan, MI 49010. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier,* transporting (1) *drugs and toilet articles,* and (2) *materials and supplies* used in the manufacture, and distribution of the commodities named in (1) above, between Allegan, MI, on the one hand, and, on the other, points in MO, KS, CO, UT, WY, NE, IA, ID, OR, NM, MN, WI, IL, and CA. under continuing contract(s) with L. Perrigo Company, of Allegan, MI. (Hearing site: Allegan, MI.)

MC 145485 (Sub-1F), filed February 19, 1980. Applicant: DAVIS CARTAGE COMPANY, a corporation, P.O. Box 96, Corunna, MI 48817. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. Transporting *fertilizer,* from the facilities of USS Agri-Chemicals, Division of United States Steel Corporation, at Chicago Heights, IL, to points in MI. (Hearing site: Lansing, MI.)

MC 145695 (Sub-2F), filed January 24, 1980. Applicant: MAZCO SYSTEMS, INC., 200 Route 17 South, Mahwah, NJ 07430. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. *Contract carrier,* transporting *such commodities* as are dealt in by distributors of panels, paneling, shelving, mantels, and beams, between the facilities of Barclay Industries, Inc., at Los Angeles, CA, on the one hand, and, on the other, the facilities of Barclay Industries, Inc., at Lodi, NJ, Deer Park, NY, and Red Hill, PA, under continuing contract(s) with Barclay Industries, Inc., of Lodi, NJ. (Hearing site: New York, NY.)

MC 145974 (Sub-7F), filed February 19, 1980. Applicant: HIDATCO, INC., P.O. Box 356, New Town, ND 58763. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract carrier,* transporting *insulation board,* from the facilities of Poly-Therm Industries, Inc., at Superior, WI, to points in ND, SD, MT, ID, WA, OR, WY, and MN under continuing contract(s) with Poly-Therm Industries, Inc., of Superior, WI. (Hearing site: Minneapolis/St. Paul, MN.)

MC 146015 (Sub-4F), filed February 19, 1980. Applicant: MUMMA FREIGHT LINES, INC., 6495 Carlisle Pike, Mechanicsburg, PA 17055. Representative: E. J. Mumma, Jr. (same address as applicant). *Contract carrier,* transporting (1) *such commodities* as are dealt in by chain grocery and food business houses, and; (2) *materials, and supplies* used in the manufacture, and distribution of the commodities in (1) above, between the facilities of Ralston Purina Company, at or near Dunkirk and Buffalo, NY, on the one hand, and, on the other, Hampton Township (Cumberland County), PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 146015 (Sub-5F), filed February 13, 1980. Applicant: MUMMA FREIGHT LINES, INC., 6495 Carlisle Pike, Mechanicsburg, PA 17055. Representative: C. Jack Pearce, 1000 Connecticut Ave., N.W. *Contract carrier,* transporting *plastic materials,* from the facilities of Arco Polymers, Inc., at Monaca and Kobuta, PA, to Lithonia, GA, under continuing contract(s) with Dart Container Corp., of Mason, MI. (Hearing site: Philadelphia, PA or Washington, D.C.)

MC 146055 (Sub-8F), filed February 21, 1980. Applicant: JOHN H. SCHUEMAN & DENNY SCHUEMAN, d.b.a. DOUBLE "S" TRUCK LINE, 731 Livestock Exchange Bldg., Omaha, NE 68107. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. Transporting *coin operated amusement games and coin operated amusement machines,* from points in CA to the facilities of Central Distributing Company at Omaha, NE. (Hearing site: Omaha, NE.)

146485 (Sub-1F), filed February 19, 1980. Applicant: MARBURGER REFRIGERATED EXPRESS, INC., P.O. Box 387, Peru, IN 46970. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *foodstuffs,* (except in bulk) from the facilities of Marburger Packing Co., Inc., at Peru IN, to points in the United States (except AK, HI, and IN), restricted to the transportation of traffic originating at the named facilities. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 146704 (Sub-8F), filed February 19, 1980. Applicant: FALCON MOTOR TRANSPORT, INC., 1250 Kelly Ave., Akron, OH 44216. Representative: Michael L. Moushey, 275 East State St., Columbus, OH 43215. *Contract carrier* transporting *non-woven fabric,* from points in NJ, PA, and DE to Cleveland, OH, under continuing contract(s) with Cleveland Cotton Products, Inc. of Cleveland, OH. (Hearing site: Columbus, or Cleveland OH.)

MC 148044 (Sub-1F), filed October 19, 1979. Applicant: JANICE PARTRICIA MARTIN, d.b.a. J. D. MARTIN TRUCKING CO., Route 4, Box 251A, Rocky, Mount, VA 24151. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting (1) *lumber* and *crossties,* (a) from points in Franklin and Roanoke Counties, VA, to points in DE, KY, MD, NC, NJ, NY, OH, PA, SC, TN, WV and DC (b) from points in Henry and Smythe Counties, VA, to points in NC, and (c) from Norfolk, VA, and points in NC and SC, to points in Franklin and Roanoke Counties, VA; (2) *fertilizer* and *fertilizer materials,* in bags, from Winston-Salem, NC, to points in VA and WV; and (3) *prefabricated houses* and *building materials,* from the facilities of American Standard Homes Corp., at Martinsville, VA, to points in KY, MD, NC, OH, PA, SC, TN, and WV. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 148424 (Sub-2F), filed February 20, 1980. Applicant: TBC TRUCKING, INC., 2501 Aztec N.E, Albuquerque, NM. Representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. *Contract carrier,* transporting (1) *such commodities* as are dealt in by home improvement centers and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodites in bulk and those which because of size or weight require special equipment), between points in the United States (except AK and HI), under continuing contract(s) with Standard Brands Paint Co., Inc., at Torrance, CA. (Hearing site: Los Angeles, CA.).

MC 149065F filed December 12, 1979. Applicant: MODE TRANSPORT CORPORATION, 1050 State St., Perth Amboy, NJ 08862. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. *Contract carrier,* transporting (1) *iron and steel articles, and manufacturing machinery,* and (2) *materials, equipment, and supplies* used in manufacturing facilities (except commodities in bulk), between points in the New York Harbor limits as defined in 49 CFR § 1070.1(a), on the one hand, and, on the other, points in CT., IL, IN, MD, MA, MI, NJ, NY, NC, OH, PA, RI, SC, and VA, restricted to the transportation of traffic having a prior or subsequent movement by water, under continuing contract(s) with GSC Export Packing & Warehousing, Inc., of Perth Amboy, NJ. (Hearing site: New York, NY.)

MC 149075 (Sub-1F), filed January 22, 1980. Applicant: OVER LAND, INC., 4121 Augusta Rd., Garden City, GA 31408. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., 1001 Woodward Ave. Detroit, MI 48226. Transporting *petroleum products,* in bulk, in tank vehicles, from Augusta and Savannah, GA, to points in the United States (except AK and HI). (Hearing site: Atlanta, GA, or Washington, DC.)

MC 149214 (Sub-2F), filed February 19, 1980. Applicant: TRANSPORT ASSOCIATES, INC., 3512 Rockville Rd., Indianapolis, IN 46222. Representative: Donald W. Smith, P.O. Box 40248,

Indianapolis, IN 46240. Transporting (1) *telephone equipment* and (2) *materials and supplies* used in the manufacture, construction and maintenance of telephone, between Indianapolis, IN and Chicago, IL. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 149325F, filed February 1, 1980. Applicant: WALTS TERMINAL, INC., 401 West So. St., Indianapolis, IN 46225. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *dimensional lumber, timbers, and poles,* from the facilities of Indiana Wood Preserving, Inc., at or near Morristown, IN, to points in MN, WI, MI, OH, IL, IA, and KY, and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above, in the reverse direction. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 150274F, filed February 19, 1980. Applicant: SUPERIOR TRANSFER, INC., 2669 Merchant Drive, Baltimore, MD 21230. Representative: Ronald N. Cobert, 1730 M St., N.W., Suite 501, Washington, D.C. 20036. *Contract carrier,* transporting *appliances* (1) from the facilities of S.C.M./Proctor-Silex, at or near Baltimore, MD, to points in the United States (except AK and HI), and (2) from the facilities of S.C.M./Proctor-Silex, at or near Southern Pines and Mt. Airy, NC, and Altoona, PA, to Baltimore, MD. (Hearing site: Washington, DC.)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13342 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 381]

Adequacy of Railroad Revenue; 1980 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of limited revenue adequacy proceeding.

SUMMARY: A proceeding will be conducted to make a current determination of the railroads' cost of capital.

DATES: Notices of intent to participate due May 21, 1980; Statements of railroads due June 30, 1980; Statements of other interested parties due August 10, 1980; Rebuttal statements of railroads due August 31, 1980; Commission decision to be issued October 31, 1980.

ADDRESSES: Send notices of intent to participate to: Office of Proceedings, Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

Send other statements to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder (202) 275-7693.

SUPPLEMENTARY INFORMATION: Regulations that we adopted in 1978 provide that a yearly proceeding shall be conducted to determine adequate revenue levels for railroads.[1] In this notice, we are instituting a proceeding for 1980, but we will limit its scope to the updating of cost of capital findings.

The first full proceeding under the revenue adequacy regulations was only recently concluded.[2] We are in a position now to review the regulations in the light of the experience gained from that proceeding. We are considering the institution of a proceeding to review the regulations. We hope to be able to conclude that proceeding in time to conduct another full revenue adequacy proceeding in 1981. In the meantime, we believe that the energy of the Commission and interested public participants should be focused on a review of the underlying standards and procedures. Thus, we will not make a full revenue adequacy determination for 1980.

As in 1979, however, there is one aspect of the revenue adequacy findings that must be kept current. The railroads' cost of capital rate, which we updated in a limited 1979 proceeding,[3] should be updated again for 1980.

Thus, we are instituting the present proceeding to receive current evidence on the cost of capital to the railroads. Our decision in this proceeding will be similar in scope to the decision in Ex Parte No. 363.

The Nation's Class I railroads shall be respondents in the proceeding. They shall, and other interested parties may, submit such evidence as will enable the Commission to update the cost of capital findings of Ex Parte No. 363 in the light of current conditions in the capital markets.

Any person intending to participate in the proceeding shall, on or before May 21, 1980, file an original and one copy of a notice of intent to participate. Because the Commission desires to conserve time, to avoid unnecessary expense, and to limit the service of statements in this proceeding to persons who intend actively to participate, each notice of intent to participate shall include a detailed statement of (1) whether the person's interest extends merely to receiving Commission releases in this proceeding; (2) whether the person wishes to participate by filing and receiving statements, (3) whether, if the person desires to file statements, his interests can be consolidated with those of other persons by the filing of joint statements; and (4) any other pertinent information to aid in limiting the service list to be issued in this proceeding. The Commission will prepare and make available, to all persons submitting notices of intent to participate, a service list which will contain the names and addresses of all persons participating in this proceeding.

Evidentiary statements of the parties are due on or before the dates set forth in the preamble to this notice. An original and 15 copies (if possible) of each statement shall be filed with the Commission, and one copy shall be served upon each person on the service list.

Copies of this notice shall be available to the public at the office of the Secretary, and the notice shall be published in the **Federal Register.** A press release describing this matter shall be issued.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum and Alexis. Commissioner Trantum dissented with a separate expression.

Dated: April 22, 1980.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum (Dissenting)

In my December 11, 1979 vote on Ex Parte No. 363 I questioned the usefulness of the revenue adequacy determination in specific cases. I believe this concern is even more appropriate now. I also emphasized that the cost of capital is a dynamic and illusive creature that varies significantly over time and by purchaser.

We should not concern ourselves with a single annual number or even a range that "appropriately" describes adequate industry revenue. Instead, we must develop and construct a methodology that can be applied on short notice to evaluate individual carriers seeking rate increases.

Furthermore, there are a number of outstanding policy issues including our recent vote to eliminate the collective general increase on single lines that impacts significantly our approach to the concept of revenue adequacy. In light of these issues we clearly must redirect our approach from the macro-level to the micro-level. We cannot continue to deal with composite or average approaches.

It is unfortunate that we find ourselves in a position that forces us to continue this type of

---

[1] Adopted in Ex Parte No. 338, *Establishment of Adequate Railroad Revenue Levels,* 359 I.C.C. 270 (1978), and codified at 49 CFR 1109.25 (43 FR 5836, Feb. 10, 1978).

[2] Ex Parte No. 353, *Adequacy of Railroad Revenue (1978 Determination),* 362 I.C.C. 199 (served January 31, 1980).

[3] Ex Parte No. 363, *Adequacy of Railroad Revenue (1979 Determination),* 362 I.C.C. 344 (served January 31, 1980).

regulated solution in a predominantly competitive industry. I can only hope that we do not have to force the industry to work within these bounds for too long.

[FR Doc. 80-13344 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

[Supplemental Decision No. 1; Docket No. AB-46 (Sub-No. 22)]

Chicago, Rock Island and Pacific Railroad Co. Debtor (William M. Gibbons, Trustee)—Abandonment—Entire System

Decided: April 23, 1980.

We served a decision in this proceeding on April 16, 1980 placing certain notice and service requirements on the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island).

After consulting with Rock Island, and in light of the short time available, we are modifying requirements 2 and 3 in the event Rock Island cannot comply with them. In their place, we shall publish the appended notice (or the prior notice) in the **Federal Register**, and require Rock Island to serve it (or the prior notice) and a copy of the application (if possible) expeditiously on its 500 largest shippers, as well as the application and notice on the Governor, Public Service Commission (or equivalent agency), and designated State agency of each State in which part of the line of railroad sought to be abandoned, or over which service is proposed to be discontinued, is situated.

It is ordered: (1) Rock Island shall comply with the requirements of this decision.

(2) A copy of this decision shall be served on the Rock Island, and all parties to Finance Docket No. 27872 (Sub-No. 6).

(3) This decision is effective on the date of service.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners, Stafford, Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix

[Docket No. AB-46 (Sub-No. 22)]

Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee)—Abandonment—Entire System

William M. Gibbons, Trustee and other parties in interest to the Section 77 Proceeding, for the Reorganization of the Chicago, Rock Island and Pacific Railroad Company, Debtor, "Rock Island" (Case No. 75 B 2697, United States District Court for the Northern District of Illinois, Eastern Division) have applied to the Reorganization Court (Court), Judge Frank J. McGarr presiding, for an order pursuant to Section 17 of the Milwaukee Railroad Restructuring Act (MRRA) authorizing abandonment of Rock Island's entire railroad system.

The Court has ordered the Trustee to initiate an appropriate application for abandonment with the Interstate Commerce Commission as prescribed by Section 17 of the MRRA, and 11 USC 1170 (Bankruptcy Act). The application was filed on April 24, 1980, and requests that the Commission report to the Court that the present and future public convenience and necessity permit abandonment of the entire Rock Island system.

The Commission must report to the Court on the application on or before May 24, 1980. Comments must be filed with the Commission on or before May 5, 1980, and should address either the entire system abandonment, or the abandonment of any single line of the railroad, as well as possible acquisition of a line, and public use of lines. These comments (original and 20 copies) shall be filed with the Interstate Commerce Commission, Room 5414, 12th and Constitution, NW., Washington, DC 20423, Attention Rock Island Task Force. Comments shall be in the form of sworn statements.

The Commission found that Rock Island suffers from cashlessness as described under 49 U.S.C. 11125(a)(1), and directed another carrier to provide service over Rock Island's lines, *Kansas City Term. Ry.—Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289 (1979). Rock Island has not operated its lines since October 5, 1979. Full directed service ceased on March 23, 1980, although major portions of the Rock Island are being operated under uncompensated directed service. Rock Island has suffered substantial operating losses since 1968, and does not intend to resume operations.

Copies of the Trustee's abandonment application will be available for inspection at the Interstate Commerce Commission, Washington, D.C., and the following Commission Field Offices: Chicago, IL, Denver, CO, Des Moines, IA, Fort Worth, TX, Houston, TX, Kansas City, MO, Little Rock, AR, Memphis, TN, Minneapolis, MN, Oklahoma City, OK, Omaha, NE, and Wichita, KS, on and after April 24, 1980. Upon telephone or written request to Mr. John Pinio, Rock Island Law Department, 332 South Michigan Avenue, Chicago, Illinois 60604, Telephone No. 312-435-7479 applicant will mail a copy of the Abandonment Application.

The Honorable Frank J. McGarr, has fixed June 2, 1980 at 2:00 P.M. in his Courtroom on the 25th Floor of the United States Courthouse, Dirksen Building, 219 South Dearborn Street, Chicago, IL as the hearing date to consider the Commission's report on the abandonment application as prescribed by 11 U.S.C. 1170, and to enter such orders thereunder as the Judge shall deem appropriate. Parties in interest desiring to file comments with the court, and receive notice of the Court's decision may do so in writing on or prior to May 28, 1980 by addressing said comments to:

Clerk, U.S. District Court, Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604, Attn: Honorable Frank J. McGarr, U.S. District Judge.

Two copies of all comments filed with either the Commission or the Court must be served on Trustee, William M. Gibbons at 332 South Michigan Avenue, Chicago, Illinois 60604.

[FR Doc. 80-13343 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

[Service Order No. 1344; I.C.C. Order No. 66-A]

Rerouting Traffic

To all Railroads: Upon further consideration of Revised I.C.C. Order No. 66 and good cause appearing therefor:

It is ordered, I.C.C. Order No. 66 is vacated.

This order shall become effective at 12:01 p.m., April 21, 1980, and shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. A copy shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 21, 1980.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 80-13341 Filed 4-30-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-8979 appearing at page 19327 in the issue of Tuesday, March 25, 1980, on page 19394, in the third column, in the second complete paragraph MC 109376 (Sub-19F), Skinner Transfer Corp., line 14, "MN, NE" should be corrected to read "MN, IA, NE".

BILLING CODE 1505-01-M

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-9285 appearing at page 20175 in the issue of Thursday, March 27, 1980, on page 20222, in the second column, in the first paragraph, MC 11207 (Sub-515F), Deaton, Inc., in line 14, "LA" Should be corrected to read "IA".

BILLING CODE 1505-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 99.1.26, Amdt. No. 2]

Mission Director, USAID/Tunisia; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.26 dated September 21, 1973 (38 FR 29097), as amended to substitute "$100.000" for "$50,000" in paragraph 1.

Except as provided herein, Redelegation of Authority No. 99.1.26, as amended, remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: April 22, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 80-13325 Filed 4-30-80; 8:45 am]

BILLING CODE 4710-02-M

INTERNATIONAL TRADE COMMISSION

[603-TA-6]

Steel Jacks From Canada; Preliminary Investigation

Notice is hereby given that on April 23, 1980, the United States International Trade Commission voted to institute a preliminary investigation under section 603 of the Trade Act of 1974 (19 U.S.C. 2482) to investigate whether imports of steel jacks from Canada are the subject of a combination or conspiracy to fix prices at unfairly low levels for the purpose of restraining or monopolizing trade and commerce in the United States.

Specifically, the Commission staff has been directed to gather the following factual information relative to questions raised by a complaint (Docket 647) filed on March 24, 1980, by Bloomfield Manufacturing Co., Inc. of Bloomfield, Indiana:

(1) Prices charged by J. C. Hallman Manufacturing Co., Ltd., Ontario, Canada, to its distributors in the United States, American Gage and Manufacturing Co., Wauseon, Ohio and A. H. Bottorff Co., St. Joseph, Mo.;

(2) All other relevant costs of these importer/distributors for such jacks;

(3) Prices charged to United States customers by these importer/distributors;

(4) The nature of any written or oral arguments, if any, between Hallman and its United States distributors and/or any agreement between such importer/distributors relating to pricing levels, advertising, or labelling of the country of origin on such jacks.

(5) The costs of production for these steel jacks by the Canadian manufacturer, J. C. Hallman Manufacturing Co., Ltd.

The Commission staff has been directed to submit its report and recommendations regarding the above matters to the Commission no later than June 23, 1980.

Issued: April 28, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-13438 Filed 4-30-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-52]

Certain Apparatus for the Continuous Production of Copper Rod; Proceeding Concerning Advisory Opinion

I. *Background.* On April 2, 1980, in a letter to the Secretary of the Commission, Fried. Krupp GmbH and Krupp International, Inc. (hereinafter "Krupp" or "the petitioner") asked the Commission for an advisory opinion regarding compliance of the design of a copper rod system, which it proposes to import and sell in the United States, with the cease and desist orders issued by the Commission on November 23, 1979, in the above-captioned case.

II. *Action.* The Commission has determined that Krupp's request raises questions appropriate for an advisory opinion. The Commission will therefore accept written submissions from complainant and other respondents in the case below, the Commission investigative attorney, and from any other person with an interest sufficient to support intervention in a section 337 investigation under section 210.6 (hereinafter "the respondents"), on the question of whether Krupp's proposed system would violate the cease and desist orders. However, the Commission's action today should not be construed as precedent for future requests for advisory opinions. The Commission will consider public comments regarding advisory opinions in conjunction with its proposed amendments to the section 337 rules (45 FR 24192, April 9, 1980) and will promulgate any advisory opinion rules only after full consideration of public comments.

The letters and submissions of Krupp regarding the advisory opinion and other confidential information regarding the proposed system will be available to counsel for all persons participating in this proceeding, subject to protective order.

Within twenty (20) days after the issuance of this notice all written submissions are due from the respondents. Petitioner may file a reply to respondents' submissions within ten (10) days of the service of the responses.

Upon receipt of all written submissions, the Commission may in its discretion allow oral arguments, after giving notice to petitioner and respondents.

Issued: April 28, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-13439 Filed 4-30-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Vacancy on U.S. Court of Appeals for the Second Circuit

April 28, 1980.

By appointment of the President, a panel of the U.S. Circuit Judge Nominating Commission has been constituted to consider prospective nominees to fill a vacant judgeship on the Federal Court of Appeals in the Second Circuit. The panel must submit to the President by June 27, 1980, the names of not more than five persons deemed well qualified to be a U.S. Court of Appeals judge. Anyone may submit suggested nominees to the panel for consideration, and anyone may request that he or she be considered.

To be considered by the panel a person must be a member of the bar in good standing. Important factors in determining whether a person is well qualified are professional competence, extent and nature of legal experience, character, temperament, and health. A proposed nominee should normally have 12 to 15 years of legal experience and be physically and mentally capable of sustained work on difficult intellectual problems, with the potential for rendering long and energetic service on the Federal bench.

Experience of particular relevance may have been acquired in these areas: (a) substantial appellate experience as a lawyer or judge; (b) substantial trial court experience as a lawyer or judge; (c) substantial Federal law mastery as demonstrated by teaching or by

professional association with public or private offices dealing extensively with Federal law; (d) substantial legal writing with relationship to Federal law; and (e) substantial experience in judicial education or law reform activity of a highly professional nature, with some correlation of Federal matters. Generally, experience in at least two of three areas will be required. In cases of substantial and outstanding service as a Federal or State judge, experience in one of these areas will be sufficient.

For this vacancy the panel will consider five persons from the State of New York.

Names of proposed nominees should be sent in writing to the chairman of the panel, Lawrence E. Walsh, One Chase Manhattan Plaza, New York, New York 10005. Though not required, it will be helpful if reasons are given why the person suggested is well qualified for this judicial position.

Other members of the panel are:

Leonard Garment, New York, New York 10005.
Penny M. Wolfgang, Buffalo, New York 14202.
Judith S. Kaye, New York, New York 10017.
Mary Pinkett, Brooklyn, New York 11238.
Joseph Fauliso, Hartford, Connecticut 06115.
Ira Millstein, New York, New York 10022.
Charles L. Black, Jr., New Haven, Connecticut 06520.
Ray Norat, New York, New York 10017.
John G. Kristensen, Brattleboro, Vermont 05301.
Diane Ravitch, New York, New York 10027.
Wilbur Daniels, New York, New York 10019.
Mary A. Erlanger, Redding, Connecticut 06875.
William Glendon, New York, New York 10017.
Peter M. Fishbein, New York, New York 10022.

Phillip B. Cover,

Committee Management Control Office.

[FR Doc. 80-13369 Filed 4-30-80; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

United States v. City of Los Angeles and State of California; Proposed Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 1902, notice is hereby given that a proposed consent decree in *United States* v. *City of Los Angeles and State of California,* No. CV 77-3047-HP, has been lodged with the United States District Court for the Central District of California. The proposed decree would require the City of Los Angeles to construct and operate treatment facilities so as to terminate the discharge of sewage sludge to the ocean from the Hyperion Wastewater Treatment Plant by July 1, 1985.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *City of Los Angeles,* D.J. Ref. 90-5-1-1-809.

The proposed consent decree may be examined at the office of the United States Attorney, 1100 United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; at the Region IX office of the United States Environmental Protection Agency, Enforcement Division, 215 Fremont Street, San Francisco, California 94105; and at the Pollution Control Section, Land and Natural Resources Division, Department of Justice, Room 2444, Ninth and Pennsylvania Avenue N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

Angus Macbeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-13326 Filed 4-30-80; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Grants and Contracts

April 25, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by: Legal Aid of Fort Wayne, Inc., in Fort Wayne, Indiana, to serve Adams, DeKalb, Huntington, Steuben, Wells and Whitley Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-13384 Filed 4-30-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

April 25, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Aid Society of Gary, Inc., in Gary, Indiana, to serve Porter County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-13384 Filed 4-30-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

April 25, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Services Program of Northern Indiana, Inc., in South Bend, Indiana, to serve Jasper and Newton Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-13386 Filed 4-30-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

April 25, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thrity days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Services of North Carolina, Inc., Raleigh, North Carolina, to serve Anson, Beaufort, Buncombe, Carteret, Craven, Cumberland, Henderson, Hyde, Jones, Madison, Martin, Pamlico, Pitt, Polk, Richmond, Rutherford, Transylvania, Tyrrell, Washington, and Wayne Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street, N.E., 9th Floor, Atlanta, Ga. 30308

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-13387 Filed 4-30-80; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Artists-in-Schools Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Artists-in-Schools Panel to the National Council on the Arts will be held May 19, 1980 from 9 a.m.-5:30 p.m.; May 20, 1980 from 9 a.m.-5:30 p.m.; and May 21, 1980 from 9 a.m.-5:30 p.m., in Room 1422, Columbia Plaza Office Complex, 2401 E St. N.W., Washington, D.C.

A portion of this meeting will be open to the public on May 19, 1980 from 9 a.m.-5:30 p.m., and May 20, 1980 from 9 a.m.-5:30 p.m., and May 21, 1980 from 9 a.m.-1 p.m. for the discussion of Policy and Future directions.

The remaining sessions of this meeting on May 21, 1980 from 1 p.m.-5:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions 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 with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

[FR Doc. 80-13405 Filed 4-30-80; 8:45 am]

BILLING CODE 7437-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-18]

Safety Recommendations and Responses; Availability

Recommendation Letters

Aviation

A-80-30 and -31.—During several recent accident investigations, the National Transportation Safety Board has identified recurring failures of tail rotor blades on Bell model 47 helicopters. Two recent accidents in California are typical of several previous accidents.

On March 8 a Bell 47G helicopter crashed during a crop dusting operation in Brentwood. The pilot was seriously injured. The investigation is continuing; however, preliminary reports indicate that a tail rotor blade separated in flight.

Last September 14 a Bell 47J-2 helicopter lifted off the Queen Mary helicopter pad with four passengers and a pilot on board for a sightseeing tour of Long Beach Harbor. Witnesses saw the tail rotor blade separate from the aircraft at 200 feet above ground level and in level flight over Queensway Bay. The helicopter descended out of control, crashed, and sank in 35 feet of water. All five occupants were killed.

Upon examination, the tail rotor blade, P/N 47-642-102, was found to have separated through the grip in the grease seal radius retention area. This area is covered by Airworthiness Directive 70-10-08, which requires a detailed daily inspection of the exterior surface of the blades for the presence of cracks, dents, and nicks, and a 150-hour periodic inspection of the interior surface of the blade in the grip area for cracks, corrosion, and tool marks. The inspection is to be conducted using dye penetrant techniques, or a light and a magnification device. A metallurgical examination of the failed blade disclosed that the failure stemmed from a fatigue crack that began on the inside diameter of the grip. The fatigue had begun at small corrosion pits less than 0.002-inch deep. The service life of the blade is 600 hours; however, this blade failed within a total time of only 536.4 hours.

Four other recent accidents involving tail rotor blade failures on Bell 47 series helicopters are referenced in the Safety Board's recommendation letter forwarded April 23 to the Federal Aviation Administration. In most of the failures examined by the Safety Board's Metallurgical Laboratory, the fatigue cracks had begun from extremely small stress raisers such as knicks, corrosion pits, tool marks, and scratches. Most of these defects could have been overlooked by a visual inspection. The long history of fatigue failures in tail rotor blade P/N 47-642-102 reflects a low fatigue margin and an obvious need to replace the blade with a design more resistant to fatigue cracking.

The Board notes that in December 1979 Bell issued Alert Service Bulletins Nos. 47-79-3 and 47-79-4, which recommended that the service life of the tail rotor blades be reduced immediately from 600 hours to 300 hours, and that all blades with more than 300 hours be scrapped. The Bulletins further recommended that the current model blades be replaced with the new model blades by July 1980. The new model blades have been shown to have a higher margin for fatigue and have a higher recommended service life of 2,400 hours.

FAA's Southwest Region has issued a notice of proposed rulemaking for adoption of an Airworthiness Directive on this matter, which essentially is the same as the Bell Service Bulletins except that the proposal excludes those Bell 47

helicopters equipped with Franklin (Aircooled Motors) engines. In the text of the proposed rule, FAA recognizes the need for the improved tail rotor blades to be installed on these models and recommends that this be accomplished later. The Safety Board does not agree that the Bell 47 helicopters equipped with these engines should be excluded from the provisions of the proposed Airworthiness Directive. Further, the Board believes that removal of all blades with part No. 47–642–102 should be expedited. Accordingly, the Board recommends that FAA:

Issue an Airworthiness Directive to require the installation of the improved tail rotor blades, part No. 47–642–117 on all Bell 47 model helicopters for which the installation has been approved as soon as possible after receipt of the directive. (A–80–30)

Expedite the approval of the improved tail rotor blades for installation on all Bell 47 model helicopters equipped with Franklin engines and expedite action to require the installation of the improved blades on those aircraft. (A–80–31)

Both of these recommendations are classified "Class I, Urgent Action."

Highway

H–80–27.—About 3 a.m. last September 22 a Chevrolet sedan, occupied only by its driver, was westbound on U.S. Route 422 near Indiana, Pa. While negotiating a right curve at a high rate of speed, it collided head-on in the eastbound lane with an eastbound Ford Bronco occupied by six persons. Shortly after the crash the Ford caught fire. All persons in both vehicles were killed.

A toxicological examination revealed the presence of alcohol in the blood of both drivers. The blood alcohol level (BAL) of the Chevrolet driver was 0.21 percent, and the BAL of the Ford Driver was 0.24 percent. The toxicologist noted that these concentrations indicate "markedly impaired judgment, skill, and reaction time at the time of death." The State of Pennsylvania provides that a BAL of 0.10 percent or more constitutes a presumption that a person is under the influence of intoxicating liquor.

In its letter of April 21 to the Governor of Pennsylvania, the Safety Board notes that Pennsylvania had a steady increase in traffic fatalities from 1976 through 1979. Data from the Fatal Accident Reporting System of the National Highway Traffic Safety Administration indicate that while the number of all drivers killed annually in Pennsylvania rose about 8 percent from 1976 through 1978, the number killed who had been drinking rose 66 percent over the same period. The 1978 "driving while intoxicated (DWI)" fatality figure is 4 percent higher than the national average of 36 percent. During this same time State Police DWI Arrests showed an annual decrease. In 1976 there were 2,674 arrests; in 1977, 2,306 arrests; and in 1978 there were 2,204 arrests.

The Board further notes that alcohol-related traffic convictions were not used as a measure of enforcement. There are many variable that affect this statistic. For example, in the case of drivers arrested for DWI but who qualify for and successfully complete a rehabilitation program, the charges are dismissed by the court and expunged from the record. Also, plea-bargaining results in convictions of a lesser charge in many cases. Arrests are the basis for the entire system. (See Summary of National Alcohol Safety Action projects, U.S. Department of Transportation, National Highway Traffic Safety Administration, p. 14.) They identify violators and bring them to the attention of the adjudication and rehabilitiation programs.

The Pennsylvania Highway Safety Plan for fiscal year 1980 has several planned alcohol safety projects which include: (1) training sessions for the judiciary and for law enforcement agencies; (2) expansion and standardization of a data reporting system relative to driving while under the influence (DWI); (3) acquisition and use of improved alcohol breath-testing equipment with associated operator certification and maintenance training for State and municipal police; (4) expansion of alcohol safety programs to seven counties where no programs exist; (5) development of interstate agreements relative to handling out-of-State DWI offenders; and (6) development of an evaluation project that will measure the effectiveness of the State's Alcohol Safety Project.

The Safety Board concludes that an increase in enforcement activity in the State directed toward persons who drive while under the influence of alcohol should be included in proposed programs to reduce alcohol-related traffic accidents, injuries, and deaths. Accordingly, the Safety Board urges that the State of Pennsylvania:

Provide increased emphasis on the Statewide enforcement program directed toward reducing the number of persons driving on public roads while under the influence of alcohol. (H–80–27)

The above recommendation is designated "Class I, Urgent Action." The Board's formal investigation report will be made available to the public in the very near future.

H–80–28.—The Safety Board has conducted a safety effectiveness evaluation of the rulemaking process of the National Highway Traffic Safety Administration. That evaluation has reviewed the rulemaking processes used for Federal Motor Vehicle Safety Standard (FMVSS) 121: Air Brake Systems; FMVSS 208: Occupant Crash Protection; and the current rulemaking of NHTSA. These factural reviews have been published in three case histories which have been forwarded to the Secretary of Transportation previously. The analysis and conclusions of the evaluation are contained in a separate report, Vol. 4, copies of which are now in preparation for release to the public.

The Safety Board on April 22 advised the Secretary of Transportation that the conclusions of the evaluation indicate that NHTSA's rulemaking process, while overall quite good and improving, can be improved further. Specific recommendations toward that end have been forwarded to the Administrator of NHTSA. The Board states that one point of concern relates to the "Department of Transportation Regulatory Policies and Procedures." That document does not contain specific policy guidance on the consideration of alternatives in developing regulations. The Board has not evaluated the rulemaking processes of other DOT agencies, but believes that careful and complete consideration of alternative approaches is critical to rulemaking in all modes of transportation.

As a result of the evaluation the Board recommends that the Secretary of Transportation:

Review the "Department of Transportation Regulatory Policies and Procedures" in light of the findings of this report concerning the consideration of regulatory alternatives, to determine whether modifications are needed and applicable on a DOT-wide basis, particularly in respect to: (a) Whether the "Regulatory Polices" should specify that more than one alternative should be considered and evaluated; (b) whether the "Regulatory Policies" should specify that all significant and practicable alternatives be fully supported by sufficient data to allow a comprehensive analysis and comparison during the Regulatory Analysis; and (c) whether the "Regulatory Policies" should require that all significant and practicable alternatives be fully discussed in public notices with specific reference to the supporting data and documents. (H–80–28)

H–80–29 through –35.—Also on April 22 a separate recommendation letter was forwarded to the Administrator of the National Highway Traffic Safety Administation, together with a copy of the Vol. 4 evaluation report. This letter contained the following recommendations:

Revise NHTSA Order 800–1 to require that the precise nature and magnitude of the

safety problem to be affected by a proposed Federal Motor Vehicle Safety Standard be defined no later than the Notice of Proposed Rulemaking stage, and that data analysis, research reports, demonstrations, and other information in support of the problem identification be included or specifically referred to in the Notice; and that the data be of the level of detail "necessary to an evaluation of the standard by competent technical personnel," as called for in the legislative hisotry of the Safety Act of 1966. (H–80–29)

Revise NHTSA Order 800–1 to require that, in the development of proposed Federal Motor Vehicle Safety Standards, detailed consideration be given to and analysis be made of all significant and practicable alternative approaches, and that they be described in the Rulemaking Support Paper, with specific references to research reports or demonstrations which detail the preliminary evaluation of those alternatives. (H–80–30)

Revise NHTSA Order 800–1 to require that Rulemaking Support Papers contain detailed plans for the evaluation of safety standards after they are issued; the revised Order 800–1 should give specific guidelines for such postimplementation evaluation plans. (H–80–31)

Revise NHTSA Order 800–1 to specifically revoke the procedures formerly followed for Project Plan Descriptions and to require that the development of the Five-Year Plan for Motor Vehicle Safety and Fuel Economy Rulemaking be a continuing process. (H–80–32)

Revise NHTSA Order 800–1 to require that the issuance of, and comment periods for, Notices of Proposed Rulemaking be coordinated with other pending Notices of Proposed Rulemaking on related safety standards. (H–80–33)

Establish written procedures which will formalize the safety standard research and development decisionmaking process to require: (a) At least annual review of the Research and Development program, including summaries and analyses of work accomplished on specific issues; (b) documentation of specific decisions on the direction of future research, including decisions not to proceed in a given direction, or to explore a given issue; and (c) that these documents be made available to the public. (H–80–34)

Develop and implement a system for the collection, storage, and rapid retrieval of research reports and related material derived from or related to the safety standard research and development program for use by the NHTSA and other interested parties. (H–80–35)

Each of the above recommendations resulting from the safety effectiveness evaluation, Nos. H–80–28 through –34, is designated "Class II, Priority Action."

Railroad

R–80–17 through –19.—On October 12, 1979, northbound Amtrak passenger train No. 392 was traveling at 58.5 mph on track No. 4 at Harvey, Ill. Illinois Central Gulf freight train No. 51 was waiting on track No. 3 to crossover to track No. 4 after train No. 392 went north. The switchtender on duty at Harvey had aligned the crossover switch on track No. 4 seconds before train No. 392 arrived. Train No. 392 entered the crossover and struck train No. 51. The engineer and head brakeman on board train No. 51 were killed, and all 6 crewmembers and 38 passengers on board train No. 392 were injured.

Safety Board investigation indicated that the train director, who was 4.5 miles away, relayed instructions to the switchtender through the yardmaster. This practice developed after the portable radio used to transmit instructions was changed to a smaller, lightweight type with a transmission range of approximately 2 miles and because the switchtender worked in the yard and was not always near his telephone. It was a violation of Illinois Central Gulf Railroad Company (ICG) instructions to involve a third party to establish a block for a movement against the flow of traffic. Local ICG knew about the practice but made no provision for communication between the train director and the switchtender, other than the telephone.

The engineer on train No. 51 shouted a warning on channel 1 of the radio moments before train No. 392 arrived. It is probable that the switchtender did not switch to channel 1 after using it earlier on channel 2; thus, he did not hear the warning. However, ICG rules do not specify a particular channel that the switchtender should monitor. Even though the switchtender made many switching errors on the only other day he worked this assignment and also failed to maintain the log of train movements, it went undetected by the supervision responsible for the activities of the switchtender. The trainmasters were not monitoring the activities of the switchtenders or their compliance with rules.

Last December 18 the Safety Board recommended that the ICG provide a system to prevent the inadvertent misalignment of switches in advance of a train at the Harvey yard, restrict speeds through the area of the Harvey crossovers until this protection is provided, and provide sufficient training in the specific rules that apply to switchtenders. (Recommendations R–79–75 through –77; see 44 FR 76605, December 27, 1979.)

As a further result of its investigation, the Safety Board on April 21 recommended that the ICG:

Install a system that will ensure that the switchtender at Harvey and the train director can have direct communication when necessary for the movement of trains through the Harvey area. (R–80–17)

When radios with multiple channels are used in train operations by employees who must use several channels, issue instructions that identify the channel the employee must monitor for receiving instructions. (R–80–18)

Instruct supervisors to monitor the activities of the employees performing the switchtender duties at Harvey for fitness and ability to perform those duties of the assignment. (RT–80–19)

R–80–20.—In a separate recommendation letter to the National Railroad Passenger Corporation, also issued April 21, the Safety Board stated that the conductor of Amtrak train No. 392 testified during the investigation that he had no training on the emergency features of the new superliner coach. Consequently, he had difficulty initially in operating the upper level door which interconnected two of the coaches. The door was opened successfully by other crewmembers, and an inspection indicated the door functioned as intended.

The Safety Board also determined that Amtrak does not require that these doors be locked, but the boarding doors had been locked with a key from the inside by crewmembers. There is no means provided for rescue forces to open these locked doors from the outside. A problem would have existed with these locked doors if it had been necessary to quickly evacuate passengers or if rescuers had to remove severely injured victims. Since the crewmembers were not incapacitated, they were able to unlock the doors for the passengers to exit the last four cars. The conductor of the train had not received any familiarization instructions on these new cars.

Accordingly, the Safety Board recommended that the National Railroad Passenger Corporation:

Ensure that all crewmembers on Amtrak passenger trains are trained to identify and operate all pertinent features of the equipment. (R–80–20)

Each of the above recommendations, Nos. R–80–17 through –20, is designated "Class II, Priority Action."

Responses to Safety Recommendations

Aviation

A–80–8.—The Federal Aviation Administration on April 18 responded to recommendations issued last January 21 following investigation of the high-speed spiral dive which a Trans World Airlines B–727 took while cruising at 39,000 feet on April 4, 1979, near Saginaw, Mich. The aircraft did not recover from the dive until reaching an altitude between 5,000 to 6,000 feet m.s.l. despite flightcrew actions to counteract

the maneuver. The aircraft was then landed under emergency conditions at an alternate airport. The aircraft was damaged extensively, and the No. 7 leading edge slat on the right wing, the No. 10 spoiler panel, and several other components were missing. (See 45 FR 7018, January 31, 1980.)

FAA does not concur in recommendation A–80–8, which called on FAA to disseminate to all Boeing 727 operators and flightcrews information of the type included in Boeing Operations Manual Bulletin 75–7 and TWA Flight Operations Safety Bulletin 79–3 which address control problems associated with high-speed asymmetrical leading edge slat configuration on B–727 aircraft. Concerning the bulletins referenced in the recommendation and the Board's suggestion that these documents provide valuable information to B–727 crews who may be faced with circumstances similar to those encountered on TWA flight 841 of April 4, 1979, FAA does not find this logic acceptable for the following reasons:

(a) The subject bulletins address failures discovered during scheduled maintenance, not if flight.

(b) Failure of internal lockrings discussed therein posed *potential* inadvertent slat extension only if: (1) hydraulic system "A" had failed; (2) air speed was in excess of $M_{.80}$; and (3) flight spoilers were extended.

(c) Bulletin recommendations were intended to alert pilots to *avoid* possible abnormal lateral inputs if the above symptoms become evident; not what steps should be taken to recover once the resultant maneuver was under way.

In connection with (b), above, FAA states, "It is extremely improbable that the above would happen all, and certainly not without considerable advance indications of slat malfunction through slow actuation, incomplete stowage, or other symptoms readily identifiable on the flight deck during normal system operations. (To the best of our knowledge, none of the above symptoms of crew actions were revealed in the NTSB investigation or any other investigative findings.)"

FAA also states that since the Board is still developing information for its use in deliberations to develop a probable cause, it appears possible that all facts which preceded the subject incident may not be ascertained, and without such facts, no meaningful conclusions can be reached concerning design deficiencies, training needs, or operational limitations. FAA concurs with Boeing that the TWA flight 841 experience should be considered an isolated incident which may never be duplicated. FAA does not believe that this approach to the TWA flight 841 problem is appropriate at this time, and it is at least premature, pending the Board's final deliberations. In the meantime, FAA will continue to support the efforts of the Performance Group in the evaluation of existing evidence and data.

A–80–9 and 10.—FAA's letter of April 16 is in response to recommendations issued January 23 following investigation of an in-flight separation of the tailboom of a Hughes 269C helicopter. The helicopter crashed 2 miles west of West Milton, Ohio, last December 15. (See 45 FR 7018, January 31, 1980.)

The recommendations asked FAA to require an immediate inspection of all tailboom center section fittings, P/N 269A2324–7, installed in Hughes model 269 helicopters for evidence of cracks (A–80–9); and to establish a schedule for recurring inspections of that fitting based on an appropriate number of operating hours (A–80–10). FAA concurs in these recommendations, and reports that on February 25, 1980, FAA issued an airworthiness directive requiring initial and repetitive inspections of the tailboom center section fittings P/N 269 A2324–7, installed on Hughes Model 269 helicopters. The airworthiness directive became effective March 13, 1980.

Highway

H–80–12 and –13.—The Wyoming State Highway Department on April 15 responded to recommendations issued February 11 to the Governor of Wyoming as a result of investigation of the multiple-vehicle collision which occurred last August 22 some 30 miles northwest of Laramie, Wyo. The accident occurred in a construction zone on Interstate 80. (See 45 FR 11630, February 21, 1980.)

The Highway Department states that as recommended it will initiate a study to determine where the regarding of shoulders might be necessary to reduce the number of overturning accidents between Milepost 263 and Milepost 312. However, it is the Department's opinion that the majority of overturn accidents are caused by an over-correction maneuver on the part of the driver, rather than the steepness of roadway slope. Also, the Highway Department will increase its enforcement activities within and adjacent to construction zones in an effort to attain greater compliance with established speed limits.

Marine

M–78–31 and –32.—The American Bureau of Shipping on April 18 responded to the Safety Board's letter of April 9 commenting on the Bureau's previous response of January 29 (45 FR 10097, February 14, 1980.) The recommendations were developed as a result of investigation of the sinking of the SS *Edmund Fitzgerald* in Lake Superior on November 11, 1975.

The Safety Board expressed appreciation for the Bureau's efforts in developing rules for longitudinal strength based on the general wave spectra and environmental states discussed in the Bureau's January 29 letter. The Board requested a copy of specific wave height and wind factors used in developing the longitudinal strength standards. Based on the Bureau's determination that all Great Lakes bulk carrier hatches meet the criteria for hatch strength contained in 46 CFR 45.145, the Board's April 9 letter indicates that recommendation M–78–32 has been classified as "Closed—Acceptable Action."

Pipeline

P–79–30.—Letter of March 27 from the Research and Special Programs Administration (RSPA), U.S. Department of Transportation, is in response to a recommendation issued last October 4 in conjunction with the Safety Board's "Safety Report on the Progress of Improvements in Pipeline Transportation of Highly Volatile Liquids." The recommendation asked the Secretary of Transportation to establish minimum performance standards for the prompt detection and rapid isolation of failed sections of highly volatile liquid pipelines. (See 44 FR 60183, October 18, 1979.)

RSPA's response refers to Contract Study DOT–OS–3008, "Rapid Shutdown of Failed Pipeline Systems and Limiting of Pressure to Prevent Pipeline Failure Due to Overpressure," completed in 1974 and administered by the Materials Transportation Bureau (MTB). The study concluded that rapid shutdown systems are not cost-beneficial. It was found that the costs associated with installing a leak detection and rapid shutdown system on highly volatile liquids (HVL) pipelines in populated areas was 18 times greater than the benefits. MTB believes such systems to be desirable but cannot be considered cost effective. Several alternate initiatives has been taken to address the problem:

• Final rules were published on July 16, 1979, and December 6, 1979, with an effective date of July 15, 1980, providing written procedures for handling pipeline operations, maintenance, emergencies, training, communications, and public education. Attended monitoring of hazardous locations is required and carriers are required to monitor start-up and shut-in to insure that the

maximum operating pressure (MOP) is not exceeded.

• Proposed that existing HVL pipelines that have not been tested, be hydrostatically tested to 125 percent MOP. (43 FR 52504, November 13, 1978)

• Proposed rulemaking to require valves at frequent intervals or, alternatively, at pump stations and terminals. (44 FR 53187, September 13, 1979) Public hearings were held last December 12. MTB plans to publish a final rule on this matter in April of this year. That rule will require means to rapidly isolate failed pipelines.

Railroad

R–79–71 and 72.—National Railroad Passenger Corporation last October 23 responded to the first three recommendations issued following investigation of the head-on collision of a passenger train and a track machine which occurred April 20, 1979, at Edison, N.J. (See 44 FR 68542, November 29, 1979.) On April 15 Amtrak responded to the remaining two recommendations, R–79–71 and 72.

In response to R–79–71, which recommended that Amtrak require that all trains operating on a main track be equipped with an operable radio, Amtrak states that on March 18, 1980, the last of its order of radios from the vendor was received, and all Amtrak locomotives now have radios installed. In an effort to maintain these radios properly Amtrak now has a contract with an outside company that does the repair work. Amtrak employees will remove the defective radio and replace it with one in working order. Amtrak notes that ConRail has been approached to equip their locomotives using Amtrak tracks with radios also, but their response was negative.

With respect to recommendation R–79–72, which asked Amtrak to require that the seats of all Amfleet equipment are maintained in proper condition, Amtrak states that as a result of the collision, its Mechanical Department has designed and developed an anti-rotating device that will insure that the seats on Amfleet equipment are locked securely in place. A prototype has been made and tested and is now in production. The first shipment is expected shortly, and Amtrak will begin installation.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

[FR Doc. 80–13424 Filed 4–30–80; 8:45 am]

BILLING CODE 4910–58–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289 (Restart)]

Metropolitan Edison Co., (Three Mile Island Nuclear Station, Unit No. 1); Order for Prehearing Conference

All parties of their respective counsel are directed to appear at a prehearing conference beginning at 9:00 a.m. on May 13, 1980 in Courtroom No. 1 of the U.S. Federal Building, 3rd and Walnut Streets, Harrisburg, Pennsylvania 17108.

The Atomic Safety and Licensing Board will consider all pending prehearing matters, including remaining discovery matters, consolidation of parties (or the designation of lead intervenors or counsel on particular issues), a procedure for the simplification of issues, the timing and agenda for a prehearing conference required pursuant to 10 CFR 2.752, and the form, content, and timing of trial briefs, written direct testimony, and plans for cross-examination. Any other appropriate matter will be considerd.

The public is invited to attend the prehearing conference. However, there will be no opportunity for members of the public to participate.

Bethesda, Md., April 25, 1980.

Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman.

[FR Doc. 80–13351 Filed 4–30–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–580, STN 50–581]

Ohio Edison Co., et al.; Withdrawal of Application for Construction Permits and Facility Licenses

On March 1, 1977, the Nuclear Regulatory Commission docketed an application submitted by Ohio Edison Company on behalf of itself and The Toledo Edison Company, The Cleveland Electric Illuminating Company, Duquesne Light Company and Pennsylvania Power Company. This application, filed pursuant to Section 103 of the Atomic Energy Act, requested authorization to construct and operate two pressurized water reactors, designated as Erie Nuclear Plants, Units 1 and 2, on a site located in Eric County, Ohio.

Notice of receipt of this application was published in the Federal Register on March 10, 1977 (42 FR 13363). The related notice of hearing was also published on May 16, 1977 (42 FR 24775).

On January 23, 1980, Ohio Edison Company requested the Atomic Safety and Licensing Board to terminate the hearing proceedings. By order dated January 28, 1980, the Atomic Safety and Licensing Board dismissed the proceedings.

Accordingly, the Commission considers the application submitted by Ohio Edison Company to be withdrawn. Correspondence concerning this application will continue to be maintained at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. For historical purposes only, selected material will be retained at the Berlin Township Public Library, 4 East Main Street, Berlin Heights, Ohio. This material may be viewed by interested members of the public. No new material will be forwarded to the Berlin Township Public Library.

Dated at Bethesda, Md., this 25th day of April 1980.

For the Nuclear Regulatory Commission.

Robert L. Baer,

Chief, Light Water Reactors Branch No. 2, Division of Project Management.

[FR Doc. 80–13352 Filed 4–30–80; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting With the German Reactor Safety Committee (RSK) and the French Groupe Permanent-Reactor (GPR)

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), representatives of the Advisory Committee on Reactor Safeguards (ACRS) will meet with representatives of the Reactor Safety Committee (RSK), an advisory group to the regulatory body of the Federal Republic of Germany, and the Groupe Permanent-Reactor (GPR), an advisory body to the regulatory agency for safety of nuclear installations of the Ministry of Industry, Federal Republic of France. These meetings will be held on May 19–20, 1980 and May 28–29, 1980, respectively, in Obrigheim, Germany and Fontenay-Aux-Roses, France. Visits to several safety research and waste processing facilities will also be included.

Representatives of the ACRS, the Reactor Safety Committee (RSK), the Groupe Permanent-Reactor (GPR), and the NRC Staff will meet to discuss reactor safety policy and practice.

Specific discussions will include plant design requirements, engineered safety feature design and performance, risk assessment and related analytical models, analysis of operating experience and waste management.

Members of the ACRS, the Reactor Safety Committee, and the Groupe Permanent-Reactor will discuss information considered confidential by the German and French governments who will provide it only on the basis that it will be protected from public disclosure.

Procedures for the conduct of and participation in ACRS meetings were outlined in the **Federal Register** on October 1, 1979.

I have determined in accordance with Subsection 10(d) of Pub. L. 92–463 that it is necessary to close these meetings to insure the security of information identified and supplied by a foreign government as confidential (5 U.S.C. 552b(c)(1)). Separation of non-exempt material from exempt material while this meeting is in process is considered impractical.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, and other related matters can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: April 25, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80–13392 Filed 4–30–80; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

April 28, 1980.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to file out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447–6201

New Forms

Food and Nutrition Service
Estimated/Actual Food Stamp Program Participation and Coupon Issuance
FNS–256 and 388
Quarterly
Food stamp program areas, 12,788 responses; 6,599 hours
Charles A. Ellett, 395–7340

Revisions

Farmer's Home Administration
Certification of Non-Relocation and Market and Capacity Information Report
FMHA 449–22
On occasion
Applicants for FMHA assistance for rural development, 1,800 responses; 3,600 hours
Charles A. Ellett, 395–7340

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Joseph J. Strnad—245–7488

New Forms

Food and Drug Administration
Product License Application for the Manufacturers of Whole Blood and Blood Components
FDA 3098, A, B, C, D, and E
On occasion
Manufacturers of whole blood, 84 responses; 63 hours
Richard Eisinger, 395–6880

Health Care Financing Administration (Medicaid)
Penalty Requirements Applicable to the EPSDT Program
HCFA–R–2
Other (see SF–83)
State and local agencies
Richard Eisinger, 395–6880

Office of the Secretary
English Language Proficiency Study
OS–9–80

Single time
Persons who report speaking a language other than English, 560 responses; 796 hours
Office of Federal Statistical Policy and Standard, 673–7974
Office of the Secretary
Title of Form or Document Submitted Parent Impact Satisfaction Indicator: (A) Post Card, (B) Mail Survey, and (C) Personal Interview
OS–7–80
Single time
Parent of children currently enrolled in Head Start programs, 300 reponses; 75 hours
Barbara F. Young, 395–6880
Office of the Secretary
Survey of State and Local AFDC Administration
OS–8–80
Single time
All State and local welfare agencies, 4,051 responses; 20,306 hours
Barbara F. Young, 395–6880

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755–5184

New Forms

Policy Development and Research
Section 8 Evaluation in Rural Areas
Single time
Participants in section 8 program, 6,827 responses; 5,931 hours
Richard Sheppard, 395–6880

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426–1887

New Forms

Federal Aviation Administration
Pilot Flight Route Survey
8070–3
Single time
Aircraft Pilots, 2,000 responses; 1,000 hours
Susan B. Geiger, 395–7340
National Highway Traffic Safety Administration
National Accident Sampling System—Nonreported Accident Survey
Single time
Individuals in households nationwide, 9,882 responses; 3,014 hours
Office of Federal Statistical Policy and Standard, 673–7974

ACTION

Agency Clearance Officer—James B. Lancaster—254–3172

New Forms

Targeted Recruitment Survey
Single time
Description not furnished by agency, 6,000 responses; 1,000 hours
Arnold Strasser, 395–6880

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—Henry Beal—755–2265

New Forms [1]

Resource Conservation and Recovery Act (RCRA) Section 3004 Reporting and Recordkeeping Requirements
Annually
Treatment storage and disposal facilities, 2,098,300 responses; 5,287,800 hours
Edward H. Clarke, 395–7340
Form 3 of Consolidated Permit Application
Single Time
Treaters, storers and disposers of hazardous waste, 26,400 responses; 398,895 hours
Edward H. Clarke, 395–7340
Application Information for Section 404 (CWA) Permit on occasion
Dischargers of dredged and fill material, 4,200 responses; 73,290 hours
Edward H. Clarke, 395–7340

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld—632–7737

Revisions

Qualifications Inquiry and Transmittal Letter
OPM 1232 and 1232A
On occasion
Former employers of applicants, 2,400 responses; 400 hours
Edward C. Springer, 395–4814

UNITED STATES INTERNATIONAL TRADE COMMISSION

Agency Clearance Officer—Charles Ervin—523–0267

New Forms

Producers' Questionnaire for Invoice No. 701–TA–62, [2] Cotton Towels
Single time
Producers of cotton towels, 25 responses; 200 hours

[1] Proposed RCRA information requirements were previously noticed on March 27, 1980 (45 FR 20266). RCRA 3002, 3003, 3010, and Part A Consolidated Permit Forms were approved April 29, 1980. Section 3004 is still under review. Comments on Section 3004 should be forwarded to OMB by May 15, 1980.

[2] This report will be acted on before normal 10-day period. The clearance of this questionnaire on an expedited basis is necessary in order for the International Trade Commission to complete its investigation concerning cotton towels within the statutory time limits.

Phillip T. Balazs, 395–4814

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–13414 Filed 4–30–80; 8:45 am]

BILLING CODE 3110–01–M

Office of Federal Procurement Policy

Proposed Procurement Policy Pamphlet; Availability and Request for Comments

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of availability and request for comments on a proposed Office of Federal Procurement Policy Pamphlet.

SUMMARY: The Office of Federal Procurement Policy (OFPP) is making available for public review and comment a proposed OFPP pamphlet entitled, "A Guide for the Acquisition and Distribution of Commercial Products." The pamphlet has been prepared to assist Federal agencies and departments in implementing OFPP's Acquisition and Distribution of Commercial Products (ADCoP) policy.

The ADCoP policy requires agencies and departments to purchase commercial products and use commercial distribution systems whenever such products or distribution systems adequately satisfy the Government's needs. The policy's basic purpose is to take advantage of the efficiencies of the commercial marketplace and prevent the development of more costly, duplicative and overlapping Government systems.

DATE: Comments must be submitted by May 25, 1980.

ADDRESS: To obtain copies of the draft pamphlet, contact Mr. Daniel S. Wilson, Assistant Administrator for Commercial Products, Room 9025 NEOB, Washington, D.C. 20503. Comments on the pamphlet should be submitted to Mr. Wilson.

FOR FURTHER INFORMATION CONTACT: Daniel S. Wilson, Telephone 202–395–3254.

Karen Hastie Williams,

Administrator for Federal Procurement Policy.

[FR Doc. 80–13327 Filed 4–30–80; 8:45 am]

BILLING CODE 3110–01–M

PRESIDENTIAL COMMISSION ON WORLD HUNGER

Cancellation of Meeting

The meeting of the Presidential Commission on World Hunger scheduled for Monday, May 5, 1980, has been cancelled.

Donald B. Harper,

Administrative Officer, Presidential Commission on World Hunger.

[FR Doc. 80-13413 Filed 4-30-80; 8:45 am]

BILLING CODE 6820-97-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11139/April 23, 1980; (812-4640)]

Investors Syndicate of America, Inc.; Filing of Application for an Order Pursuant to Section 11 of the Act To Permit an Offer of Exchange

In the matter of Investors Syndicate of America, Inc., IDS Tower, Minneapolis, Minnesota 55402.

Notice is hereby given that Investors Syndicate of America, Inc. ("ISA" or "Applicant"), registered under the Investment Company Act of 1940 ("Act") as a face-amount certificate company, filed an application on March 21, 1980, and an amendment thereto on April 7, 1980, for an order of the Commission, pursuant to Section 11(a) of the Act to permit an offer of exchange of single-payment face-amount certificates SP-79 ("SP-79") purchased after February 12, 1980, for single-payment face-amount certificates SP-80 ("SP-80"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

SP-79 and SP-80 are single-payment face-amount certificates. Applicant states that a single payment face-amount certificate is purchased through one installment and is a contractual obligation of ISA which entitles the holder thereof to receive on the maturity date of such certificate a stated amount plus additional credits, if any declared by the Board of Directors of ISA. The SP-79 matures twenty years from its effective date, which was April 12, 1979. Applicant further states that pursuant to Section 28 of the Act, SP-79 has an assured accural rate of 3½% but that prior to the effective date of the SP-79, additional credits were predeclared for the first five years and that these additional credits plus the assured rate will result in a 7.60% yield for the first five years. In addition Applicant states that after the fifth year additional credits may be declared at the discretion of the Board of Directors of ISA.

Applicant states that the SP-79 and the SP-80 are substantially identical in all respects. However, because of the escalation in interest rates Applicant states it can now invest moneys in higher yielding securities. Thus, Applicant states that the Board of Directors of ISA predeclared at their February 13, 1980, meeting additional credits for the first five years of the SP-80 which will result in a yield for the first five years of that certificate of 9.00% as compared to 7.6% for the SP-79. Applicant states that the ISA Board of Directors has determined that it would be equitable to permit investors who purchased an SP-79 after February 12, 1980, to exchange their SP-79 for an SP-80.

Applicant states that because there are no sales or surrender charges, an SP-79 certificateholder will benefit if the exchange is made as proposed. Furthermore, Applicant states that since no sales commissions are charged, no sales person of ISA will benefit from the transaction. Applicant also states that the cash surrender value for both the SP-79 and the SP-80 will be the same at the end of each of the first three anniversary dates. However, with the additional predeclared credits the yield for the fourth year will be 8.00% for the SP-80 as compared to 7.3% for the SP-79 and for the fifth year 9.00% for the SP-80 as compared to 7.60% for the SP-79. Applicant further states that the anniversary date for the SP-80 and the SP-79 will be the same.

The Applicant represents that it will discontinue the issuance of certificates subject to the predeclaration of additional credits and will make no further predeclaration as to outstanding certificates if at any time the capital and unappropriated retained earnings of ISA should be less than 5% of net certificate reserves less certificate loans. Applicant states that as of December 31, 1979, the capital and unappropriated retained earnings amounted to 15.5% of net certificate reserves. Applicant further represents that additional credits declared for the first five years for the SP-80 will be at least equal to the rates for the SP-79, but that after the initial five years any additional credits declared for the SP-80 may be more or less than the rates declared for the SP-79. Additionally, Applicant represents that the exchange offer will have no affect on the declaration of additional credits for existing SP-79 certificateholders.

The Applicant contends that by permitting the exchange offer new investors will have an opportunity to obtain as attractive an assured yield as possible in the purchase of a face-amount certificate for a five year period. The Applicant asserts that it is fair and equitable to limit the exchange offer to those persons purchasing an SP-79 after February 12, 1980, since it was not until February 13, 1980, that the Board of Directors of ISA made any decision regarding the rates for the SP-80. Furthermore, Applicant argues that the other certificates being offered by ISA are either sold on the installment basis or are sold for retirement accounts, and thus are not appropriate to be included in the exchange offer. In conclusion, Applicant states that in its opinion the terms of proposed exchange offer are fair, appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 11(c) of the Act provides, among other things, that exchange offers of securities of registered face-amount certificate companies for securities of any other investment company are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end investment company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Notice is further given that any interested person may, not later than May 19, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by

mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–13420 Filed 4–30–80; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Itel Corp.; Order of Suspension of Trading

April 25, 1980.

In the matter of trading in the securities of Itel Corporation; Securities Exchange Act of 1934 Section 12(k).

It appearing to the Securities and Exchange Commission that Itel Corporation has failed to file with the Commission its Annual Report on Form 10–K for its fiscal year ended December 31, 1979 and that, as a result, there is a lack of current adequate and accurate public information about the operations and financial condition of Itel Corporation, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Itel Corporation.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9:45 a.m. on April 25, 1980 through midnight on May 4, 1980.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–13421 Filed 4–30–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21538/April 25, 1980; (70–6449)]

Northeast Utilities; Proposed Increase in Authorized Shares of Common Stock and Order Authorizing Solicitation of Proxies in Connection Therewith

In the matter of Northeast Utilities, 174 Brush Hill Avenue, West Springfield, Massachusetts.

Notice is hereby given that Northeast Utilities ("Northeast"), a registered holding company has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, and 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Northeast proposes to increase its authorized common stock from 75,000,000 to 100,000,000 shares. Of the presently authorized shares, 66,977,511 shares are issued and outstanding.

Although the Declaration of Trust of Northeast, which serves as the company's charter and by-laws, sets out Northeast's powers and the rules which govern the administration of its affairs, it does not set out the authorized number of Northeast's common shares which number is fixed by resolution of the company's shareholders. Northeast proposes to submit the proposal to increase the authorized shares to its shareholders for their approval at its Annual Meeting of Shareholders to be held on May 27, 1980. The proposal must be approved by the affirmative vote of the holders of a majority of the outstanding common shares, the company's sole class of capital stock. Proxies are being solicited from Northeast's common shareholders. Northeast has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than May 20, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that Northeast's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered That the declaration regarding the proposed solicitation of proxies be, and hereby is, permitted to become effective forthwith pursuant to Rule 62.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–13422 Filed 4–30–80; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–600]

PMI Mortgage Corp.; Application and Opportunity for Hearing

April 16, 1980.

In the matter of PMI Mortgage Corporation, as packager and master servicer, 555 California Street, San Francisco, California 94104; Securities Exchange Act of 1934, Section 12(h).

Notice is hereby given that PMI Mortgage Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended ("1934 Act") for an exemption from certain reporting requirements under Section 13 and the operation of Section 16 of the 1934 Act.

The Application states, in part:

1. The Applicant, which is indirectly a wholly-owned subsidiary of Sears, Roebuck & Co., has issued Certificates representing interest in a pool of mortgage loans. Certificateholders receive payments of principal and interest on a monthly basis as such

payments are received from the mortgagors.

2. As a result of that offering, the Applicant has become subject to the reporting requirements of Section 13 of the 1934 Act.

3. The Applicant proposes to file current reports on a monthly basis, as well as an annual report on Form 10–K, containing all information believed to be of interest to Certificateholders.

4. The Applicant seeks an exemption from the quarterly reporting requirements of Form 10–Q, and certain of the information requirements prescribed by Form 10–K.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the office of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than May 12, 1980 may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc.80–13423 Filed 4–30–80; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 09/09–5263]

Golden Gate Capital, Inc.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Golden Gate Capital, Inc. (GGC) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1980).

The officers, directors and stockholders of the GGC are as follows:

Benjamin F. Dillingham, Chairman of the Board, Director and 27.3%, 6099 S. Land Park Dr., Sacramento, CA 95822

John W. Woodroof, President, Director and 27.3%, 12442 Sheridan Circle, Saratoga, CA 95070

Andre F. Bosc, Vice President, Director and 36.3%, 1155 Jones St., San Francisco, CA 94109

Daniel C. Masters, Secretary, Treasurer, General Manager, Director and 9.1%, 1120 Douglas Ave. #2, Burlingame, CA 94010

GGC, a California corporation, with its principal place of business located at 853 Hinckley Road, Burlingame, California 94010, will begin operations with $545,600 of net combined paid-in capital and paid-in surplus derived from sale of 5,500 shares of common stock. They plan to conduct business principally in the State of California.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Act of 1958 (the Act), as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, on or before May 16, 1980 submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Burlingame, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 24, 1980.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 80–13399 Filed 4–30–80; 8:45 am]

BILLING CODE 8025–01–M

[Proposed License No. 01/01–0307]

Regional Financial Enterprises, Inc.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. 661 *et seq.*), has been filed by Regional Financial Enterprises, Inc. (Applicant), with the Small Business Administration, pursuant to 13 CFR 107.102 (1980).

The Officers, Directors and Stockholders are as follows:

	Common	Preferred	
		Class A	Class B
Robert M. Williams, Chairman of the Board, 1111 Summer Street, Stamford, CT 06905.	60 percent	None	None.
George E. Thomassy, III, President and Director, 1111 Summer Street, Stamford, CT 06905.	40 percent	None	None.
Lawrence G. Graev, Secretary, 280 Park Avenue, New York, NY 10017	None	None	None.
Lincoln First Banks, Inc., One Lincoln First Square, Rochester, NY 14643	None	14.3 percent	None.
Lincoln First Bank N.A.			
Manufacturers National Corporation, Manufacturers Bank Tower, Renaissance Center, Detroit, MI 48243.	None	14.3 percent	None.
Manufacturers National Bank			
Connecticut National Bank, 888 Main Street, Bridgeport, CT 06602	None	14.3 percent	None.
Bank of Virginia Company, 11011 West Broad St. Road, Richmond VA 23260	None	14.3 percent	None.
Bank of Virginia			
Texas American, Bancshares, Inc., 500 Throckmorton St., Fort Worth, TX 76101.	None	14.3 percent	None.
The Fort Worth National Bank, P.O. Box 2050, Fort Worth, TX 76101			
Central Penn National Corp., Central Penn National Bank Building, 5 Penn Center Plaza, Philadelphia, PA 19103.	None	14.3 percent	None.
Central Penn National Bank			
Colorado National Bankshares, Inc., Colorado National Building, P.O. Box 5168, Denver, CO 80217.	None	7.1 percent	None.
The Colorado National Bank of Denver, 17th and Champa, Denver, CO 80202			
St. Joseph Bank & Trust Company, on River Bend Plaza at Jefferson, P.O. Box 1917, South Bend, IN 46634.	None	7.1 percent	None.
Associates Corporation of North America, 250 Carpenter Freeway, Dallas, TX 75222.	None	None	100 percent.

The Applicant intends to enter into a Management Agreement with Investment Management, Inc. Mr. Robert M. Williams owns 60 percent of the outstanding of Investment Management, and Mr. George E. Thomassy III owns the remaining 40 percent. The Applicant does not intend to utilize an Investment Advisor, but an Advisory Board will be created as a consultative body which will have regular quarterly meetings with the employees of Investment Management to review the investment activities of the Applicant.

The Applicant will have its principal place of business at 1111 Summer Street, Stamford, Connecticut 06905. The Applicant at present has $8,100,000 committed for investment. It expects, however, that total funds committed for investment will aggregate in excess of $10,000,000 prior to issuance of its license.

The Applicant intends to conduct its operations principally in the State of Connecticut.

The Applicant intends to follow a diversified investment policy with emphasis on "venture capital" investment in small business concerns.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, on or before May 16, 1980, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Stamford, Connecticut.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 15, 1980.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 80-13401 Filed 4-30-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1821]

Texas; Declaration of Disaster Loan Area

The Following 4 counties and adjacent counties within the State of Texas constitute a disaster area as a result of natural disaster as indicated:

County	Natural disasters	Dates
Upton	Drought	1/1/79 to 2/15/80.
Irion	Drought	9/1/79 to 2/25/80.
Uvalde	Drought	7/1/79 to 3/1/80.
Uvalde	Late freeze	3/1/80.
Travis	Tornado, hailstorm and high wind.	4/7/80.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 22, 1980, and for economic injury until the close of business on January 22, 1981, at:

Small Business Administration, District Office, 1205 Texas Avenue, Room 712, Lubbock, Texas 79401, or

Small Business Administration, District Office, 727 East Durango, Room A513, Federal Building, San Antonio, Texas 78206

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 22, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-13400 Filed 4-30-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. AC 25.773-X]

Advisory Circular for Pilot Compartment View for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular and request for comments.

SUMMARY: The draft Advisory Circular is intended to provide guidance material for demonstrating compliance with the pilot compartment view requirements for transport category airplanes.

DATES: Comments must identify the docket number and be received on or before July 1, 1980.

ADDRESS: Send all comments on the draft Advisory Circular to: Federal Aviation Administration, Attention: Flight Test Branch (AWS-160), 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Gough, Flight Test Branch, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 426-8323.

Comments received on the draft Advisory Circular may be inspected at Room 330, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW, Washington, DC 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are solicited on all aspects of the draft Advisory Circular. A copy of the draft Advisory Circular may be obtained by contacting the person identified under "For Further Information Contact."

Issued in Washington, D.C., on April 24, 1980.

M. C. Beard,

Director of Airworthiness

[FR Doc. 80-13330 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; City of Alexandria, Va.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, Environmental Coordinator, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240, Telephone: (804) 771-2805.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation, will prepare an environmental impact statement (EIS) on a proposal for the replacement of the Monroe Avenue Bridge over the R. F. & P. Railroad's Potomac Yards and

necessary approaches along Route 1 in the city of Alexandria, Virginia. The proposed project extends from the Route 1 intersection with Bashford Lane to the intersection with Curtis Avenue a distance of approximately 0.6 miles.

Alternatives under consideration include (1) no build; (2) a bridge utilize by only high occupancy vehicles during certain periods of the day; (3) a conventional four-lane facility with no restrictions; and (4) a bridge which provides high occupancy vehicle lanes in addition to the four conventional traffic lanes.

Letters describing the proposed project and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this project. One public meeting has been held in Alexandria, Virginia, on June 21, 1979, and another is to be scheduled after the Preliminary Evaluation of Alternatives has been circulated for reveiw. In addition a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: April 21, 1980.

Robert B. Welton,

Environmental Coordinator Richmond, Virginia.

[FR Doc. 80-13241 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: State College, Centre County, Pa.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in State College, Centre County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John R. Krause, Division Environmental Engineer, Federal Highway Administration, 228 Walnut Street, Harrisburg, Pennsylvania 17108, Telephone: (717) 782-2276, or Thomas C. Ickes, District Engineer, Pennsylvania Department of Transportation District 2-0, 1924 Daisy Street, Clearfield, Pennsylvania 16830, Telephone (814) 765-5361

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Pennsylvania Department of Transportation will prepare an environmental impact statement (EIS) on the proposed completion of the State College Bypass in Centre County, Pennsylvania. The EIS will include the entire Bypass System of which eight miles and four interchanges have been constructed. The proposed improvement includes construction of the remaining two miles of the bypass adjacent to PA Route 26, an interchange with PA Route 26, an interchange at Waddle Road, and Park Avenue extended from the bypass to the Pennsylvania State University. The proposed project will improve the traffic flow in and around State College and the access to Pennsylvania State University. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; (3) completion of the bypass facility. Incorporated into and studied with the build alternate will be design variations of grade and alignment.

The FHWA and the Pennsylvania Department of Transportation will coordinate the proposed project with local government officials and with other government agencies in their areas of responsibilities. No formal scoping meeting is planned at this time. A series of public meetings will be held in State College between March and September 1980. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concening this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: April 21, 1980.

Donald E. Hammer.

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 80-13240 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Gregg and Rusk Counties, Tex.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Gregg and Rusk Counties, Texas.

FOR FURTHER INFORMATION CONTACT: George Nelson, P.E., District Engineer, Federal Highway Administration, 826 Federal Building, Austin, Texas 78701, Telephone: (512) 397-5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (DHT), intends to prepare an environmental impact statement (EIS) on a proposal to construct a new alignment of U.S. Highway 259, from approximately 1.5 miles northeast of State Highway 31 at U.S. Highway 259, northeast of Kilgore, south and west to U.S. Highway 259, south of Kilgore, a distance of approximately 7.2 miles. Because of difficulty in predicting availability of funds, the DHT has not yet decided whether to use State or Federal funds to finance construction of this project. The proposed facility is a four-lane roadway with 80-foot pavement width, 8-foot shoulders and a 16-foot paved median on a minimum 160-foot right-of-way.

The proposed section of U.S. 259 will provide four basic tansportation needs for the City of Kilgore. As an east loop around the City, it will serve local citizens desiring to travel between sections of Kilgore. By segregating the short, local trips from the long distance trips and through trips, the access to local housing, schools and businesses will be improved. Through vehicles, including heavy truck traffic, that now follow the existing U.S. 259 through commercially built-up areas will have an alternate route available with less traffic conflicts. As a result of the improved access to the major routes serving Kilgore, business and pleasure trips into and out of Kilgore will be enhanced.

Three alternates will be considered for this proposed project: (1) upgrading the existing facility, (2) a new route to bypass the existing congested areas, and (3) no-build.

There are currently no plans to hold a formal scoping meeting for this proposal. A Project Concept Conference and a Public Meeting were held during the early stages of project planning in the fall of 1978. Route and traffic studies have been conducted with additional studies made using information gathered at the public meeting. Coordination with local officials, both City and County, has been initiated. More detailed studies of

the proposed action, such as air and noise analyses, will be conducted in preparation of the Draft Environmental Impact Statement. An opportunity for a public hearing will be offered and adequate public notice will be given through the news media as to information available and opportunity to make such a request.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: April 22, 1980.

George H. Nelson,

District Engineer, Austin, Tex.

[FR Doc. 80-13402 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Mayaguez, PR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway in Mayaguez, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Juan O. Cruz, Assistant Division Administrator, Federal Highway Administration, U.S. Courthouse and Federal Building, Carlos Chardon Street, Hato Rey, Puerto Rico, Telephone: (809) 753-4600 or Nestor Quevedo Cordero, Chief, Environmental Studies Division, Puerto Rico Department of Transportation and Public Works, Box 8218, San Juan, Puerto Rico 00910, Telephone: (809) 726-7060.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Puerto Rico Department of Transportation and Public Works, will prepare an environmental impact statement (EIS) on a proposal for the conversion to expressway the segment of Route PR-2, Eugenio Maria de Hostos Avenue, from Algarrobo Avenue to Yaguez River in the city of Mayaguez, Puerto Rico.

The proposed action consists of the reconstruction and widening of Route PR-2 between Km. 150.0 and Km. 154.0 from its present four (4) lanes divided expressway configuration to a six (6) lane controlled access freeway with a reduced median of 1.91 metres, marginal streets and auxiliary lanes where necessary.

The highway project is located within the northern sector of the present Mayaguez Urban Area near the west coast of the island of Puerto Rico. The city of Mayaguez is one of the most important cities of Puerto Rico and the most progressive city in the western region, serving as the major commercial, industrial, cultural, educational and recreational center for the neighboring municipalities, which form the Mayaguez Region. The existing route serves as the major north-south highway facility connecting Mayaguez with San Juan (capital) along the north coast and Ponce (second largest city) along the south coast.

The proposed action will provide better accessibility and greater mobility within the Mayagez Region which will help in stimulating the economic development of the Region.

Three major interchanges are to be constructed at: (1) PR-104 (entrance to Mayaguez Hilton Resort), (2) Llorens Torres and Post Streets at the entrance to the University of Puerto Rico (Mayaguez Campus), and (3) at Algarrobo Avenue. The existing intersection at PR-102 will be modified to restrict crossing of traffic at that point. PR-104 will be extended from its present terminus at PR-2 westward to intersect with Gonzalez Clemente Avenue. Marginal streets will be included where necessary and feasible in order to provide proper access to abutting land uses.

The improvements to PR-2 highway have been included in the Recommended Transportation Plan for Mayaguez Metropolitan Area for 1995. Traffic volumes along the PR-2 corridor in Mayaguez have increased steadily. Sections of PR-2, Llorens Torres Street and Post Street, within the project limits are particularly congested by traffic, especially during peak traffic hours corresponding to morning and evening commuter rush and university related traffic throughout certain periods of the day. The existing roadways lack the capacity to absorb the large quantities of vehicular traffic generated and optimum operations are hinderd by the existing at-grade intersections. The daily average and peak hour traffic volumes will continue to increase as the Mayaguez Campus expands its facilities and as the city of Mayaguez continues to grow and develop, particularly towards the northern sections of the municipality.

Alternatives under consideration include (1) No build; (2) Mass transit; (3) A new route through a new alignment; and (4) up-grading of the existing Route PR-2.

The studies for this project began about six (6) years ago. Early in the preparation of the Environmental Studies, the scoping process was initiated by consulting state and local agencies requesting their comments. Several meetings have been held with the Vocational School officials and Mayaguez Campus officials and a designated University Technical Committee, for the discussion of the project possible impact on lands or activities within those educational institutions.

Additional meetings will be maintained during further environmental process development, in the measure that it be considered necessary.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, at the address provided above.

Issued on: April 21, 1980.

Juan O. Cruz,

Assistant Division Administrator, San Juan, P.R.

[FR Doc. 80-13331 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; San Juan, P.R.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Juan O. Cruz, Engineer Coordinator, Federal Highway Adminstration, U.S. Couthouse and Federal Building, Carlos Chardon Street, Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4600 or Nestor Quevedor Cordero, Chief, Environmental Studies Division, Puerto Rico Department of Transportation and Public Works, Box 8218, San Juan, Puerto Rico 00910, Telephone: (809) 726-7060.

SUPPLEMENTARY INFORMATION: The FHWA, in coordination with the Puerto Rico Department of Transportation and Public Works, will prepare an EIS for the construction of Cupey Alto Avenue, PR-176, a 6.3 kilometers long highway facilities within the San Juan Metropolitan Area.

The proposed project will run throughout a very built-up area, where

several urban developments and commercial centers are located. The existing transportation facilities are obsolete and their capacity is not enough to handle properly existing traffic volumes in accordance to the heavy commercial activites generated in the area.

In order to better describe the project, it has been divided in two (2) sections as follows:

Section 1: (Freeway) from Las Americas Freeway to the intersection of existing Routes PR–176 and PR–845.

Section 2: (Avenue) from the existing intersection of Routes PR–176 and PR–845 to future South Peripheral Expressway.

The first section is approximately 2.5 kilometers long and includes two split level interchanges at highway PR–1, (proposed), and at Las Americas Freeway, which is already constructed. This section will affect a small portion of the Botanical Garden of the University of Puerto Rico, where several recreational and research facilities exist and are proposed. The Botanical Garden classify as a 4(f) property consequently a Section 4(f) Evaluation will be included in the Draft EIS.

The second section is approximately 3.8 kilometers long with partial access controlled and includes split level interchanges with Lomas Verdes and Las Cumbres Avenues and the South Peripheral Expressway.

The major alternatives under consideration are, do nothing, upgrade existing facility, improvement of Public Transportation System and for the freeway section, several locations alternatives are proposed. For the avenue section some minor modifications to the new alignment are proposed to avoid affecting some private educational institutions and residences. The alignment of this second section is considered fixed since its right of way was reserved several years ago.

In 1976 letters requesting comments were sent to all concerned state and federal agencies. Also, several meetings have been held with the University of Puerto Rico, the Department of Natural Resources and the Environmental Quality Board. In April 13, 1978, an Informational Meeting was held, where this project and its alternatives were presented to the public. Because of the already achieved coordination, no formal scoping meeting is considered necessary at this moment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: April 16, 1980.

Juan O. Cruz,

Assistant Division Administrator, San Juan, Puerto Rico.

[FR Doc. 80–13169 Filed 4–30–80; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[Docket No. RSRM–78–3 et al.]

Petitions for Waiver of Rules Requiring Rear End Marking Devices

As required by 45 U.S.C. 431(c), and in accordance with 49 CFR 211.41 and 221.9, notice is hereby given that three railroads have submitted waiver petitions to the Federal Railroad Administration (FRA) requesting temporary of partial waivers of compliance with 49 CFR Part 221 (Rear End Marking Devices—Passenger, Commuter, and Freight Trains). That part requires that certain passenger, commuter, and freight trains be equipped with highly visible marking devices located on the trailing end of the rear car of the train.

Part 221 was published in the Federal Register on January 11, 1977 (42 FR 2321) and became effective on February 15, 1977. Compliance with the provisions of that part became mandatory on July 1, 1978 (42 FR 62002).

Each of the railroads seeking a waiver is identified below. A brief discussion of each request for waiver is provided.

Interested persons are invited to participate in these proceedings by submitting written data, views, or comments. The FRA does not anticipate scheduling a public hearing in connection with the aforementioned petitions since the facts do not appear to warrant a hearing. However, a public hearing will be scheduled if requested by an interested person before May 16, 1980.

All communications concerning these petitions must identify the appropriate docket number (e.g., FRA Waiver Petition No. RSRM–78–3) and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590. Communications received before June 13, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered to the extent practicable.

Detailed information concerning each petition is on file with the Docket Clerk. Any comments received will also be on file. This material is available for examination by the public during regular business hours (9 a.m.–5 p.m.), in Room 8211, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Chessie System

[FRA Waiver Petition Docket No. RSRM–78–3]

The Chessie System seeks a limited partial waiver of 49 CFR 221.13(c). This section of the regulation mandates that the centroid of the rear end marking device be located at a minimum of 48 inches above the top of the rail. Chessie is requesting that it be permitted to use a fusee placed 38 inches above the rail. Chessie assets that the fusee it intends to use will meet all of the criteria for rear end marking devices other than the height requirement. The fusee marker would be used by Chessie in those limited instances in which there will be train movement on main track and a caboose is either unavailable or its use is impractical. Chessie has not estimated how many cars will be affected by granting the waiver petition. It is Chessie's assertion that previously submitted test results support its claim that there is no difference in visibility between markers placed at a height of 48 inches above the rail and those placed at a height of 38 inches. Chessie's request is unrelated to its continued program for retrofitting cabooses with previously approved marking devices.

Burlington Northern

[FRA Waiver Petition Docket No. RSRM–79–1]

Burlington Northern (BN) seeks, on its own behalf and that of the Colorado and Southern Railway and the Fort Worth and Denver Railway, a temporary waiver of compliance with the provisions of 49 CFR Part 221. Section 221 requires that trains be equipped with highly visible rear end marking devices by July 1, 1978.

Petitioners have equipped approximately 780 cabooses with marking devices as of April 1, 1980, but a total of 299 more cabooses and 29 other types of cars remain in need of modification. BN and its associated petitioners have ordered 1,200 FRA-approved marker lights. They seek a temporary waiver of compliance until December 31, 1980, so that installation may be completed without serious service interruptions.

Consolidated Rail Corp.

[FRA Waiver Petition Docket No. RSRM–79–2]

Consolidated Rail Corporation (Conrail) seeks a temporary waiver of compliance with the requirement to

equip its trains with highly visible marking devices as prescribed by 49 CFR Part 221.

In support of this petition, Conrail asserts that additional time is needed to analyze and test equipment as well as to obtain FRA and owner approval, and to install the devices. Conrail has given priority to its commuter cars in the prescribed modifications and rearward facing headlights are being used in the interim. Petitioner seeks a temporary waiver of compliance for 422 M–1 and M–2 commuter cars until December 31, 1979, and for 426 multiple unit passenger cars and self-propelled diesel passenger cars until June 30, 1980.

A total of 2,184 cabooses are in the service of the Conrail fleet and three different types of electrical systems are operative. With respect to cabooses and other cars on the rear end of trains, Conrail requests a temporary waiver of compliance until December 31, 1981.

Additionally, an exemption is sought for an unspecified number of switching, transfer and branch line operations where only one train at a time is operated, where the caboose may not be the last car in the train, or where absolute block and similar systems preclude any following trains.

Authority: Secs. 202 and 208, Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431 and 437); § 1.49(n), Regulations of the Office of the Secretary of Transportation (49 CFR 1.49(n)).

Issued in Washington, DC on April 18, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80–13332 Filed 4–30–80; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket HS–80–2]

Amador Central Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is herby given that the Amador Central Railroad (AMCR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the AMCR be granted authority to permit certain employees to continuously remain on duty for in excess twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The AMCR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not the exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–80–2 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Department of Transportation (Nassif Building), 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before June 20, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Department of Transportation (Nassif Building), 400 Seventh Street, S.W., Washington, D.C. 20590.

Authority: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on April 24, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80–13201 Filed 4–30–80; 8:45 am]

BILLING CODE 4910–06–M

[Waiver Petition Dockets Nos. RSGM–80–1 Through RSGM–80–30]

Petitions for Waiver of Safety Glazing Standards

Notice is hereby given that thirty petitioners have submitted requests for temporary or permanent waivers of compliance with the Safety Glazing Standards (49 CFR Part 223). The Federal Railroad Administration (FRA) published a final rule on December 31, 1979, that requires that all newly built and most existing railroad equipment have improved safety glazing materials installed in order to reduce the risk of death or serious injury resulting from flying objects, including bullets. The regulations provide for the affected locomotives, passenger cars, and cabooses to be equipped with certified glazing in all windows after June 30, 1983.

The individual petitions for a waiver of compliance with this regulation are described below. The description indicates the nature and extent of the relief requested as well as any information that has been submitted in support of the request for the waiver of compliance.

Interested persons are invited to participate in these proceedings by submitting written data, views, or comments. FRA does not anticipate scheduling an opportunity for oral comment since the facts do not appear to warrant it. All communications concerning these petitions must identify the appropriate Docket Number (e.g., FRA Waiver Petition Docket Number RSGM–80–1) and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration (FRA), 400 Seventh Street, SW, Washington, DC 20590. Communications received before June 12, 1980, will be considered by the Federal Railroad Administration before the date final action is taken. All comments will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.–5 p.m.), in Room 8211, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

Union Railroad Co.

[Waiver Petition Docket No. RSGM–80–1]

The Union Railroad Company (Union) seeks a permanent waiver of compliance with Part 223 for its present fleet of 97 locomotives and 37 cabooses used in switching and transfer service within and between various customer facilities in the Pittsburgh area.

Union's locomotives and cabooses are now equipped with glazing materials that meet the requirements of the Pennsylvania Public Utilities Commission. The front and rear facing windows are equipped with material having minimum properties as determined by the American National Standards Institute. Union has no record of any incident where a trainman has been injured as a result of a projectile penetrating the window glazing material of any of its locomotives or cabooses. During the period from 1976 through 1979, there were 48 incidents where projectiles had been thrown at trains

and 4 incidents where trains had been shot at with BB guns and sling shots, however, on none of these occasions was anyone injured.

Bessemer & Lake Erie Railroad Co.

[Waiver Petition Docket No. RSGM–80–2]

Bessemer and Lake Erie Railroad Company (Bessemer) seeks a permanent waiver of compliance with Part 223 for its present fleet of 66 locomotives. These locomotives regularly operate over 140 miles of track between Conneaut, Ohio and North Bessemer, PA.

According to Bessemer, its locomotives are currently equipped with 9/16" thick safety glass that meets AMSI AS–1 requirements in all forward and rearward facing locations and ¼" thick Lexan Polycarbonate Glazing in all side facing locations. Bessemer's records indicate that from 1977 to date there were only six indicdents involving objects striking locomotives, however, none of these incidents resulted in injury to trainmen.

Southern Pacific Transportation Co.

[Waiver Petition Docket No. RSGM–80–3]

The Southern Pacific Transportation Company (SP) seeks a temporary waiver of compliance from Part 223 for 144 of its locomotives.

These locomotives are presently being operated at a reduced level and prior to July 1, 1983, they should either be retired from service or placed in a rehabilitation program that will include the installation of certified glazing materials.

The Arcata & Mad River Railroad Co.

[Waiver Petition Docket No. RSGM–80–4]

The Arcata and Mad River Railroad (AMR) seeks a permanent waiver of compliance with Part 223 for 3 locomotives and 1 caboose. The Arcata and Mad River Railroad is a 7½ mile short line that operates in a remote location in Northern California.

Each of these units is at least 25 years old and are not operated at speeds of more than 20 m.p.h. There have been no incidents of vandalism on this line.

Bath & Hammondsport Railroad Co.

[Waiver Petition Docket No. RSGM–80–5]

The Bath and Hammondsport Railroad Company (BH) seeks a permanent waiver of compliance with Part 223 for its present fleet of 2 locomotives. BH operates a line for freight service from a connection with Conrail at Bath to Hammondsport, New York, a total distance of 9.23 miles.

The total population of all communities on this line is less than 20,000 people. There have been no cases of vandalism in the history of the railroad.

The Prescott & Northwestern Railroad Co.

[Waiver Petition Docket No. RSGM–80–6]

The Prescott and Northwestern Railroad Company (PNW) seeks a permanent waiver of compliance with Part 223 for its present fleet of 3 locomotives. PNW operates a line for freight service from a connection with the Missouri Pacific at Prescott to Highland, Arkansas, a total distance of 31.05 miles. These units operate in a lightly populated area and there have been no cases of vandalism in the history of the railroad.

Terminal Railway Alabama State Docks

[Waiver Petition Docket No. RSGM–80–7]

Terminal Railway Alabama State Docks (TASD) seeks a permanent waiver of compliance with Part 223 for 11 diesel engines used in switching service. These units are owned by the State of Alabama and operate over 75 miles of track at the Port of Mobile, Chickasaw, and Theodore, Alabama. There have been no incidents of vandalism on this line.

Warren & Saline River Railroad Co.

[Waiver Petition Docket No. RSGM–80–8]

The Warren and Saline River Railroad Company (WSR) seeks a permanent waiver of compliance with Part 223 for its present fleet of 2 locomotives. WSR regularly operates over 15.6 miles of track between Warren and Hermitage, Arkansas.

These locomotives primarily operate within the yards of industrial plants. There have been no reported acts of vandalism on this line.

Colorado & Wyoming Railway Co.

[Waiver Petition Docket No. RSGM–80–9]

The Colorado and Wyoming Railway Company (CW) seeks a permanent waiver of compliance with Part 223 for its fleet of 18 locomotives. CW operates 2 locomotives in its Northern Division from CF&I Steel Corporation's Sunrise Mine to Guernsey, Wyoming for a total distance of 6.5 miles. In its Southern Division, it operates two locomotives from Allen Mine to Jansen, Colorado, for a total distance of 28 miles. CW operates 14 locomotives in intraplant switching within the CF&I Steel Plant and also serves 10 other industries within its switching zone, all of which are located within 28 miles of the plant. There is no record of vandalism on any of these lines.

Pecos Valley Southern Railway Co

[Waiver Petition Docket No. RSGM–80–10]

The Pecos Valley Southern Railway Company (PVS) requests a permanent waiver of compliance for its present fleet of 2 locomotives. PVS operates a 34 mile railroad from Pecos to Saragosa, Texas. The interchange yard in Pecos is in a lightly populated area and PVS has had no experience of vandalism on its line. All of the affected units are over 25 years old and should be replaced within the next five years.

Chicago & NorthWestern Transportation Co.

[Waiver Petition Docket No. RSGM–80–11]

Chicago and NorthWestern Transportation Company (CNW) seeks a permanent waiver of compliance with Part 223 for 56 locomotives of the 971 locomotives it operates. These locomotives were built between 1942 and 1953 by either the Baldwin-Lima-Hamilton Corporation or the American Locomotive Company and are scheduled for retirement between 1980 and 1985.

Butte, Anaconda & Pacific Railway Co.

[Waiver Petition Docket No. RSGM–80–12]

The Butte, Anaconda and Pacific Railway Company (BAP) seeks a permanent waiver of compliance with Part 223 for 15 locomotives. BAP operates on a 26 mile line between Anaconda and Butte, Montana. BAP is a wholly owned subsidiary of Anaconda Copper Company. The majority of its train movements are restricted to the industrial yards of the Anaconda Company.

During last ten years, BAP has not had any serious accidents or personal injuries as a result of projectiles penetrating the windows of its locomotives. Compliance with Part 223 by BAP will require an estimated capital expenditure and cash out-lay of $170,000.

Moscow, Camden & San Augustine Railroad

[Waiver Petition Docket No. RSGM–80–13]

The Moscow, Camden and San Augustine Railroad (MCSA) seeks a permanent waiver of compliance with Part 223 for its present fleet of 2 locomotives. MCSA operates over a 7 mile line between Camden and Moscow, Texas. There have been no acts of vandalism on this line in the past ten years.

Sandersville Railroad Co.

[Waiver Petition Docket No. RSGM–80–14]

The Sandersville Railroad Company (SAN) seeks a permanent waiver of compliance with Part 223 for its present fleet of 3 locomotives. SAN operates a line of 9.1 miles from Tennille to Kaolin, Georgia. SAN has not experienced any acts of vandalism on its line.

Aberdeen & Rockfish Railroad Co.

[Waiver Petition Docket No. RSGM–80–15]

Aberdeen and Rockfish Railroad Company (AR) seeks a permanent waiver of compliance with Part 223 for its present fleet of 3 locomotives. AR operates a 45 mile long freight and TOFC service between Aberdeen and Fayetteville, North Carolina.

More than half of the length of AR's main line track traverses open farmland and lightly populated areas. AR's records indicate that there have been no incidents of vandalism.

Pickens Railroad Co.

[Waiver Petition Docket No. RSGM–80–16]

Pickens Railroad Company (PICK) seeks a permanent waiver of compliance with Part 223 for its present fleet of 2 locomotives. These locomotives regularly operate over 8.3 mile main line and 3.5 mile sidings in Pickens County, South Carolina. There have been no recorded cases of vandalism on this line.

The Lake Terminal Railroad Co.

[Waiver Petition Docket No. RSGM–80–17]

The Lake Terminal Railroad Company (LTR) seeks a permanent waiver of compliance with Part 223 for its present fleet of 16 locomotives. LTR is a terminal and switching railroad serving U.S. Steel in Lorain, Ohio. LTR primarily operates within the confines of the steel plant, except for six transfer movements daily to interchange yards. LTR's locomotives are now equipped with ¼" thick safety glass with a .030" vinyl interlayer. There have been no reported cases of vandalism on this line during the last five years.

Chicago Short Line Railway Co.

[Waiver Petition Docket No. RSGM–80–18]

The Chicago Short Line Railway Company (CSL) seeks a permanent waiver of compliance for its present fleet of 4 locomotives. CSL operates a switching service over 33 miles of track in the Calumet district of South Chicago, Illinois.

These locomotives are currently equipped with Lexan Glazing. These units operate in a lightly populated area and there have been no cases of vandalism in the history of the railroad.

Chicago, Madison & Northern Railway Co.

[Waiver Petition Docket No. RSGM–80–19]

The Chicago, Madison and Northern Railway Company (CMN) seeks a permanent waiver of compliance for its present fleet of 6 locomotives. CMN currently operates one line from Sparta to Viroqua, Wisconsin and another from Janesville to Mineral Point, Wisconsin. None of these lines operate in densely populated areas and there have been no reported incidents of vandalism on this line.

Pearl River Valley Railroad Co.

[Waiver Petition Docket No. RSGM–80–20]

The Pearl River Valley Railroad Company (PRV) seeks a permanent waiver of compliance for a single locomotive. PRV operates a line for freight service from a connection with the Southern Railway at Nicholson to Good Year, Mississippi, a total distance of 4.69 miles. This unit operates through a lightly populated area and there have been no reported incidents of vandalism on this line.

Port of Tillamook Bay

[Waiver Petition Docket No. RSGM–80–21]

The Port of Tillamook Bay (POTB) seeks a permanent waiver of compliance with Part 223 for its present fleet of 2 locomotives. POTB's operating lines extend from the Port of Tillamook Bay Industrial Park to Tillamook, Oregon, a distance of 2.5 miles through farmland and 2.0 miles in the Industrial Park. There have been no incidents of vandalism on this line.

Indiana & Ohio Railroad

[Waiver Petition Docket No. RSGM–80–22]

Indiana and Ohio Railroad seeks a permanent waiver of compliance with Part 223 for a single locomotive. This unit operates in a lightly populated area and there have been no incidents of vandalism in the history of the railroad.

Texas Central Railroad Co.

[Waiver Petition Docket No. RSGM–80–23]

The Texas Central Railroad Company (TEXC) seeks a permanent waiver of compliance with Part 223 for its present fleet of 4 locomotives. TEXC operates a line for freight service from a connection with the Santa Fe Railroad at Dublin to Gorman, Texas, a total distance of 24.14 miles. TEXC primarily serves a lightly populated agricultural area. In the thirteen year history of the railroad, there have been no reported cases of vandalism.

Duluth & Northeastern Railroad Co.

[Waiver Petition Docket No. RSGM–80–24]

The Duluth and Northeastern Railroad Company (DNE) seeks a permanent waiver of compliance with Part 223 for its present fleet of 4 locomotives and 2 cabooses. DNE operates a line for freight service between Cloquet and Saginaw, Minnesota, a total distance of 12 miles. The main line of DNE's track runs through an uninhabited wooded area. DNE's records indicate that there have been no incidents of vandalism during the last 26 years.

Cambria & Indiana Railroad Co.

[Waiver Petition Docket No. RSGM–80–25]

Cambria and Indiana Railroad Company (CI) seeks a permanent waiver of compliance with Part 223 for its present fleet of 18 locomotives and 2 cabooses. CI operates a line for freight service from Colver to Revloc, Pennsylvania, a total distance of 27.9 miles.

CI operates primarily in an isolated, predominantly rural area in central Pennsylvania. There have been no cases of vandalism in the history of the railroad. Compliance with Part 223 by CI is estimated to be $3,500 for each switcher locomotive.

Conemaugh & Black Lick Railroad Co.

[Waiver Petition Docket No. RSGM–80–26]

Conemaugh and Black Lick Railroad Company (CBL) seeks a permanent

waiver of compliance with Part 223 for its present fleet of 22 switcher locomotives and 2 protection cars. CBL is a terminal and switching railroad serving the Johnstown Plant of Bethlehem Steel Corporation in Johnstown, Pennsylvania.

CBL operates primarily within the confines of the steel plant and interchange yards immediately adjacent to the plant boundaries. There have been no cases of vandalism in the history of the railroad. Compliance with Part 223 by CBL is estimated at $3,500 for each switcher locomotive.

Patapsco & Back Rivers Railroad Co.

[Waiver Petition Docket No. RSGM–80–27]

Patapsco and Back Rivers Railroad Company (PBR) seeks a permanent waiver of compliance with Part 223 for its present fleet of 32 switcher locomotives. PBR is a terminal and switching railroad serving the Sparrows Point Plant of Bethlehem Steel Corporation at Sparrow Point, Maryland, and various industries located on property within or adjacent to the plant.

PBR operates within the confines of a steel plant and interchanges cars with trunk line railroads in isolated interchange yards. There have been no reported cases of vandalism in the history of the railroad. PBR estimates that compliance with Part 223 will cost $3,500 for each switcher locomotive.

Philadelphia, Bethlehem & New England Railroad Co.

[Waiver Petition Docket No. RSGM–80–28]

Philadelphia, Bethlehem and New England Railroad Company (PBNE) seeks a permanent waiver of compliance with Part 223 for its present fleet of 25 locomotives. PBNE is a terminal and switching railroad serving the Bethlehem Plant of Bethlehem Steel Corporation in Bethlehem, Pennsylvania.

PBNE primarily operates within the confines of a steel plant and interchanges with trunk line railroads in an interchange yard immediately adjacent to the plant boundary. There have been no reported cases of vandalism in the history of the railroad. Compliance with Part 223 by PBNE is estimated at $3,500 for each switcher.

South Buffalo Railway Co.

[Waiver Petition Docket No. RSGM–80–29]

South Buffalo Railway Company (SBR) seeks a permanent waiver of compliance with Part 223 for its present fleet of 33 switcher locomotives. SBR is a terminal and switching railroad serving the Lackawanna Plant of Bethlehem Steel Corporation in Lackawanna, New York, and various industries within or adjacent to the plant.

SBR primarily operates within the confines of a steel plant and interchanges cars with trunk line railroads in isolated interchange yards. SBR records indicates that there have been no cases of vandalism in the history of the railroad. SBR estimates that compliance with Part 223 will cost $3,500 for each switcher locomotive.

Steelton & Highspire Railroad Co.

[Waiver Petition Docket No. RSGM–80–30]

Steelton and Highspire Railroad Company (SH) seeks a permanent waiver of compliance with Part 223 for its present fleet of 8 switcher locomotives. SH is a terminal and switching railroad serving the Bethlehem Steel Corporation in Steelton, Pennsylvania.

SH only operates within the confines of a steel plant and one interchange yard immediately adjacent to the plant boundary. There have been no incidents of vandalism on this line. SH estimates that compliance with Part 223 will cost $3,500 for each switcher locomotive.

This notice is issued under the authority of Section 202, 84 Stat. 97 (45 U.S.C. 431); Sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation 49 CFR 1.49(n).

Issued in Washington, DC on April 24, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80–13202 Filed 4–30–80; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. IP79–3; Notice 2]

Ford Motor Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Ford Motor Company of Dearborn, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.106, Motor Vehicle Safety Standard No. 106, *Brake Hoses*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 19, 1979, and an opportunity afforded for comment (44 FR 16534).

Paragraph § 5.3.11 of Motor Vehicle Safety Standard No. 106 requires that an end fitting of a hydraulic brake hose shall show no base metal corrosion on the end fitting surface, after 24 hours of exposure to salt spray, except where crimping or the application of labeling information has caused displacement of the protective coating. Ford Motor Company informed NHTSA that brake hose end fittings "in some of the approximately 240,000 Fairmont and Zephyr cars built from August 3, 1977, to January 9, 1978" may possibly fail to meet the corrosion requirement.

Specifically, Ford determined that the corrosion resistant zinc plating on some of the steel end fittings shipped to Ford by the Weatherhead Company, had been plated by Superior Plating less than the Ford-specified minimum thickness of .00015 inch. This discovery was made in the aftermath of tests by the Canadian Standards Association which had resulted in the formation of red rust on the end fittings. While Ford believes the Canadian tests were more rigorous than that specified by § 5.3.11, nevertheless its own testing of one hose from the same production lot as those initially tested by Canada "found evidence of corrosion on the steel end fittings." Ford's tests to Standard No. 106 on end fittings manufactured after Superior Plating had corrected its error showed no evidence of base metal corrosion.

Ford argued that if corrosion occurs it will not result in any significant reduction of brake hose strength. It subjected the hose that had failed its corrosion test to the burst strength test specified in § 5.3.2, and the rubber section of the assembly failed at 11,500 psi. There was no apparent damage to the end fittings, and the burst level was said to be comparable to that recorded in the tests of new hose assemblies. Ford conducted additional tests based upon daily exposure of end fittings to salt spray for 60 days and experienced burst strength values comparable to the 11,500 psi of the original test.

The petitioner stated that there was no way to determine which end fittings would have complied or failed to comply when new, and that remedy would require replacement of brake hoses in all 240,000 vehicles. It concludes that its tests showed:

"* * *that brake hose assemblies as used on the 1978 Fairmont/Zephyr even after being subject to a long term severely corrosive environment, will still be capable of withstanding pressures far in excess of that required to operate the vehicle brakes.

Therefore, installation of 1978 model Fairmont/Zephyr brake hose end fittings which might have, if tested, developed surface corrosion during a 24-hour salt spray test, poses no higher risk of injury than like fittings which are resistant to such corrosion."

No comments were received on the petition.

The NHTSA concurs with Ford's arguments. No safety problem would exist unless the end fittings were corroded to a point where they could not sustain the 5000 psi pressure required by Standard No. 106; Ford's own tests showed a bursting strength approaching 11,500 psi. Furthermore, the Ministry of Transport (Canada), has not cited Ford for a noncompliance with Canadian Standard No. 106 which is essentially similar to U.S. Standard No. 106.

Accordingly, petitioner has sustained its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on April 24, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-13215 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP79–15; Notice 2]

B. F. Goodrich Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by the B. F. Goodrich Co. of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on December 6, 1979, and an opportunity afforded for comment (44 FR 70269).

Paragraph S3.4(c) requires that the sidewalls of each passenger car tire be labeled with the maximum permissible load rating. Goodrich produced 3512 snow tires in which the maximum load was incorrectly expressed in pounds on the white wall side (though correctly expressed in kilograms, and in both forms on the black wall side). The correct maximum load is 1742 pounds but the figure supplied on the white wall side, 1790 pounds, exceed this maximum by 48 pounds. The tires are known as "P 215/75R15 BF Goodrich Trailmaker Radial Steel Belted Mud and Snow" tires, and were manufactured from the 27th week of 1979 to the 37th week.

Goodrich argued that its "audit test data" proves that the mislabeled tires will comply with the performance requirements of Standard No. 109 when tested at the higher load figure. Its audit testing consisted of extensions of the standard's high speed and endurance testing. The 1700 miles of the endurance test is extended until the tire fails or the test's termination at 2800 miles. In these tests the tires are run for 2 hours at an equivalent of 50 mph at loads that increase in increments of five percent. Goodrich tested four of the incorrectly labeled tires, three of which completed the 2800 miles without failure. The fourth tire failed at 2240 miles "at 120% of its correct maximum load rating, which is well above the 1790 lb. branded on the white wall side". It then tested two additional tires using the 1790 lbs. load rating, both of which completed the 2800 miles without failure.

In its high speed testing, tires are run at increasing increments of 5 mph beyond the 85 mph for 30 minutes until the tire fails or the 120 mph step is completed. One tire failed at 95 mph, two at 100 mph and the fourth at 105 mph. In a retest of two tires at the higher load, failures occurred at 100 mph and 105 mph. On the basis of these tests Goodrich argued that its noncompliance is inconsequential.

No comments were received on this petition.

It is believed that motorists are generally unaware of the actual load on their tires, and will, therefore, not be induced to try to achieve the maximum stated in pounds on the sidewall. Documentation submitted by the petitioner demonstrates that even if a time should be loaded 48 pounds beyond its intended capacity, it will nevertheless comply with the standard.

Petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 99 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on April 24, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-13216 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Procedures for Adjudication of Ionizing Radiation Claims

AGENCY: Veterans Administration.

ACTION: Revision of program guide.

SUMMARY: The Veterans Administration has revised a program guide for use of various regional offices in the development and disposition of claims of veterans alleging exposure to ionizing radiation during service while participating in atmospheric testing of nuclear weapons. This guide provides background information concerning the atmospheric nuclear test program and potential health effects for veterans who participated. It is not directive.

FOR FURTHER INFORMATION CONTACT: Robert C. Macomber, (202–389–2635).

SUPPLEMENTAL INFORMATION: On August 21, 1979 (44 FR 49090), the Veterans Administration published as a matter of public interest a notice of the issuance of the program guide. As a result of that notice, three comments were received. Because these comments have merit, we have amended the program guide accordingly and again give this notice as a matter of public interest.

Program guides are nondirective and non-rule or policy making. They are superseded by instructions, technical bulletins, or other non-rule making issues which may be at variance on the same subject matter.

Approved: April 25, 1980.

By direction of the Administrator:

Rufus H. Wilson,

Deputy Administrator.

Rating Practices and Procedures Disability, Ionizing Radiation Exposure

1. *Claims Alleging Disabilities Attributed to Exposure to Ionizing Radiation.* For some time, claims have been received in which it is alleged that disabilities have resulted from veterans' exposure to ionizing radiation during service through their participation in atmospheric testing of nuclear devices.

Some 200,000 U.S. military personnel participated in the atmospheric testing of nuclear weapons in Nevada and the South Pacific between 1945 and 1962. Since the Limited Test Ban Treaty of 1963, all U.S. tests have been underground.

This testing and the resultant health hazard were discussed in a recent comprehensive study of the health effects of ionizing radiation by representatives of several executive agencies, including the VA, HEW, DoD, DoE, DoL, EPA and NRC. The findings are contained in the "Report of the

Interagency Task Force on the Health Effects of Ionizing Radiation," June 1979. The Interagency Task Force (hereafter referred to as "ITF") reported that an estimated 43% of the test participants received no exposure to ionizing radiation as a result of their participation; 87% received less than 1 rem of external radiation; 97% less than 3 rem; and over 99% less than 5 rem. It should be pointed out that these estimates are based upon external film badge readings of participants.

Although film badge readings are available for a large number of participants, not every participant was badged. In some cases, for units in which individuals operated in close proximity to each other (e.g., a ship's crew, and infantry squad), a representative sample of the unit was badged. In general, this was done for units which were not expected to be exposed to significant radiation. Individual badging was generally carried out for persons expected to be exposed to higher levels of radiation.

The badges measured external gamma and high energy beta radiation, as these were the types of greatest concern. They did not measure direct neutron radiation, to which few, if any, participants were exposed. Nor did the badges measure low energy beta, which would not penetrate the badge covering (just as it would not penetrate clothing or skin). Finally, the badges did not measure any dose commitment that may have occurred from inhalation or ingestion of radioactive particles. All research and analysis to date indicate that there is little likelihood that test participants inhaled or ingested any significant amounts of radiation; however additional studies are underway, and the possibility should not be entirely discounted.

Film badges and dosimeters were subject to errors that should be taken into account in assessing dose received. An error factor of ± 20% is generally recognized as reasonable for the badges and dosimeters used at that time, and as high as ± 50% in some instances.

2. *Health Effects of Ionizing Radiation.*

1. *Acute Somatic Effects.* Individuals exposed to high levels and rates of ionizing radiation may experience acute somatic effects within days or weeks after exposure. The ITF reported that single, whole-body doses of over 100 rem can affect bone marrow cells and cells lining the intestinal tract, causing such effects as anemia, hemorrhage, infections, nausea and diarrhea. High doses were also said to cause neural cell damage. Chromosomal damage occurs at lower dose levels, as well as high doses.

b. *Late Somatic Effects.* Although there are little positive data on the health effects of low-dose radiation, some negative data (Japanese atom bomb survivors, studies of background radiation) do exist. The failure to show positive results in these studies is attributed to the small sample sizes, since large samples are needed to reveal the relatively infrequent effects expected at low doses.

Current estimates of low-dose health effects are based on studies of medical exposure, as well as the Japanese atom bomb survivors.

Cancer is the major disease associated with radiation exposure. Certain sites (e.g., blood-forming tissue, female breast) appear more sensitive, but other tissues also are shown to be at increased risk. It is not unlikely that eventually all tissue may be shown to be subject to radio-carcinogenesis.

Various types of cancer have been linked to radiation by epidemiological studies conducted among (1) persons exposed to atom bomb radiation and fallout, (2) persons exposed to diagnostic or therapeutic radiation, and (3) persons exposed to radiation in their occupations.

The following cancers show strong associations:

leukemia (except chronic lymphatic leukemia)
thyroid
female breast
lung
bone
liver
skin

The following cancers show associations that appear meaningful but are less striking:

lymphoma (including multiple myeloma)
stomach
esophagus
bladder
brain
salivary gland
colon
rectum

The following cancers show suggestive but unconfirmed associations:

uterus
cervix
kidney
pancreas
small intestine

The ITF acknowledged that ongoing and proposed research will permit a more definitive listing of late somatic effects of low-level ionizing radiation.

There are no distinguishable pathological features of the cancers induced by radiation from which they may be differentiated from cancers due to "natural" factors. It is thus impossible to say *with certainty* whether such a disease would have occurred regardless of the radiation exposure.

In the absence of acceptable hard data on the latent effects of low level radiation, the ITF reports, it has been necessary to assume that there is a directly proportional or "linear" relationship between the risks of high and low doses. This theory assumes as well that there is no threshold level of exposure below which radiation will not have any potentially carcinogenic effect. These assumptions have been criticized as both underestimating and overestimating the potential hazard of low-dose exposure, although it would appear that they currently offer a sound basis for projecting this risk.

The Work Group on Care and Benefits of the ITF reported a "natural" incidence of fatal cancer of 1,600 in any population of 10,000. They provided the estimate of one additional death for each additional rem to which the entire group was exposed; for example, if all in a group of 10,000 were exposed to one rem in addition to naturally occurring background radiation, there would be only one fatal cancer beyond the 1,600 otherwise expected. Since the 200,000 test participants received an average dose of about half a rem, some *ten* fatal cancers from among the entire group can be expected over the lifetime of the participants which might be statistically related to radiation exposure. On the other hand, some 32,000 fatal cancers *not* related to this radiation can be expected.

c. *Genetic Effects.* Experimental studies in animals have shown that radiation can produce gene mutations which can result in abnormalities in later generations. However, no genetic effects have ever been observed in humans, despite much data and extensive study.

3. *Development of Evidence.* Claims for disabilities based upon such exposure pose unique development problems for claimants and special assistance should be extended to them. Paragraph 22.05.1 of M21–1 provides for Central Office coordination of the search of Government records for exposure data, and lists the identifying information necessary for these special searches to ensue.

4. *Adjudication of Claims—Reasonable Doubt.* The problems inherent in the adjudication of claims in which there are allegations of late somatic effects of radiation are many. The records obtained may not conclusively place an individual at a

test site or elsewhere, or document with certainty the dosage of exposure in given claim. The resolution of reasonable doubt in a claimant's favor requires that, at a minimum, veterans be presumed to have been present at a test or series of tests as claimed unless the service department conclusively places them elsewhere at the time in question. Also, when an individual dosimetry reading for claimant is not available but the service department is able to supply or estimate a range of exposure for the claimant's organizational unit, exposure at the upper limit of the range is to be conceded. In keeping with the application of the reasonable doubt standard, even where an individual dosimeter reading is available, the reading should be carefully interpreted in light or the known variance in those readings. Further, an overall estimated exposure level of the veteran's organizational unit, if any, should be used if more beneficial to the veteran than the adjusted dosimeter reading.

The many remaining unknowns concerning the carcinogenic effects of low-level radiation make such determinations especially perplexing. It should presently be assumed, however, that there is no level of exposure below which some risk does not attach, and that the probability of radiation-induced disease increases with the intensity and duration of exposure. That is not to say that dosage should be the sole, or even controlling, criterion. Consideration should be given to such factors as the estimated date of onset of the disease in relation to the dates of exposure, and where available, to such postservice personal and occupational histories as cigarette smoking (in lung cancer cases) and significant contact with other known carcinogens (such as benzene in leukemia cases.)

Where the evidence in its entirety creates a reasonable doubt as distinguished from speculation or remote possibility, such doubt should be resolved in favor of service connection, Additionally, there should be no hesitancy in submitting claims based on malignancies to Central Office (212) for advisory opinions.

5. *Copies of Rating Sheets Furnished to Compensation and Pension Service.* The copies of rating sheets furnished in accordance with M21–1, paragraph 49.06a(6)(a), should contain the dates and branch of service; serial number; name, date and location of all A-tests atttended; the military unit to which assigned at time of test; duty assignment at test; dosimetry reading or amount of radiation exposure, if known; and any other identifying information which would assist in any further seach for information.

[FR Doc. 80–13347 Filed 4–30–80; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 86
Thursday, May 1, 1980

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

	Items
Civil Aeronautics Board	1-3
Depository Institutions Deregulation Committee	4
Environmental Quality Council	5
Federal Energy Regulatory Commission	6
Federal Home Loan Bank Board	7
Nuclear Regulatory Commission	8
Postal Rate Commission	9
Railroad Retirement Board	10

1

CIVIL AERONAUTICS BOARD.

Corrected Copy [1] (M_278, April 29, 1980)

TIME AND DATE: 9:30 a.m., May 1, 1980.

PLACE: Room 1027 (open), 1825 Connecticut Avenue NW., Washington, D.C. 20428

SUBJECT:

1. Ratification of items adopted by notation.

2. Dockets 37013 and 37014, Applications of Munz Northern for certification with subsidy at points previously served as a Wien subcontractor, and petition for an investigation to delete such points from Wien's certificate and transfer them to Munz with subsidy eligibility (memo No. 9462-A, BDA).

3. Dockets 37670, 37695, and 37982, Requests by the ATA and United for an amendment of the Board's current policy to provide for the broadest possible zones of reasonableness within which airline management may pursue flexible pricing policies without threat of suspension action by the Board (memo No. ——, BDA).

4. Docket 37982, In the matter of a motion filed by the Air Transport Association of America to make Domestic Fare Policies more flexible (memo No. ——, BDA).

5. Docket 33836, Final rule extending the Board's fare flexibility policy to the Puerto Rico/ Virgin Islands markets (memo No. 7847-T, BDA).

6. Travel Committee, Inc.—Petition for review of staff action denying waiver of the major change provisions of Part 380 (memo No. 9568, BDA).

8. Docket 38063, Application of World Airways, Inc., for an Exemption from the Hawaii Common Fare Condition (memo No. ——, BDA).

[1] M-277 (May 1 calendar) should be M278 and Item 7 was already on as Item 10.

9. Docket 36804, Draft Notice of Proposed Rulemaking for one-day special tariff permission of fare decreases, draft order denying exemption request of Western Air Lines (memo No. ——, OGC, BDA).

10. Docket 38003, Application of Western for compensation for losses at Sheridan, Wyoming (memo No. ——, BDA).

11. Docket 36863, Notice of Western Air Lines to terminate service at Sheridan, Wyoming (memo No. ——, BDA).

12. Docket 35307, Ozark's notice of intent to suspend service at Clarksville, Tennessee-Ft. Campbell-Hopkinsville, Kentucky (memo No. ——, BDA).

13. Docket 37632—Hughes Airwest's notice to terminate service at Sun Valley-Hailey-Ketchum, Idaho (memo No. ——, BDA).

14. Dockets 36333, 36339, 36567—Southeast Airlines, Inc. exemption requests (memo No. ——, BDA).

15. Application of Part 250 to Operators of Small Aircraft (memo No. ——, BDA).

16. Docket 36858, Air New England, Inc., violations of Part 250 (memo No. ——, BDA).

17. Docket 36357, Applications of Altair Airlines, Inc., Docket 37424, Air New England, Docket 37380, Big Sky Airlines, Docket 37401, New Haven Airways, Inc., Docket 37618, Imperial Airlines, Docket 37667, Mid-South Aviation, Inc., for exemption from Part 250 of the Board's Economic Regulations (memo No. ——, BDA).

18. Docket 36294, Petition by the Aviation Consumer Action Project to clarify carrier's obligations to pay denied boarding compensation to passengers bumped from an oversold flight when they are offered alternate transportation of an extra section of that flight (memo No. ——, OGC, OEA).

19. Amendment of delegation of authority to Director, Bureau of Consumer Protection (memo No. ——, BCP).

20. Annual Review of Outstanding Delegation to the Bureau of Consumer Protection (memo No. 9643, BCP).

21. Docket 36288, *(A. V. Constantini* v. *Pan American World Airways, Inc.).* Motion for review of the Director BCP's dismissal of third-party complaint (memo No. 9647, OGC).

22. Dockets 32711, Dallas/Ft. Worth Service-Florida Investigation (Part II); 33019, Chicago-Midway Expanded Service Preceding Investigation—Order dismissing applications of Air Florida and Midway (Southwest) to serve Dallas, Love Field, and dismissing petition for reconsideration of Order 79-9-192 awarding Southwest AME Authority between Dallas (Love Field) and New Orleans.

23. Dockets 32495, 32496, *Application of DHL Airways, Inc.:* Docket 33363, *Former Large Irregular Air Service Investigation;* Order on Discretionary Review (memo No. 9645, OGC).

24. Docket 37865, Petition of the Las Vegas Parties for leave to intervene in the *Denver-London Service Case* (memo No. ——, BIA, OGC).

25. Docket 35416, Application of Laker Airways Limited for transfer of its foreign air carrier permit pursuant to section 402(g) (memo No. ——, BIA, OGC, BLJ).

26. Dockets 34141 and 36785—Applications to Trans-Panama for and initial foreign air carrier permit to engage in non-scheduled foreign air transportation of property and mail between Panama and Miami, New York, and Los Angeles, and exemption authority to operate 40 non-scheduled cargo flights between Panama and Miami (memo No. ——, BIA, OGC, BALJ, BCP).

27. Docket 37640, Application of Skocdopole Brothers Aviation Ltd. for and initial foreign air carrier permit to operate charters between Canada and the United States using small aircraft (memo No. ——, BIA, OGC, BALJ).

28. Docket 37164, United States-Bermuda Show Cause Proceeding. Dockets 37259, 37264, 30382, 32188, 31146, 37258, 37269, 37266, 31170, 37271, 35261, 37263, 37084, and 36829: Applications of American, Delta, Eastern, Evergreen, Ozark, Pan American, Republic, Transamerica, Trans Carib Air, Trans World, USAir, and Mackey International for Bermuda authority (memo No. ——, BIA, OGC, BALJ, BDA, BCAA).

29. Docket 37486, Servicio Aereo de Honduras, S.A. (SAHSA's) application for an amended foreign air carrier permit for the transportation of person's property, and mail to add Houston and New York (memo No. 9644, BIA, OGC, BALJ).

30. Docket 34507, Application of El Al Israel Airlines for amended 402 permit (memo No. ——, BIA, OGC, BLJ).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-868-80 Filed 4-29-80; 3:26 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the May 1, 1980 meeting (M-278 amdt. 1, April 28, 1980).

TIME AND DATE: 9:30 a.m., May 1, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 7a. Docket 35253, Policy Statement on discriminatory, preferential and prejudicial pricing (BDA).

STATUS. Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: This item was inadvertently omitted from the May 1st calendar and further delay would not be in the public interest. Accordingly,

the following Members have voted that Item 7a be added to the May 1, 1980 calendar and that no earlier announcement of this addition was possible:

Chairman Marvin S. Cohen.
Member Elizabeth E. Bailey.
Member Gloria Schaffer.
Member George A. Dalley.

[S-869-80 Filed 4-29-80; 3:26 pm]
BILLING CODE 6320-01-M

3

CIVIL AERONAUTICS BOARD.

Notice of closure and addition of item to the May 1, 1980 meeting (M-278 amdt. 2, April 29, 1980).

TIME AND DATE: 9:30 a.m., May 1, 1980 (after open items).

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 31. Micronesian Status Negotiations—Proposed draft agreement for regulation of commercial air transport services to the Islands of Micronesia under its new semi-independent status (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: This item is being short noticed for the May 1st meeting because on the day the calendar was prepared there was not a quorum to vote this item closed. Since the Office for Micronesian Status Negotiations requested agency clearance by April 30, it is important that this matter be considered by the Board as soon as possible:

Chairman Marvin S. Coehn.
Member Elizabeth E. Bailey.
Member Gloria Schaffer.

The proposed language concerns positions to be taken in negotiations to be held between the Office for Micronesian Status Negotiations and Representatives of the Governments of Micronesia. Premature public disclosure to the new governments of the opinions and positions, which may or may not be taken in international negotiations, could compromise the ability of the Office of Micronesian Status Negotiations to successfully negotiate provisions of the proposed Agreement which are considered in the best interests of the United States. Premature disclosure would therefore be likely to significantly frustrate implementation of the proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9) and 14 CFR § 310b.5(9)(B):

Chairman Marvin S. Cohen.
Member Elizabeth E. Bailey.
Member Gloria Schaffer.

PERSONS EXPECTED TO ATTEND:

Board Members: Chairman Marvin S. Cohen, Member Elizabeth E. Bailey, and Member George A. Dalley.
Assistants to Board Members: Mr. David Kirstein, Mr. Vance Forte, Mr. Steven Lachter, and Mr. Bernard Diederich.
Managing Director: Mr. Cressworth Lander.
Executive Assistant to the Managing Director: Mr. John R. Hancock.
Office of the General Counsel: Ms. Mary McInnis, Mr. Michael Schopf, and Mr. Peter Schwarzkopf.
Bureau of International Aviation: Mr. Dan Casper, Mr. Ivars Mellups, Mr. Jim Horneman, Mr. Herb Aswall, Mr. Rich Loughlin, Mr. Peter Rosenow, and Mr. Ronald Miller.
Bureau of Consumer Protection: Mr. Reuben Robertson and Ms. Patricia Kennedy.
Office of Economic Analysis: Mr. Robert Frank.
Office of the Secretary: Mrs. Phyllis T. Kaylor and Ms. MaryKay Roach.

GENERAL COUNSEL CERTIFICATION: I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9) and 14 CFR § 310b.5(9)(B) and that this meeting may be closed to public observation.

Mary McInnis,
General Counsel.

[S-870-80 Filed 4-29-80; 3:26 pm]
BILLING CODE 6320-01-M

4

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE.

TIME AND DATE: 2:30 p.m., Tuesday, May 6, 1980.

PLACE: Offices of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Summary of Title II of the Monetary Control Act of 1980.
2. Adoption of rules of organization and procedure, and Sunshine and Freedom of Information Act regulations.
3. Selection of a Chairman and Vice Chairman.
4. Selection of a General Counsel, Executive Secretary, and Policy Director.
5. Premiums paid to depositors and finder's fees.
6. Interest as a deposit for purposes of the early withdrawal penalty rule; payment of interest on deposits after maturity.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board of Governors of the Federal Reserve System (202) 452-3204.

Dated: April 29, 1980.

[S-864-80 Filed 4-29-80; 11:19 am]
BILLING CODE 6210-01-M

5

COUNCIL ON ENVIRONMENTAL QUALITY.

April 29, 1980.

TIME AND DATE: 11:30 a.m., Friday, May 9, 1980.

PLACE: Conference Room, 722 Jackson Place, NW., Washington, D.C. 20006

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Briefing on Staff Studies of Environmental Effects of Bio-energy.

CONTACT PERSON FOR MORE INFORMATION: John F. Shea, III (202) 395-4616.

[S-872-80 Filed 4-29-80; 3:44 pm]
BILLING CODE 3125-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION.

April 29, 1980.

TIME AND DATE: 2 p.m., April 29, 1980.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Docket No. EL80-22, General Public Utilities Corporation.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone (202) 357-8400.

The following members of the Commission voted that agency business requires the holding of an open meeting on less than the one week's notice required by the Government in the Sunshine Act:

Chairman Curtis.
Commissioner Sheldon.
Commissioner Holden.
Commissioner Hall.

Kenneth F. Plumb,
Secretary.

[S-865-80 Filed 4-29-80; 2:08 pm]
BILLING CODE 6450-85-M

7

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10 a.m., May 5, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Application for Branch Office—First Federal Savings and Loan Association of Eau

Claire, Eau Claire, Wisconsin and Application for Limited Facility—Durand Federal Savings and Loan Association, Durand, Wisconsin.
Merger—Security Federal Savings and Loan Association of Newport, Newport, Kentucky INTO Kentucky Enterprise Federal Savings and Loan Association of Newport, Newport, Kentucky.
Merger—Citizens Building and Loan Association, Manchester, Ohio INTO Civic Savings Association, Portsmouth, Ohio.
Preliminary Application for Conversion to a Federal Mutual Charter—The Chenango Savings and Loan Association, Norwich, New York.
Application for Service Corporation Activity—Rossville Federal Savings and Loan Association, Rossville, Georgia.
Application for Bank Membership—Empire Savings Bank, New York, New York.
Regulation on Monitoring Fair Lending Practices.
Regulation on Reduction in Reporting Requirements.
Regulation on Branching of Federal Associations.
Policy Statement on Branching.
Regulation on Investment in Guaranteed Commercial Real Estate Loans.
Regulation on Mobile Home Loan Consumer Protection Provisions.
Regulation on Conflict of Interest Disclosure Waiver.
Regulation on Safekeeping Federal Home Loan Bank Accounts.
Board's Semiannual Agenda of Regulations.

Announcement is being made at the earliest practicable time.

[S-871-80 Filed 4-29-80; 3:26 pm]
BILLING CODE 6720-01-M

8

NUCLEAR REGULATORY COMMISSION.

DATE: Monday, May 5, 1980.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

3 p.m.

Discussion of Proposed Congressional Testimony to be given the Week of May 5 (approximately 1½ hours, closed—Exemption 9) (if necessary).

CONTACT PERSON FOR MORE INFORMATION:
Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR DAILY UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

Roger M. Tweed,
Office of the Secretary.
April 28, 1980.
[S-867-80 Filed 4-29-80; 2:08 pm]
BILLING CODE 7590-01-M

9

POSTAL RATE COMMISSION.

"FEDERAL REGISTER" CITATION FOR PREVIOUS ANNOUNCEMENT: 45 FR 28035, April 25, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE CLOSED MEETING: 10:30 a.m., May 5, 1980.

CHANGE IN THE MEETING:

(1) New time: 2 p.m., May 5, 1980.
(2) Added agenda item: Reconsideration of Commission Order No. 328.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, Secretary, Postal Rate Commission, 2000 L Street NW., Suite 500, Washington, D.C.20268; 202–254–3880.

[S-866-80 Filed 4-29-80; 2:08 pm]
BILLING CODE 7715-01-M

10

RAILROAD RETIREMENT BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: VOLUME 45, NO. 81, P. 27873, THURSDAY, APRIL 24, 1980.

TIME AND DATE: 9 a.m., May 1, 1980.

PLACE: Board's meeting room, eighth floor, headquarters building, 844 Rush Street, Chicago, Illinois 60611.

CHANGES IN THE MEETING: Additional items to be considered at the open meeting:

(9) Contracting for employment projections.
(10) Extension on payment of unemployment contributions—Chicago and Northwestern Transportation Company.
(11) Revision to Basic Board Order prescribing major actions to be taken to allocate and control travel funds.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–751–4920, FTS No. 387–4920.

[S-863-80 Filed 4-29-80; 10:01 am]
BILLING CODE 7905-01-M

federal register

Thursday
May 1, 1980

Part II

Department of Health, Education, and Welfare

Office of Human Development Service

Research and Demonstration Grant Program; Availability of Funds

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

[Program Announcement No. 13654-803]

Research and Demonstration Grant Program

AGENCY: National Institute of Handicapped Research, (NIHR), Office of Human Development Services, (OHDS), Department of Health, Education, and Welfare, (DHEW).

SUBJECT: Announcement of Availability of Grant Funds for Rehabilitation Research and Demonstration Grant Program.

SUMMARY: The National Institute of Handicapped Research (NIHR) announces that applications for research grants under Title II of the Rehabilitation Act of 1973, as amended by Public Law 94-602 (Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978), are being accepted in the following priority areas:

Priority A: Demographic and Clinical Characteristics of the Disabled Population.
Priority B: Retention of Rehabilitation Professionals in Rural Areas.
Priority C: Prenatal Risk Factors/Early Intervention in Early Childhood (0-3).
Priority D: Spinal Cord Injury.
Priority E: Multiple Sclerosis.
Priority F: End-Stage Renal Disease.
Priority G: General.

Regulations applicable to this program were published in the **Federal Register,** Subpart A and Subpart D of Part 1362, Chapter VII of Title 45 of the Code of Federal Regulations (45 CFR Part 1362) of November 25, 1975. However, these regulations are currently undergoing revision and will appear as Notice of Proposed Rule Making early in May, 1980. These revised regulations will be applicable to all grants and continuation awards funded subsequent to the date of final issuance.

DATES: Closing date for receipt of application is June 30, 1980. Applicants are encouraged to respond at an earlier date if possible.

Scope of this Announcement

This Program Announcement provides only information relating to the receipt, review, and award of grants under the priority funding areas listed in this Announcement. Funding priorities for the NIHR Research and Training Center Program will be announced separately.

Program Purpose

Title II of the Rehabilitation Act of 1973, as amended by Public Law 95-602 (Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978), authorizes planning and conducting research, demonstrations and related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals. In addition, Title II authorizes the conduct of specialized research activities, including spinal cord injury research, end-stage renal disease research, research on the retention of rehabilitation professionals in rural areas, and research with respect to preschool age handicapped children.

Program Goals and Objectives

Program Goals and Objectives for each priority area are as follows:

Priority A: Demographic and Clinical Characteristics of the Disabled Population

The purpose of the project is to design a comprehensive data system which incorporates data from a number of sources (systems) on the demographic and clinical characteristics of the disabled population. Data sources to be assessed and analyzed for linkage to an integrated system should include sources related to employment, health, income, functional abilities and other demographic and clinical characteristics of the disabled population of the United States. The system should be usable for achieving the following objectives:

1. To identify the epidemiological patterns of disability and related problems, including background and identifying information, type of disability and functional limitation, e.g. vocational, independent living, as well as specific types of physical or mental impairment.

2. To identify patterns of need and problem identification as perceived by the disabled population, include need for services and benefits and problems of health and restoration care, income, transportation, etc.

3. To identify the residual capacities and strengths of the disabled particularly in relation to vocational and social potentials and aspirations.

4. To identify the experience of disabled clients with service organizations; problems and needs concerning independent living, housing, legal matters, work, transportation, recreation, etc.

To the extent that data is not available through existing systems the project should incorporate the design of survey instruments to acquire the data and procedures for implementing the survey. The project should also propose any research that would be needed before incorporation of data requirements in a survey instrument.

It is expected that development of the system could be completed within a one year time frame.

Priority B: Retention of Rehabilitation Professionals in Rural Areas

To design a program of research which would develop and demonstrate innovative methods to attract and retain professionals to serve in rural areas in the rehabilitation of handicapped and severely handicapped individuals. This plan should include methodologies to:

1. Identify, retrieve, and analyze all relevant work done on this problem to date by NIHR, RSA and other government and private agencies rendering rehabilitation professional services in rural areas.

2. Survey selected rural regions, including rehabilitation facilities strategically located therein, to discover the causes of problems encountered in recruiting and retaining rehabilitation professionals.

3. Study a criterion group of rehabilitation professionals who have functioned effectively in rural areas for extended periods, to discover the salient traits of those professionals that have contributed most to their success and satisfaction.

4. Explore the potential of telecommunications as a method for alleviating specific problems hindering recruitment and retention of rehabilitation professionals in rural areas.

5. Identify incentives designed to overcome problems in recruitment and retention of rehabilitation professionals in rural areas.

It is expected that the design of this research program would be completed within a one year time frame.

Priority C: Prenatal Risk Factors/Early Intervention in Early Childhood (0-3)

To develop innovative methods of providing services to severely handicapped children up to the age of three and those who are at high risk.

Specific objectives of this study should include:

1. Identification of high risk factors, i.e. birth problems, failure to thrive, etc. and its relation to treatment strategies.

2. Evaluation of the process by which infants with handicaps are identified,

diagnosed and referred to treatment agencies.

3. Development of new or refinement of existing methods of identifying, diagnosing and treating high risk infants.

Priority D: Spinal Cord Injury and Dysfunction

To generate new knowledge leading to the development of innovative and improved techniques of medical management of spinal cord dysfunction, with emphasis upon the newly disabled patient in the acute medical care phase. Priority will be given to those projects that focus upon experimental evaluative modalities for determination of functional potential, the clinical course including pathophysiology of early developing complications, and new techniques for the prevention and treatment of such complications as they effect readiness for rehabilitation. Such proposals should consider such areas and scope of investigation that permit definitive results that are readily applicable to clinical problems or lead to further scientific investigation that have significant potential impact upon clinical problems.

Priority E: Multiple Sclerosis

To generate new knowledge leading to the heightened understanding of the cause, duration, and severity of the exacerbation of the multiple sclerosis course as it effects potential for rehabilitation. Priority will be given to those studies that lead to the identification of the means of preventing episodes and/or minimizing the deleterious effects of the reactivation in patient populations recently diagnosed and identified as suffering from multiple sclerosis. Such proposals should consider a scope of investigation that permits transfer and application of research results into early rehabilitation practices or that have potential impact upon clinical practice based upon the identification of further scientific investigation.

Priority F: End-Stage Renal Disease.

To develop new knowledge through scientific investigations that lead to the improvement of end-stage renal disease rehabilitation services. Priority will be given to those investigations that emphasize home and other forms of dialysis methods including peritoneal, ambulatory, and innovative hemodialysis techniques. Such project proposals should be directed to the identification and evaluation, including clinical trials, of those innovative techniques that are appropriate for use outside of dialysis centers and that facilitate normal life style, mobility, and productive living.

Priority G: General

To conduct planning, research, demonstrations and related activities of high potential or unusual promise for the purpose of developing methods, procedures and devices to improve the delivery of vocational and other rehabilitation services to handicapped individuals.

Eligible Applicants

States and public or private agencies and organizations, including institutions of higher education may apply for research and demonstration grants.

Available Funds

Support may be up to a five year duration. Applications proposing multi-year activities must be accompanied by an explanation of the need for the multi-year support; a review of the objectives and activities proposed beyond the initial year of support; and budget estimates to obtain the objectives in any proposed subsequent year.

Approximately $1,200,000 is available for the new Research and Demonstration grants. Individual grant awards normally range from $100,000 to $200,000. The initial grant sustains the Federal share of the budget for the first year of the project. Applications for continuation awards will be reviewed annually on a non-competitive basis and approved only if;

a. funds are available to continue the grant;

b. satisfactory progress has been made in implementing the approved work plan and in achieving the goals and objectives as indicated by site visits, progress reports and other relevant data;

c. the need continues to exist for the activities conducted by the grant.

Grantee Share of the Project

Some cost-sharing will be required on the project. The actual percentage of cost-sharing will be determined at the time of the award.

The Application Process

Availability of Forms Application for a Research and Demonstration grant must be submitted on standard forms provided for this purpose. Application kits which include the forms and other information may be obtained by writing to: National Institute of Handicapped Research, Room 3418, May E. Switzer Building, 330 C Street, S.W., Washington, D.C. 20201, Attention: 13654–803 Telephone: 202/245–0515

Applicants *must* specify which priority(s) by letter designation they wish to address when requesting application kits.

Application Submission. One signed original and two copies of the grant application, including all attachments, must be submitted to the address provided in the application kit. Additionally, in order to facilitate the review process a copy of the application should be submitted concurrently to the appropriate Regional Office and appropriate State Vocational Rehabilitation Agency for review and comment.

A–95 Notification Process. This grant, program is exempt from A–95 State and Area Wide Clearinghouses.

Application Consideration

The National Institute of Handicapped Research determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program are subjected to a competitive review and evaluation by qualified persons independent of the National Institute of Handicapped Research. The results of the review assist the Director of the National Institute of Handicapped Research in considering competing applications. The Director's consideration also takes into account comments of the HEW Regional Offices, State Vocational Rehabilitation Agencies; and the National Institute of Handicapped Research staff. Comments may also be requested from appropriate specialists and consultants inside and outside the federal government.

The successful applicant is notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is contemplated.

Criteria for Review and Evaluation of Applications

Grant applications will be reviewed and evaluated in terms of how well the application contents address the following criteria (a maximum point total of 100 is possible):

1. *National Need*—The need section must clearly describe how the project relates to the national need in handicapped research, provide specific evidence of the need, indicate specifically who or what will be helped and describe the problem rather than the symptom. (5 points.)

2. *Objectives*—The objectives of the project must be related to the problem, be significant for handicapped research, clearly describe proposed project outcomes, be capable of being attained and be measurable. (5 points.)

3. *Plan of Operation*—The following factors are considered:

a. High quality in the design of the project: the plan must clearly describe the overall design for the proposed project and the specific procedures by which each objective will be accomplished. (30 points, 35 points for research utilization projects.)

b. Management Plan. The management plan must adequately describe the way in which personnel and resources will be used to accomplish each component of the plan. (10 points.)

c. Relevancy. A clear description of how the objectives of the project relate to the purpose of the Institute must be presented. (5 points.)

d. The way the applicant plans to use its resources and personnel to achieve the project objectives must be presented. (5 points.)

4. *Quality of Key Personnel*—Factors which are considered are the qualifications of the project director and other key personnel to be used in the project and the time they will commit to the project. (10 points.)

5. *Adequacy of Resources*—Facilities, equipment and supplies to be utilized must be appropriate and adequate and assurances of support from cooperating agencies, institutions, business, industry, labor, where applicable, must have been received. (5 points.)

6. *Utilization Plan*—The application must describe what will be delivered, the format in which the results, products, or outcomes that will be delivered, the way in which results, projects or outcomes will be developed or provided for dissemination purposes to specified user populations and the procedures to be used in disseminating the results, end products, or outcomes at the local, State and/or national levels. (10 points; 0 points for research utilization projects where research utilization is the main project objective.)

7. *Evaluation Plan*—The plan must include valid objectives and reliable instruments to produce data that are quantifiable and procedures for assessing and documenting the projects results and end products or outcomes in terms of the achievement of project goals and objectives. (5 points; 10 points for research utilization projects.)

8. *Budget and Cost Effectiveness*—Factors which are considered are whether the budget is adequate to support the project activities, costs are reasonable in relation to the objectives of the project and budget items are justified in a clear narrative. (5 points.)

9. *Literature Review*—The literature review must be sufficiently comprehensive to establish the basis for the problem; describe the problem rather then the symptoms of the problem; to provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination and training procedures were appropriate; and to describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work. (5 points.)

Closing Date for Receipt of Applications

The closing date for receipt to applications under this Program Announcement is June 30, 1980. Applicants are encouraged to respond at an earlier date if possible. Applications may be mailed or hand delivered. Hand delivered applications will be accepted during regular working hours at 8:30 a.m. to 5:00 p.m.

An application will be considered to have arrived by the closing date if:

1. The application was sent by registered or certified mail no later than June 30, 1980 as evidenced by the U.S. Postal Service postmark or the original receipt from the U.S. Postal Service unless the appplication arrives too late to be considered by the independent review panel.

2. The application is hand delivered to the office designated to receive the application in the application instructions. Hand delivered applications will be accepted no later than close of business, June 30, 1980, in any case; and

3. The application is sent by mail and received on or before the closing date in the Department of Health, Education, and Welfare, the Office of Human Development Services or the National Institute of handicapped Research mailrooms as evidenced by the time date stamp or other documentary evidence of receipt maintained by such mailroom. Late applications are not acceptable and applicants will be notified accordingly.

In view of the limited time remaining in the fiscal year for applicants to prepare and submit their applications and for selction of the grantee, and because of the need to begin operations under the grant as soon as possible, the Director has determined under 5 U.S.C. 553 that public comment on the standards in this notice would be impracticable and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program Number: 13.654, Research and Demonstrations).

Dated: April 11, 1980.

Margaret J. Giannini, M.D., F.A.A.P.,

Director of the National Institute of Handicapped Research.

Approved: April 25, 1980.

Manuel Carballo,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 80-13353 Filed 4-30-80; 8:45 am]

BILLING CODE 4110-92-M

federal register

Thursday
May 1, 1980

Part III

National Transportation Safety Board

Areas of Responsibility for Field Offices

NATIONAL TRANSPORTATION SAFETY BOARD

Areas of Responsibility for Field Offices; Correction

On April 3, 1980, at 45 FR 22314, the National Transportation Safety Board published a notice providing information concerning the areas of responsibility of the NTSB Field Offices in investigating aviation, highway, pipeline, and railroad transportation accidents which occur in the United States. However, certain relevant information was omitted from that notice. For expedient use by the public, a corrected document, together with revised modal maps illustrating the areas of jurisdiction for the Washington, D.C., Headquarters and the 10 Field Offices, is provided below. This information is effective May 1, 1980.

Headquarters, Washington, D.C.

Location: 800 Independence Avenue, SW., Washington, D.C. 20594.

Telephone: 202–472–6091 (railroad commercial); 202–472–5973 (pipeline commercial); 472–6091 (railroad Federal telecommunications); 472–5973 (pipeline Federal telecommunications).

Jurisdiction

Pipeline—Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, Tennessee, Florida, Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Vermont, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Railroad—Virginia, Maryland, West Virginia, Kentucky, Tennessee, and North Carolina.

Anchorage

Location: Room C–145, 701 C Street, Box 11, Anchorage, Alaska 99513.

Telephone: 907–2711–5001 (commercial); 399–0150, ask for Anchorage 271–5001 (Federal telecommunications).

Jurisdiction

Aviation: Alaska.

Atlanta

Location: 1720 Peachtree Street, N.W., Atlanta, Georgia 30309.

Telephone: 404–881–7385 (commercial); 257–7385 (Federal telecommunications).

Jurisdiction

Aviation—Georgia, Alabama, Mississippi, Tennessee, North Carolina, South Carolina, Kentucky, Virginia, West Virginia, Maryland, and the District of Columbia.

Highway—Georgia, Louisiana, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, Florida, and Puerto Rico.

Railroad—Georgia, Mississippi, Alabama, South Carolina, Florida, and Puerto Rico.

Chicago

Location: 2300 E. Devon Avenue, Suite 140, Des Plaines, Illinois 60018.

Telephone: 312–827–8858 (commercial); 384–9248 (Federal telecommunications).

Jurisdiction

Aviation—Illinois, Indiana, Ohio, Minnesota, Wisconsin, and Michigan.

Railroad—Illinois, Indiana, Ohio, Minnesota, Wisconsin, and Michigan.

Denver

Location: 10255 East 25th Avenue, Suite 14, Aurora, Colorado 80010.

Telephone: 303–837–4492 (commercial); 327–4491 (Federal telecommunications).

Jurisdiction

Aviation—Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota.

Railroad—Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota.

Fort Worth

Location: Federal Building, Room 7A07, 819 Taylor, Forth Worth, Texas 76102.

Telephone: 817–334–2616 (commercial); 334–2616 (Federal telecommunications).

Jurisdiction

Aviation—Texas, New Mexico, Oklahoma, Arkansas, and Louisiana.

Pipeline—California, Nevada, Utah, Arizona, Colorado, New Mexico, Kansas, Oklahoma, Texas, Missouri, Arkansas, Louisiana, Mississippi, and Alabama.

Railroad—Texas, New Mexico, Oklahoma, Arkansas, and Louisiana.

Kansas City

Location: Federal Building, Room 1748, 601 East 12th Street, Kansas City, Missouri 64106.

Telephone: 816–374–3576 (commercial); 758–3576 (Federal telecommunications).

Jurisdiction

Aviation—Missouri, Kansas, Nebraska, and Iowa.

Highway—Missouri, Texas, Oklahoma, Arkansas, Kansas, Nebraska, North Dakota, South Dakota, Minnesota, Iowa, Wisconsin, Illinois, Indiana, and Kentucky.

Railroad—Missouri, Kansas, Nebraska, and Iowa.

Los Angeles

Location: 15000 Aviation Boulevard, P.O. Box 6117, Lawndale, California 90261.

Telephone: 213–536–6041 (commercial); 966–6041 (Federal telecommunications).

Jurisdiction

Aviation—California, Nevada, Arizona, and Hawaii.

Highway—California, Nevada, Arizona, New Mexico, Colorado, Utah, Wyoming, Montana, Idaho, Oregon, Washington, Alaska, and Hawaii.

Railroad—California, Nevada, and Arizona.

Miami

Location: 4471 N.W. 36th Street, Miami Springs, Florida 33166.

Telephone: 305–526–2940 (commercial); 350–2940 (Federal telecommunications).

Jurisdiction

Aviation—Florida, and the Commonwealth of Puerto Rico.

New York

Location: Federal Building, Room 102, JFK International Airport, Jamaica, New York 11430.

Telephone: 212–995–3716 (commercial); 665–3716 (Federal telecommunications).

Jurisdiction

Aviation—New York, Pennsylvania, Delaware, New Jersey, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, and Maine.

Highway—New York, Pennsylvania, Delaware, New Jersey, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, Maine, Michigan, Ohio, West Virginia, Virginia, Maryland, and District of Columbia.

Railroad—New York, Pennsylvania, Delaware, New Jersey, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, and Maine.

Seattle

Location: 19415 Pacific Highway South, Room 303, Seattle, Washington 98188.

Telephone: 206–764–3782 (commercial); 399–3782 (Federal telecommunications).

Jurisdiction

Aviation—Washington, Oregon, and Idaho.

Railroad—Washington, Oregon, Idaho, and Alaska.

William L. Lamb,

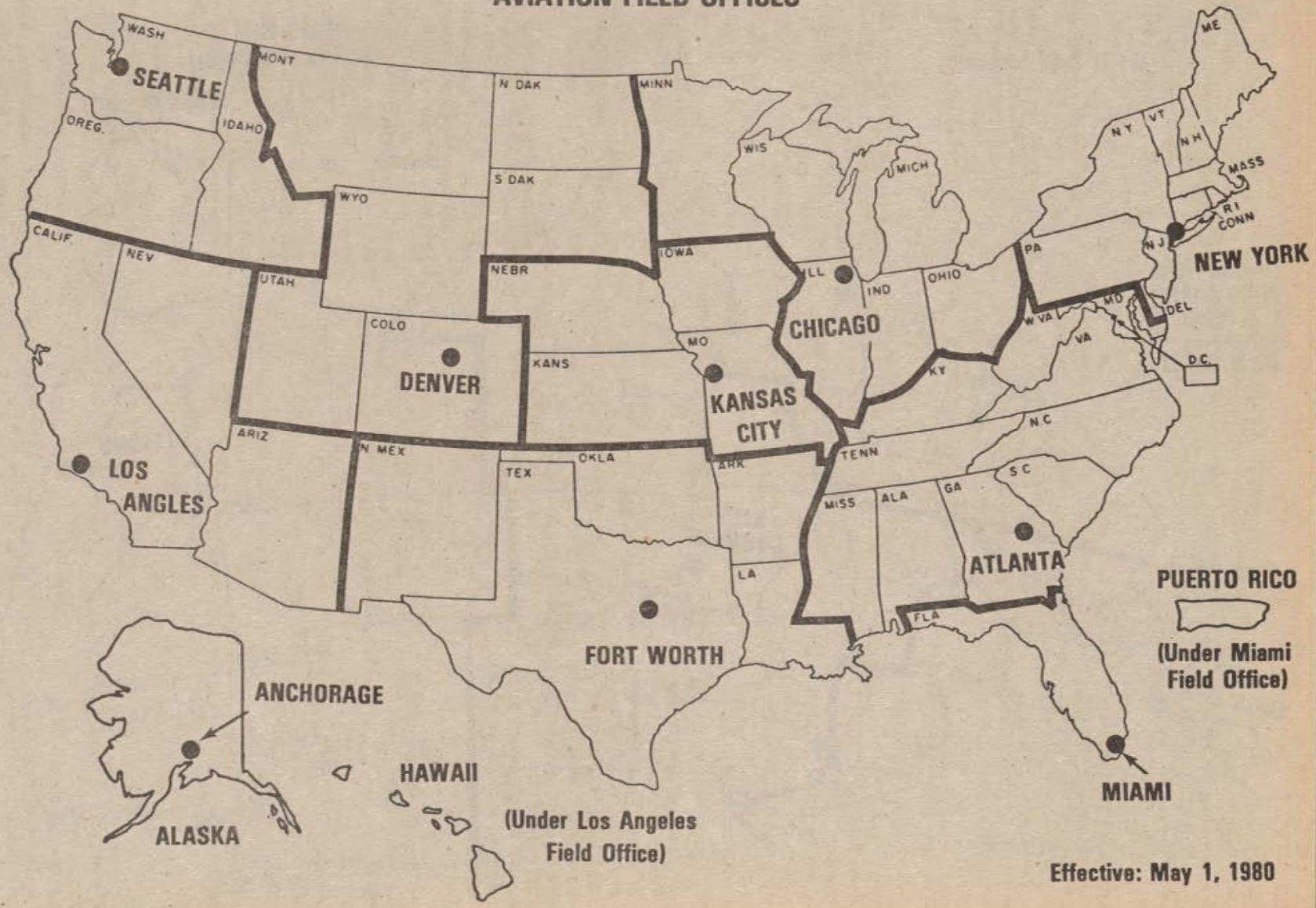
Chief, Field Investigation Division.

April 25, 1980

BILLING CODE 4910-58-M

NATIONAL TRANSPORTATION SAFETY BOARD

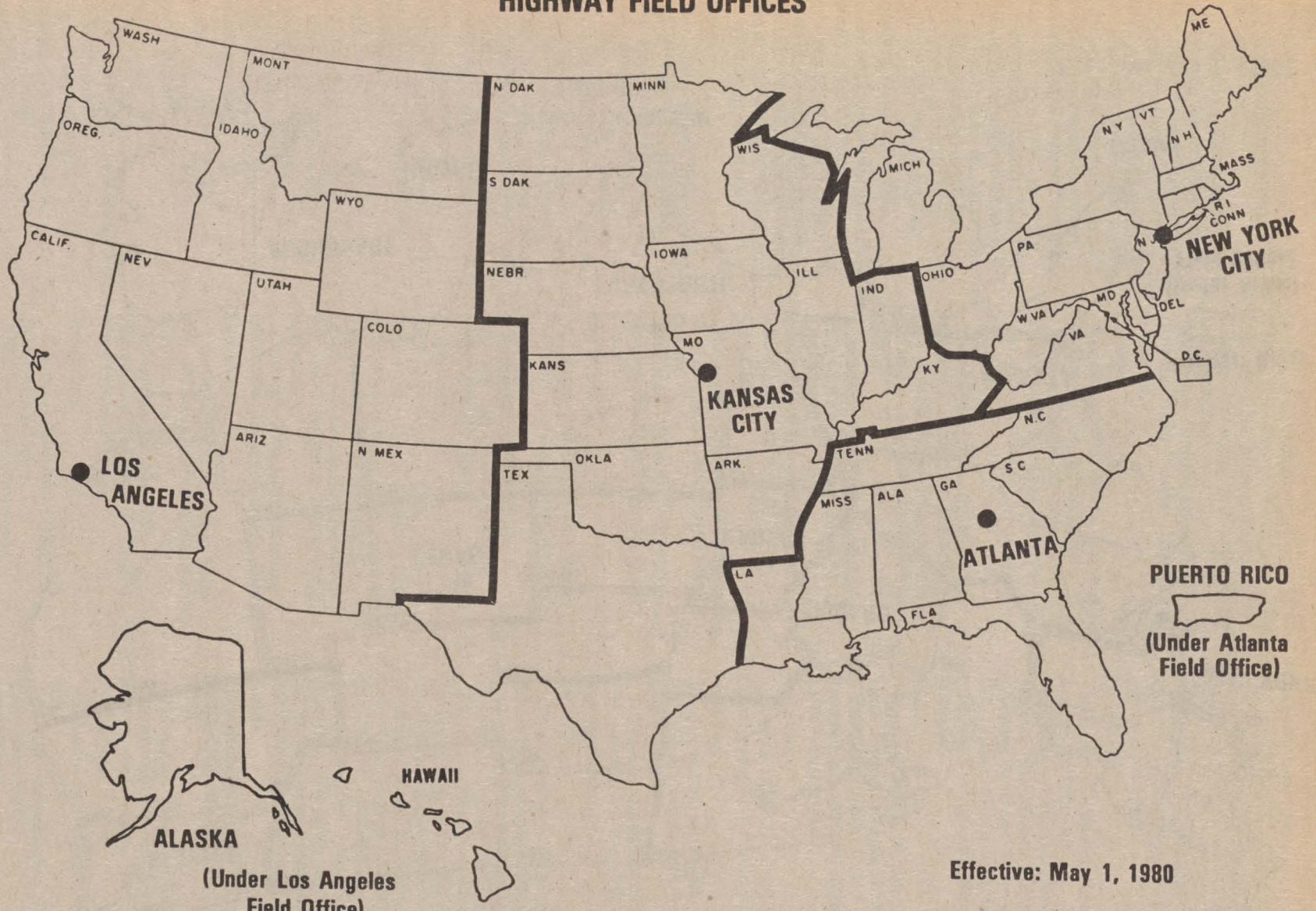
AVIATION FIELD OFFICES



Effective: May 1, 1980

NATIONAL TRANSPORTATION SAFETY BOARD

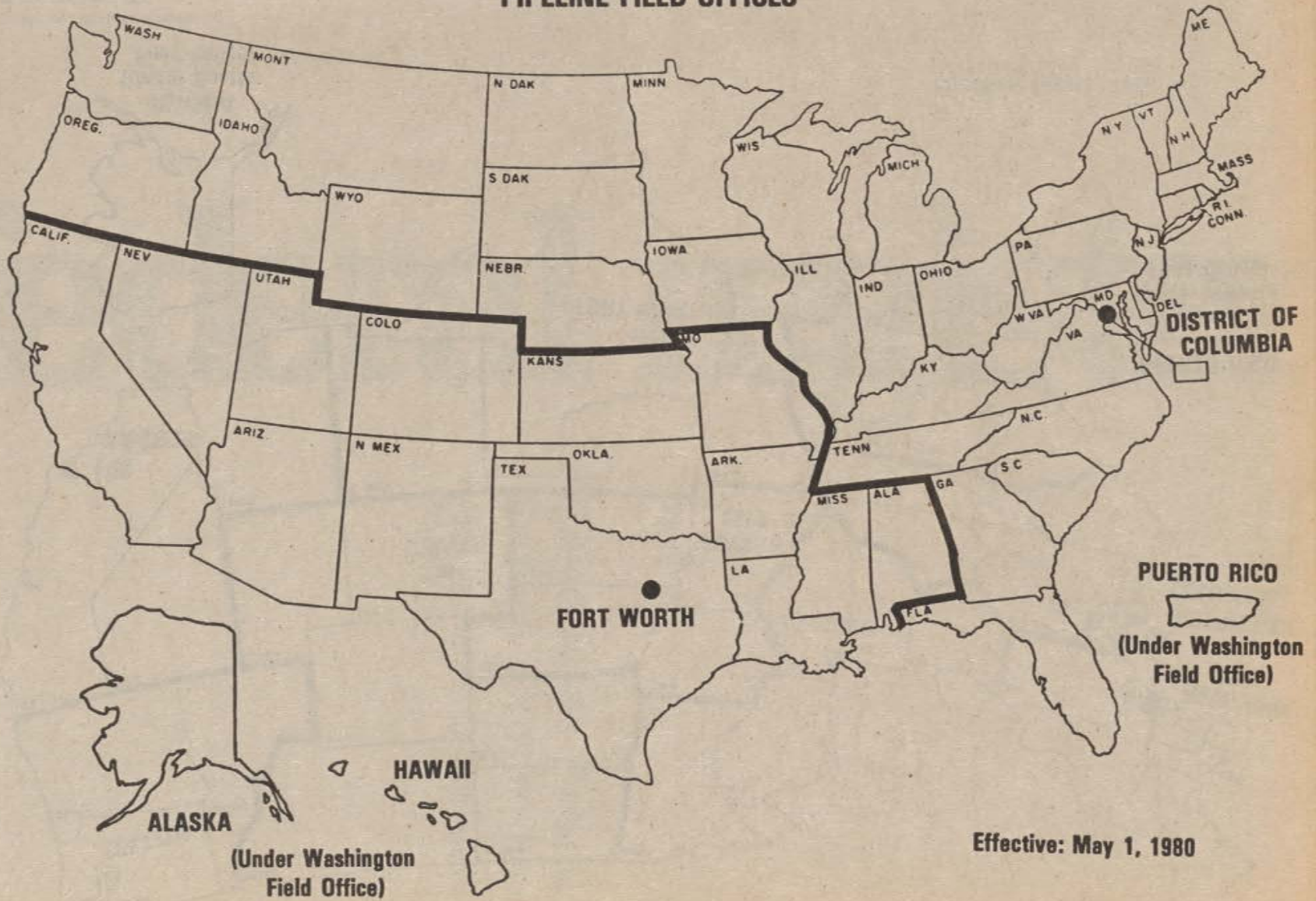
HIGHWAY FIELD OFFICES



Effective: May 1, 1980

NATIONAL TRANSPORTATION SAFETY BOARD

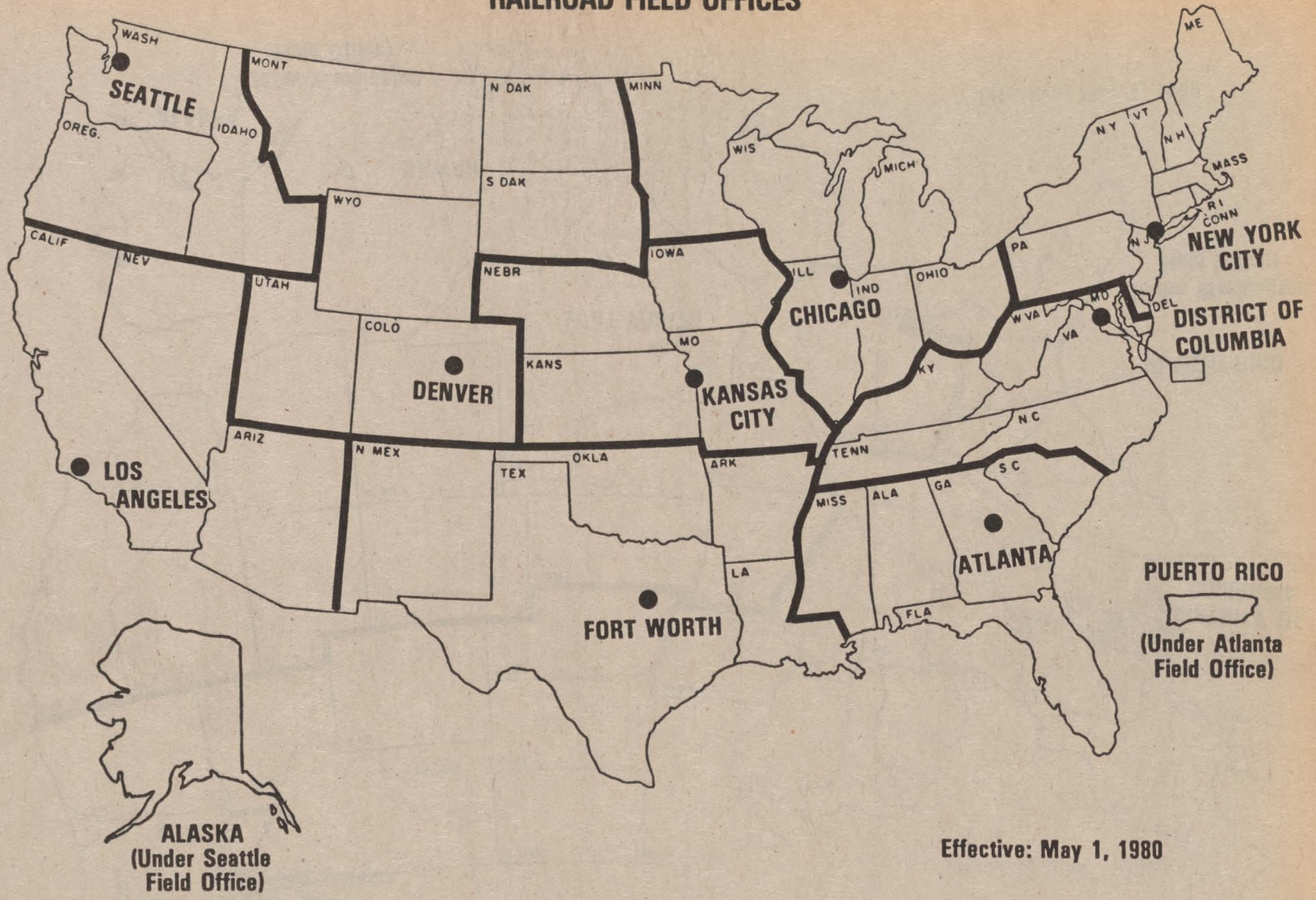
PIPELINE FIELD OFFICES



Effective: May 1, 1980

NATIONAL TRANSPORTATION SAFETY BOARD

RAILROAD FIELD OFFICES



Effective: May 1, 1980

[FR Doc. 80-13440 Filed 4-30-80; 8:45 am]

BILLING CODE 4910-58-C

federal register

Thursday
May 1, 1980

Part IV

Consumer Product Safety Commission

Rules of Practice for Adjudicative Proceedings

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1025

Rules of Practice for Adjudicative Proceedings

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: In this document, the Consumer Product Safety Commission sets forth its final Rules of Practice for Adjudicative Proceedings, which shall govern the procedure in adjudicative proceedings arising under the Consumer Product Safety Act, the Flammable Fabrics Act, and in such other proceedings as the Commission may designate.

EFFECTIVE DATE: May 1, 1980.

FOR FURTHER INFORMATION CONTACT: Winston M. Haythe, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, Telephone No. (301) 492–6633.

SUPPLEMENTARY INFORMATION: On July 23, 1974 the Consumer Product Safety Commission published in the **Federal Register** (39 FR 26843) proposed and interim rules of practice for adjudicative proceedings and received comments on that proposal. Thereafter, on June 21, 1977 the Commission published in the **Federal Register** (42 FR 31431) a revised set of proposed and interim rules of practice for adjudicative proceedings, 16 CFR Part 1025. The revisions in the second proposal were made in light of the comments received on the first proposal, as well as the experience gained by the Commission staff in trying cases pursuant to the initially published rules. The proposal of June 21, 1977 invited public comment by July 21, 1977. The comment period was extended until August 22, 1977 at the request of several interested persons who were unable to prepare comments by July 21 (42 FR 29089, August 2, 1977).

A basic intent of the Commission in the development of these final Rules of Practice has been to promulgate a single set of procedural rules which can accommodate both simple matters and complex matters in adjudication. The Commission believes this objective has been accomplished in these Rules. For this reason, the Commission has concluded that it will be unnecessary, and confusing, to have separate rules to govern procedures in adjudications to assess civil penalties. Therefore, the Commission is simultaneously revoking its interim Rules of Practice for Expedited Proceedings ("Expedited Rules") (16 CFR Part 1026) and withdrawing the proposed rule (45 FR 27923, April 25, 1980).

As discussed in the notice revoking the Expedited Rules, the three public comments on 16 CFR Part 1026 stated that, among other things, procedural rights (e.g., discovery) would be limited in expedited proceedings for the assessment of civil penalties. Since the Commission is revoking the Expedited Rules and will conduct all administrative proceedings for the assessment of civil penalties under these final Rules of Practice, the concerns expressed by the public comments have been rendered moot. Thus, the final Rules of Practice, which are patterned on the Federal Rules of Procedure, will be used in all administrative matters, including civil penalty assessment hearings, except in those instances where the matter of a civil penalty is presented to a United States District Court in conjunction with an action by the Commission for injunctive or other appropriate relief. When the Commission proceeds against a person for injunctive or other appropriate relief in a United States District Court, the Commission may, if it so chooses, combine the assessment of a civil penalty with the injunctive application into a single case to be heard by the Court. However, the Commission retains the right to institute an administrative proceeding for the assessment of a civil penalty separate and distinct from any court action for an injunction against the same party. In either instance every affected party will be afforded the full panoply of procedural due process rights as guaranteed by the Constitution.

Discussion of Major Comments

Identification of Comments

In response to the Commission's proposal of June 21, 1977 comments were received from manufacturers, directly and through trade associations, an association of retailers and a law school-affiliated public interest organization.

In addition to the public comments on the proposed rules, a number of suggestions were made by members of the Commission staff, based upon their individual experiences in using the proposed rules in the course of administrative hearings.

As the "Section-By-Section Analysis of Comments" will show, the Commission has accepted some suggestions contained in the comments, thereby either amending or deleting portions of the proposed rules, and has rejected others.

Commission Objectives in Development of Rules

The Commission has been guided by certain overall objectives in drafting rules which are to govern matters in adjudication. The primary objective is to achieve a just, speedy and inexpensive determination based upon the evidence, with a uniformity of treatment in all adjudications. Openness is another objective. From its inception in 1973, the Commission has conducted its regulatory activities in full public view and has encouraged, to the maximum extend, meaningful public participation in its regulatory efforts. These final Rules reflect the Commission's openness policy by requiring that matters in litigation be transacted in sessions which are open to the public to the fullest extent possible.

To encourage meaningful public participation in the adjudicative process, the Commission has provided in these Rules for a person to appear as a "participant." A participant shall have the privilege of participating in the proceedings to the extent of making a written or oral statement of position, and may file proposed findings of fact and conclusions of law, as well as a post hearing brief, with the Presiding Officer. See § 1025.17(b). A participant's statements shall be considered but not accorded the status of probative evidence. A participant may also participate in any appeal of a matter by complying with §§ 1025.53–54. In exchange for the limited participation just described, those provisions relieve participants from the necessity of complying with the more stringent legal requirements which are imposed on parties with full litigating rights. Additionally, if a member of the public, who is not a named party to the proceedings, desires to participate in the adjudication with the full range of litigating rights of any other party, one can be an "intervenor" if the requirements for intervenor status set forth in § 1025.17 are met.

Another major objective of the Commission in the development of these rules has been to insure that all matters in adjudication move forward in a timely manner because of the safety issues involved in the Commission's enforcement actions. Thus, while affording adequate protection to the Constitutional due process rights of every affected party, the Commission has imposed certain time restrictions within these Rules. For example, all discovery must be completed within 150 days after issuance of a complaint,

unless otherwise ordered by the Presiding Officer in exceptional circumstances. See § 1025.31(g).

These rules have been designed to accommodate both the simplest and the most complex types of cases. The vehicle for achieving such flexibility within a single set of adjudicative rules is to place broad discretion in the Presiding Officer who hears a matter in controversy. The granting of broad discretion to the Presiding Officer can be seen throughout the provisions of these rules.

Except as otherwise provided, these Rules have been patterned on the Federal Rules of Civil Procedure. Therefore, legal practitioners who are familiar with the United States court system will already be familiar with most, if not all, procedural requirements of the Commission. Additionally, the Federal Rules of Evidence are applicable to proceedings before the Commission, except as they may be relaxed by the Presiding Officer if the ends of justice will be better served in so doing. See § 1025.43(a).

The major overall objective of the Commission in developing these Rules has been to ensure that matters in adjudication be carried out in furtherance of the Commission's Congressional mandate "to protect the public against unreasonable risks of injury associated with consumer products." 15 U.S.C. 2051(b)(1). The Commission believes that these final Rules of Practice for Adjudicative Proceedings achieve the Commission's objectives for matters in administrative litigation.

Section-by-Section Analyses of Comments

Significant changes have been made throughout these Rules as a result of public comments, staff recommendations, and/or upon the Commission's own initiative. The principal issues raised by the comments and the Commission's conclusions are as follows:

1. *Section 1025.3(e).* Two comments suggested that the definition of the term "motion" be amended to make clear that only those persons with an interest in the subject of the motion would be entitled to respond to it. Section 1025.3(e) limits responses to motions to parties in a proceeding. Section 1025.3(f) defines the term "party" to mean any person named in the proceedings subject to the Rules or any intervenor. Section 1025.17(d) sets forth factors which a Presiding Officer shall consider in ruling on petitions to intervene, e.g., the nature and extent of the property, financial or other substantial interest in the proceedings of the person seeking to intervene. Section 1025.17(a) provides that once granted intervenor status, such intervenor shall have the full range of litigating rights afforded to any other party. Since § 1025.3(e) already limits responses to parties to the proceedings, the Commission's view is that the commenters objective has already been achieved and no further clarification within § 1025.3(e) is necessary.

2. *Section 1025.3(i).* One comment requested that the term "Presiding Officer" be redefined to include only a member of the Commission or an administrative law judge. The Commission has decided to revise the definition of the term "Presiding Officer" to exclude Commissioners. Without this change a Commissioner could review on appeal the determinations he/she made during the hearing and the initial decision he/she prepared.

The Commission has decided it is better to exclude a member of the Commission from serving as a Presiding Officer than to exclude the Commissioner who serves as a Presiding Officer from participating as a member of the Commission in an appeal. If a Commissioner presides at an adjudication, prepares the initial decision and is excluded from the appellate process, the other Commissioners might nonetheless be influenced by the fact that a fellow Commissioner rendered the decision. In addition, there may be the public perception that that may happen. Also, by excluding the Commissioner that presided, the possibility of a tie Commission vote is greatly enhanced. To avoid these difficulties the definition has been changed to exclude members of the Commission.

3. *Sections 1025.11 (a) and (b).* Although no public comment addressed these provisions which concern the commencement of proceedings, the Commission has amended the language in these sections to provide that adjudicative proceedings will be commenced, after the Commission has determined that a *prima facie* case has been established, by the issuance of a complaint bearing the signature of the individual delegated responsibility to sign the Complaint by the Commission. As proposed, §§ 1025.11 (a) and (b) provided that a complaint must be issued "by the Commission" and "signed by the Secretary on the seal of the Commission."

The final provision reflects the fact that the burden of proof in an administrative proceeding is on the Directorate for Compliance and Enforcement and to avoid the appearance that the Commission is both prosecuting and deciding each adjudication.

4. *Section 1025.11(b)(3).* As proposed, this section directs that the documents that accompanied the staff's recommendation to the Commission to initiate the proceeding, and that are obtainable under the Freedom of Information Act, 5 U.S.C. 552, be attached to the complaint. Two comments stated that this provision could authorize the attachment of trade secrets and other confidential commercial information to a complaint. The concerns expressed and suggestions raised in those comments are now moot since § 1025.11(c) has been changed in the final section to provide that only a list and summary of the documentary evidence shall be attached to the complaints.

5. *Section 1025.11(c) (§ 1025.11(d) as proposed).* This section provides for the prompt publication in the Federal Register of the complaint after it is issued. One comment stated that a complaint should not be published in the Federal Register as provided in proposed § 1025.11(d) and two other comments expressed concern that a complaint could conceivably be published before a respondent had knowledge of the complaint. Although it is theoretically possible that a complaint could be published in the Federal Register prior to completion of service, the Commission believes such an occurrence is unlikely because of the necessary delay in publication resulting from the preparation of transmitted documents at the Commission and the time required at the Office of the Federal Register to prepare the complaint for publication. Despite the risk of delayed service upon the respondent, the Commission believes prompt publication is important, especially in view of possible class actions under § 1025.18, as well as to give notice of the complaint to potential participants or intervenors under § 1025.17.

6. *Section 1025.13.* Three comments object to the section authorizing the Presiding Officer to allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceedings or cause undue delay. The commenters expressed concern that amendments to the administrative complaint could (1) alter the charges originally authorized by the Commission, thereby usurping the Commission's function, (2) allow extraneous issues to be introduced into an adjudication, and (3) hamper the respondent's ability to develop an adequate defense or conduct adequate

discovery if permitted just before or during a hearing. One comment stated that the Rules of Practice contain no express mechanism for opposing amendments or supplemental pleadings, while another suggested allowing an interlocutory appeal to the Commission of a decision of the presiding officer allowing amendments to the complaint or the submission of supplemental pleadings.

The Commission believes that procedures established by the final Rules of Practice are adequate to protect the rights of respondents and to accomplish the purposes of a just and speedy adjudication. The procedural mechanism for amending the complaint or allowing supplemental pleadings is by motion addressed to the presiding officer. *See* final § 1025.23. Sections 1025.23 (a) and (c) expressly provide for the submission of opposition to the motion. In ruling upon a motion, the presiding officer must heed certain fundamental principles. Respondents are entitled to be adequately informed of the legal authority and jurisdiction invoked for the proceeding and of the matters of fact and law relied upon. 5 U.S.C. 554(b). *See, Rodale Press, Inc.* v. *FTC*, 407 F.2d 1252 (D.C. Cir. 1968); *NRLB* v. *Tennsco Corp.*, 339 F.2d 396 (6th Cir. 1964). The right to be informed of the charges, alleged facts and legal theories implicitly carries with it the right to an adequate opportunity to prepare a defense to the charges, including conducting discovery. In ruling upon a motion to amend or file supplemental pleadings, the presiding officer must consider any delay or prejudice to the parties that may result. In addition, since § 1025.11(a) provides that only a complaint authorized by the Commission may be issued, amendments to the complaint must come within the scope of the Commission's authorization. Thus, neither the presiding officer nor the Commission's staff is usurping the Commission's function. The Commission believes that these Rules of Practice provide adequte procedures for the parties to argue their respective positions and an adequate framework for the exercise of the broad discretion vested in the presiding officer. Consistent with the Commission's view to limit interlocutory appeals to avoid undue delay during the progress of an adjudication, we have declined to adopt any of the changes recommended by the commenters.

7. *Section 1025.16(b)(4).* Three comments raised objection to the provision allowing service by publication in the Federal Register for "a respondent not otherwise served pursuant to these rules." Each comment observed that the Supreme Court of the United States has determined that actual notice is required to all class members who can be ascertained through reasonable efforts. The Commission intends nothing less.

Where known or reasonably ascertainable, each class member will recieve notice as provided by § 1025.16(b)(1)–(3). Where class members cannot be identified through reasonable efforts by the Commission, then service may be made by publication in the Federal Register "and such other notice as may be directed by the Presiding Officer * * *" § 1025.16(b)(4). The Commission anticipates that the notice directed by the Presiding Officer will include notice by publication in trade journals and by other efforts reasonably calculated to give to each class member the best notice practicable under the circumstances.

Moreover, the Commission observes that is is unnecessary for individual class members to receive personal notice in a class action maintained pursuant to the Federal Rules of Civil Procedure (Fed.R.Civ.P.) Rule 23 (b)(1) or (b)(2) if the class is adequately represented. Where the representation is adequate, due process is satisfied because the cohesiveness of the class assures that "the named representatives will protect the absent members and give them the functional equivalent of a day in court." *Souza* v. *Scalone*, 64 F.R.D. 654, 659 (N.D.Cal. 1974); 7A Wright and Miller, *Federal Practice and Procedures: Civil* § 1786 (1972 ed.).

The class actions which may be instituted under these Rules are the equivalent of those under Fed.R.Civ.P. 23 (b)(1) or (b)(2). The Presiding Officer may direct notice to be published in any acceptable publication, in addition to the Federal Register. The service by publication will be resorted to where class members are unknown, are not reasonably ascertainable, or are unreachable by other means of service as provided by these Rules. Accordingly, the Commission has not substantively changed this section.

8. *Section 1025.16(g).* One comment requested that the proposed rule be changed to provide that the service date be the date of actual delivery rather than the date of deposit in the mail, because of delays in mail delivery. Section 1025.15(b) provides for three (3) additional days in time computations for documents served by mail, as does Fed.R.Civ.P. 6(e). Accordingly, the Commission's view is that § 1025.16(f) is sufficient as proposed.

9. *Section 1025.17(b).* Three comments were received on the section on intervention which provides for participation by a person not an intervenor as a "participant." A participant shall have the privilege, as provided in § 1025.41(d), of making a statement of position and of filing proposed findings of fact and conclusions of law and a post hearing brief. One comment sought clarification as to whether § 1025.17(b)(3), in conjunction with § 1025.41(d), was intended to limit a participant to a single "statement of position," and if so intended, then no objection was interposed by the comment. The Commission does intend to limit a participant to a single statement of position.

A second comment urged that public participation be limited to intervenors with full rights and obligations and suggested deletion of the "participant" status. The commentor recommended, alternatively, limiting the participant to filing only a statement of position. A third commenter praised the concept of such status, while offering some suggested changes to § 1025.17. After careful consideration of all comments on this section, the Commission's position is that all persons affected by the agency's regulatory enforcement activities and the public generally should and will have the means to be heard. Participant status provides a mechanism for accomplishing that objective with less involvement and responsibility than an interview. Accordingly, no substantive revisions have been made.

10. *Section § 1025.18.* Two comments were received which addressed the issue of respondent class actions as authorized in § 1025.18. Both comments acknowledged that a respondent (defendant) class action is an accepted procedural device, as provided in Fed.R.Civ.P 23(b) and sanctioned by case law. However, each voiced some concern as described below about the section as proposed. To a limited extent, the Commission agrees with the concern expressed and has amended § 1025.18 accordingly.

As proposed, § 1025.18 contained language from Fed.R.Civ.P. 23(a) and Fed.R.Civ.P. 23(b)(3), but contained none of the procedural safeguards contained in Fed.R.Civ. P. 23(c)(2) which relate to class actions brought under Fed.R.Civ.P. 23(b)(3). It was this omission which caused concern. The omission reflects the Commission's intention that respondent class actions brought pursuant to § 1025.18 incorporate only Fed.R.Civ.P. 23(b)(1) and (2) class

actions. The Commission intends to exclude respondent class actions under Fed.R.Civ.P. 23(b)(3). To make this clear, § 1025.18(d) has been amended as follows:

"(d) Upon motion of Complaint Counsel and as soon as practicable after the commencement of any proceedings brought as a class action, the Presiding Officer shall determine by order whether the action is a proper class action. It is a proper class action if the prerequisites of paragraph (a) are met and if the Presiding Officer finds that:

"(1) The prosecution of separate actions against individual members of the respondent class might result in (A) inconsistent or varying determinations with respect to individual members of the class which might produce incompatible or conflicting results, or (B) determinations with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members who are not parties to the proceedings or would substantially impair or impede the ability of the absent members to protect their interests; or

"(2) The Commission has acted on grounds generally applicable to the class, thereby making appropriate an order directed to the class as a whole. In reaching a decision, the Presiding Officer shall consider the interests of members of the class in individually controlling the defense of separate actions, the extent and nature of any proceedings concerning the controversy already commenced against members of the class, the desirability or undesirability of concentrating the litigation in one adjudication, and the difficulties likely to be encountered in the management of a class action, as well as the benefits expected to result from the maintenance of a class action."

In addition, one comment expressed concern that the respondent or respondents selected to represent the respondent class would be unable or unwilling to defend adequately the absent class members. This is an objection which should more properly be raised in the context of a particular adjudication and considered by the Presiding Officer on a case-by-case basis when he/she is asked to determine whether or not a class action may be maintained. It is an issue faced and addressed by United States district courts when they are requested to certify a class action. As noted elsewhere in this preamble, the Commission expects that interpretations of these Rules by the Presiding Officer will be guided by principles stated and developed in case law interpreting the Federal Rules of Civil Procedure.

The same comment observed that there is no procedure in these rules comparable to Fed.R.Civ.P. 23(c)(2) whereby a respondent may elect to be excluded from the respondent class and represent himself/herself/itself through counsel or otherwise. The amendment of § 1025.18(d) discussed above makes such a provision unnecessary. The procedure in Fed.R.Civ.P. 23(c)(2) allowing a respondent to "opt out" of the class applies only to class actions maintained under Fed.R. Civ.P. 23(b)(3). Since that section has not been incorporated into these rules, the procedure to "opt out" has not been included.

Furthermore, providing an "opt out" procedure from a defendant class would be contrary to the purpose of class actions. Presumably every respondent who could afford to "opt out" would do so, leaving a "shell" respondent class. Since sound reasons exist for not including such a provision, the Commission has accordingly not provided one.

The provisions of §§ 1025.18 (a) and (d) which require the Presiding Officer to consider certain factors when deciding whether to allow the class action to be maintained, together with the interlocutory appeal procedure, guarantee that a respondent class will not be maintained unless the Presiding Officer is satisfied that the representative will adequately represent the interests of the absent class members and that the action is one suitable for class action treatment. Finally, the rights of individual absent members are further protected by the provision which permits subclasses to be used and by the inherent authority of the Presiding Officer to order such notice or other actions as he/she may deem necessary for the orderly and fair progress of the case.

The Commission believes that the section in final form provides the due process envisioned by the Federal Rules of Civil Procedures and required by law.

11. *Section 1025.19.* One comment stated that the section on joinder of proceedings fails to provide a mechanism for a party whose rights would be prejudiced by joinder to prevent joinder or at least to present arguments. Section 1025.19 provides for consolidation upon motion by a party. Section 1025.23(c) provides for the filing of a written response to any written motion by an opposing party. Thus, a party that believes it will be prejudiced by joinder may express its opposition in a response to a motion for joinder. Hence, no change to § 1025.19 is deemed by the Commission to be warranted.

12. *Section 1025.21.* Three comments were received concerning prehearing conferences. One requested clarification as to the meaning of the phrase "except in unusual circumstances" as used in § 1025.21(a). The intent of the Commission is to establish the holding of a prehearing conference reasonably soon after the commencement of an adjudication under these Rules of Practice as the customary procedure. The qualifying language "except in unusual circumstances" was included to permit the presiding officer discretion to vary the time or dispense with the hearing when unusual circumstances not now anticipated make such a conference impractical or valueless. The language of the qualifying clause has been altered to clarify its meaning.

The other two comments objected to the provision requiring an initial prehearing conference within approximately 50 days after publication of a complaint in the **Federal Register.** Section 1025.21(a) states that the purpose of the prehearing conference is "to consider" a number of relevant items, including those set forth within the Rule. The comments expressed concern as to whether or not a proper defense could be prepared within the 50-day time limit. The Commission anticipates that for highly complex cases, more than one prehearing conference might be held before a hearing on the merits of the cause. Thus, at an initial prehearing conference it would not be necessary in every case that each of the parties would be fully prepared on each of the items in § 1025.21(a). The initial prehearing conference is the proper forum for establishing schedules and insuring that adjudicated matters proceed in a timely fashion. The Commission therefore will adhere to the 50-day requirement as proposed.

One comment objected to § 1025.21(a)(9) as unreasonable and unnecessary in terms of limiting the number of witnesses. As stated earlier, the initial prehearing conference provides an opportunity to consider all relevant matters, and the number of witnesses is a matter of relevant concern. The purpose is not to control the presentation of a party's case or to limit the number of witnesses needed to prove any point, but rather to avoid unnecessary duplication of testimony and delay. Hence, no substantive change is being made in § 1025.21.

13. *Section 1025.22.* Although no public comment addressed this provision, the Commission has decided to amend the mandatory requirement for the filing by parties of prehearing briefs and to place the matter within the discretion of the Presiding Officer. In final form, § 1025.22 provides that parties may file prehearing briefs not later than 10 days prior to the hearing, unless otherwise ordered by the Presiding Officer. Since pretrial briefs serve as an aid to the Presiding Officer,

the discretion to require pretrial briefs should be and, therefore, is vested in the Presiding Officer.

14. *Section 1025.23(d).* One comment stated that the provision allowing the Presiding Officer to defer ruling on a motion to dismiss until the close of the case is unfair to litigants. The Commission expects that the Presiding Officer will promptly rule on a motion to dismiss where the correct disposition is clear. If the motion is granted, the parties are spared the expense of participating in an unjustified trial. However, the proper ruling on the motion is not always ascertainable until the evidence is presented, at which time the motion may be granted or denied. For this reason and in accordance with the Commission's decision to grant broad discretion to the Presiding Officer, the Commission has decided not to alter § 1025.23(d) as drafted.

15. *Section 1025.24(b)(1).* Several comments were submitted concerning interlocutory appeals. One suggested the addition of an enumerated exception to permit an interlocutory appeal of the Presiding Officer's ruling on what constitutes a defendant class similar to Fed.R.Civ.P. 23(c). The comment also suggested that an interlocutory appeal be allowed for a review by the Commission of the Presiding Officer's determination of the scope of the issues to be decided at the hearing.

The Commission believes that as a general rule, all issues that arise during an adjudication should be considered and decided by the Presiding Officer during the proceeding. Commission review during the evidentiary stage will promote delay, unnecessary confusion and eliminate the opportunity for the Presiding Officer to correct his/her errors. An exception from the general rule should be, and is, provided where substantial prejudice or harm may result from a ruling of the Presiding Officer if not appealable prior to completion of the evidentiary stage of the adjudication. Allowing interlocutory appeals liberally would also tend to undercut the Commission's decision to place broad discretion in the Presiding Officer. The Commission has concluded that the § 1025.24(b)(1) as proposed achieves the proper balance between protection of the rights of the parties and promoting a prompt and fair decision. Therefore, the proposed addition of another exception to the policy against interlocutory appeals has not been adopted.

16. *Section 1025.24(b)(2).* Another comment concerning interlocutory appeals suggested that the Commission should provide for the filing of a reply in addition to the appeal petition and answer, at least in those cases where there will be no oral argument. As proposed, the section provides that the Commission may request further briefing in addition to the petition and response. The Commission is of the view that the section as proposed provide ample opportunity for the parties to argue their respective positions and is adequate without an automatic right to reply.

17. *Sections 1025.24(b) (3) and (4).* In response to another comment, a new subsection has been added to § 1025.24(b). § 1025.24(b)(3) as proposed has been redesignated as § 1025.24(b)(4) and a new subsection, § 1025.24(b)(3), has been added to provide as follows:

"(3) If the Presiding Officer shall order the production of records claimed to be confidential, the order of the Presiding Officer shall be automatically stayed for a period of five (5) days following the date of entry of the order to allow an affected party the opportunity to file a petition with the Commission for an interlocutory appeal pursuant to § 1025.24(b)(2). If an affected party files a petition with the Commission pursuant to § 1025.24(b)(2) within the 5-day period, the stay of the Presiding Officer's order is automatically extended until the Commission has acted upon the petition."

Since this section provides for an automatic stay of the Presiding Officer's order, the time to file a petition for interlocutory appeal and the opposition has been set at 5 days to minimize delay resulting from the interlocutory appeal.

The discussion in the following paragraph relating to § 1025.24(c) should be noted for further understanding of the new provision set forth in § 1025.24(b)(4).

18. *Section 1025.24(c).* One comment expressed the view that this section should be amended to provide for a mandatory stay of an order by the Presiding Officer requiring the production of records claimed to be confidential, pending an interlocutory appeal to the Commission under § 1025.24(b)(2). Otherwise, the comment contended, the issue would be moot if immediate compliance with the Presiding Officer's adverse ruling were required.

After consideration of this comment, the Commission has added a new subsection in § 1025.24(b) providing for a stay pending appeal of the order requiring the production of records claimed to be confidential. However, § 1025.24(c) shall remain in final form substantially as proposed since the justification for the stay pending appeal of the order concerning confidential records is not applicable to other interlocutory appeals.

19. *Section 1025.25(d).* As proposed, this section defers Commission review of an order granting Summary Decision that is not fully dispositive of all issues in the adjudication until issuance of the Presiding Officer's Initial Decision and Order. One comment suggested that this provision expressly reference § 1025.24(b)(3) and provide for interlocutory review of a Summary Decision which is not fully dispositive of all issues in the adjudication, if the requirements of § 1025.24(b)(3) have been met. The Commission is of the view that to allow an interlocutory appeal of a partial Summary Decision could result in unnecessary delay. Deferring review of the Summary Decision until completion of the hearing will not result in prejudice to the party adversely affected, may eliminate the desire to appeal and will permit the Commission to review all issues at one time. Accordingly, § 1025.25(d) is being promulgated as proposed.

20. *Section 1025.26.* A total of six comments relating to the section on settlements was received. Two comments suggested that all settlement discussions be held *in camera* and that settlement offers be filed *in camera*.

The Rules of Practice, as proposed and now as final, contain no provision concerning the format for meetings to negotiate settlement in adjudications. The Commission policy that meetings shall be open to the public, and the limited exceptions to that policy, are contained in 16 CFR Part 1012. Thus, the comments recommending that settlement negotiations be conducted in closed meetings are outside the scope of this rulemaking. Nevertheless, the Commission believes that the comments that settlement discussions should be closed to the public warrants consideration when the Commission considers changes in 16 CFR Part 1012. Accordingly, the comments will be retained and considered in the context of changes in the meetings policy.

The Commission agrees with the commenter's suggestion that settlement offers should be filed *in camera* to prevent prejudice resulting from public disclosure of the contents of an offer prior to acceptance by the Commission. Accordingly, proposed § 1025.26(b) has been modified to read that "[o]ffers of settlement shall be filed *in camera* and in the form of a consent agreement and order * * *." The Commission believes that adoption of the suggestion brings the Rules of Practice within the spirit of Rule 408 of the Federal Rules of Evidence, which excludes offers of settlement from evidence.

For further consistency with Rule 408, the Commission has adopted a

commenter's suggestion to exclude the contents of a rejected settlement offer from introduction into evidence. Final § 1025.26(h) applied not only to the terms of the rejected settlement offer, but the fact of the offer itself.

A comment suggested that only a respondent, as opposed to "any party," should have the opportunity to submit an offer of settlement. Since the term "party" is defined in § 1025.3(f) to mean "any person named or any intervenor," and, further, since pursuant to § 1025.17(a) a person accorded intervenor status "shall have the full range of litigating rights afforded to any other party," the Commission believes that any party should be able to propose a settlement offer. It should be noted, however, that any settlement offer must be signed by the respondent(s), pursuant to § 1025.26(b), to be valid.

Another comment asked that § 1025.26(c)(2) be amended to provide that waiver of further rights to seek judicial review be predicated upon the acceptance by the Commission of a consent agreement and order which is identical to the proposed consent agreement and order. The Commission's position is that such a change is unnecessary since the Commission will only see consent agreements and orders that have been signed by the respondent concerned and transmitted by the Presiding Officer. Presumably the respondent will be aware of and satisfied with the contents of the consent agreement and order it has signed. If in rejecting a proposed consent agreement, the Commission indicates it would accept another with altered terms, a new agreement containing the altered terms would have to be prepared and signed by the respondent. Thus, the Commission sees no need for adopting the suggested change.

Two comments objected to the requirements in §§ 1025.26 (c) (3) and (6) for detailed provisions, including a corrective action plan, in a settlement proposal. The comments suggested there be more "give and take" in the settlement process. The comments ignore the fact that in authorizing an adjudication under these rules, the Commission is acting upon behalf of the public, and often to protect the public from exposure to a consumer product that allegedly presents a substantial product hazard or is dangerously flammable. The Commission staff, therefore, lacks the freedom to "give and take" in the same way as counsel for parties in private litigation. This is especially so in adjudications for an order under section 15 of the CPSA, 15 U.S.C. 2064, where issuance of an administrative complaint signifies that the Commission and the respondent were unable to arrive at a voluntary corrective action plan as provided for in 16 CFR 1115.20. Permitting settlements that fail to meet the requirements for a voluntary corrective action plan will encourage individuals and firms to believe that they may be able to achieve more favorable terms after issuance of an administrative complaint. Such an expectation is unrealistic because authorization of a complaint means that the Commission has determined that the respondent's "best offer" for a voluntary corrective action plan did not meet the Commission's estimate of the minimum corrective action required to adequately protect the public. Since the Commission is concerned that matters in adjudication either be settled promptly and completely or else proceed through the judicial process in a timely manner, the Commission will retain the provisions in § 1025.26(c) relating to the contents of settlement proposals.

One comment stated that § 1025.26(d) should be amended to require the Presiding Officer to transmit all qualifying offers of settlement to the Commission, rather than to leave the matter to the discretion of the Presiding Officer.

Adopting the suggestion could result in a delay in the proceedings because frivolous offers or those in conflict with fundamental Commission policies, which would be summarily rejected, would go forward to the Commission. The Commission has concluded that the better course is to require the Presiding Officer to transmit only joint agreements subscribed to by Complaint Counsel and one or more respondents and to vest discretion in the Presiding Officer to certify to the Commission those unilateral *bona fide* offers of settlement that meet the standards of § 1025.26(c), are not clearly frivolous, duplicative or contrary to established policy. Therefore, the suggestion has been adopted in part and rejected in part.

Three comments addressed § 1025.26(e) relating to a stay of the proceedings while a settlement offer is being considered. One comment stated that the provision requiring all parties to agree to a settlement offer before the proceedings will be stayed pending a Commission ruling on the offer, will not work well in a multi-party litigated matter. The Commission was not unmindful of the complexities involved in multi-party settlement negotiations when it proposed this section. However, after careful consideration of all submitted points of view, the Commission remains convinced that an enforcement matter should not be halted for consideration of a settlement offer unless all interested parties can agree on a settlement proposal. This will insure that an adjudication proceeds in as timely a manner as possible.

Another comment suggested that under § 1025.26(g) there are only two possible dispositions for a settlement proposal: acceptance or rejection. The comment suggested that other alternatives not be precluded from review.

The Commission views the section as drafted to be the preferred language. As a practical matter an offer can only be accepted or rejected. It would be inappropriate and procedurally unwieldy for it to attempt to negotiate acceptable settlement terms with the respondents. In rejecting an offer of settlement, the Commission will endeavor to set forth its reasons and, where appropriate, indicate what modifications to the rejected offer would make it acceptable to the Commission. Thus, if a settlement offer is rejected, the party or parties offering the settlement may submit a revised offer, taking into consideration the reasons given in writing by the Commission for its having rejected the original offer. For example, see the Commission's Order issued on June 6, 1979 in *Matter of Spare Parts et al.*, CPSC Docket No. 78–1.

21. *Section 1025.31.* A total of six comments addressed the general provisions governing discovery. Section 1025.31(c) concerning the scope of discovery, in particular, generated considerable comment. One comment expressed the view that not only must the scope of discovery be within the Commission's authority and relevant to the subject matter in the proceedings, but that its production must be both reasonable and necessary. As proposed, § 1025.31(c)(1) provides that discoverable facts must be relevant to the subject matter involved in the proceedings and also that for information sought which will not be admissible at the hearing, it must be shown that the information appears reasonably calculated to lead to the discovery of admissible evidence. The Commission has revised § 1025.31(c)(1) to the extent of making the provision consistent with Fed.R.Civ.P. 26(b)(1) and it has added new § 1025.31(c) (2) and (3). They are patterned on provisions of the Federal Trade Commission's Rules of Practice, 16 CFR 3.31. Section 1025.31(c)(2) affirms that nothing in these Rules abridges the traditional right to protect privileged material from unreasonable disclosure. Section

1025.31(c)(3) identifies the circumstances when material prepared in anticipation of litigation, other than the work of experts, is subject to discovery. These new sections, taken with the bases for granting protective orders in § 1025.31(d), reasonably protect the interests of the parties.

As proposed, § 1025.31(c)(2) excepted from discovery the documents which accompanied the staff's recommendation to the Commission as to whether a complaint should be issued. The purpose was to eliminate unnecessary discovery since under proposed § 1025.11(c) the same documents which were obtainable under the Freedom of Information Act were required to be attached to the complaint. Several comments objected to the exception from discovery. Those comments have been rendered moot by several changes in the final rules. Final § 1025.11(b)(3) (superseding proposed § 1025.11(c)) requires that only "[a] list and summary of documentary evidence supporting the charges" in the complaint (not the documents themselves) be attached to the complaint. Since the reason for the exception no longer exists, the exception in proposed § 1025.31(c)(2) has been deleted from the final rules.

Several comments addressed proposed § 1025.31(c)(3), which concerns discovery of experts. The commenters suggested that the provisions on discovery should be redrafted to prohibit discovery of experts who are not expected to appear at trial, except in extraordinary circumstances, such as those contemplated in Fed.R.Civ.P. 26(b)(4)(B).

As stated earlier in this preamble, these Rules have been patterned on the Federal Rules of Civil Procedure. In view of this fact and after consideration of the comments concerning the discovery of experts, the Commission has decided to substantially revise § 1025.31(c)(3) to bring it into accord with Fed.R.Civ.P. 26(b)(4) (A) and (B).

Section 1025.31(c)(3) as promulgated provides:

(3) Hearing Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (c)(1) of this section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

(ii) Upon motion, the Presiding Officer may order further discovery by other means upon a showing of substantial cause and may exercise discretion to impose such conditions, if any, as are appropriate in the case.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means."

Another comment suggested a revision to § 1025.31 to provide for the tender and payment of fees and expenses to follow the provisions of Fed.R.Civ.P. 26(b)(4)(C). That section provides that a party seeking discovery from an expert shall customarily pay the expert a reasonable fee, and in the case of an expert retained by another party but not expected to be called as a witness, the party seeking discovery shall pay a fair portion of the reasonable fees and expenses paid by the party that retained the expert.

The Commission agrees with the fundamental principle expressed in the comment that a party may be required to bear the cost of conducting discovery of another party's expert. The Commission has therefore added a new § 1025.31(c)(3)(C) to provide for the payment of experts. Rather than following Fed.R.Civ.P. 26(b)(4)(C), the Commission has patterned the new section on the Federal Trade Commission's Rules of Practice, 16 CFR 3.31(b)(4)(B)(iii). Section 1025.31(c)(3)(C) as promulgated reads as follows:

The Presiding Officer may require as a condition of discovery that the party seeking discovery pay the expert a reasonable fee, but not more than the maximum specified in 5 U.S.C. 3109 for the time spent in responding to discovery.

Unlike Fed.R.Civ.P. 26(b)(4)(C), no provision is included in these Rules for reimbursement to an attorney of fees paid to an expert who will not be called to testify. The Commission expects that on the rare occasion when such a circumstance occurs, payment will go directly to the expert based upon the time spent in complying with the discovery. Allocating the original fee would be difficult and cumbersome and the inclusion of a provision adequate to the task is not justified by the number of times such a situation is likely to arise.

Discretion whether to require payment of a fee, and to fix the amount of a reasonable fee is placed in the Presiding Officer. In an adjudication in which each party is seeking discovery of a like number of experts of an opposing party, it may be reasonable to have each party bear the fees for its own experts. The amount of the expert's fee not only must be reasonable, but it cannot exceed the statutory maximum specified in 5 U.S.C. 3109.

Two comments objected to the provision to supplement responses after discovery is had, pursuant to § 1025.31(f). The Commission has not adopted the suggestion for two reasons. Any extra burden placed upon respondents and Complaint Counsel by the requirement to update responses to discovery is greatly outweighed by the practice that would ultimately evolve of making numerous, periodic and repetitive discovery requests to ascertain if there will be a change from a prior response as a result of information obtained since the last request. In addition, the exchange of all relevant data during the course of any enforcement proceeding helps assure that the result is fair, equitable and proper.

Five comments objected to the 150-day limitation upon discovery provided in § 1025.31(g). Prior to proposing these Rules, the Commission carefully considered the time limitations imposed, being aware of the due process rights of every respondent but at the same time being concerned that every enforcement matter proceed in a timely fashion. The comments have failed to persuade the Commission that the 150-day limitation is unreasonable. The commenters have suggested leaving the time limitation to the discretion of the Presiding Officer. While the suggestion is consistent with one of the basic principles embodied in these Rules, and the Presiding Officer is, in fact, authorized to increase or decrease the time period for discovery based upon the nature of the proceedings and the circumstances, the Commission believes inclusion of a 150-day time limit as a general rule will result in diligent efforts to complete discovery within the time allowed. Therefore the Commission has declined to adopt the suggested change in the final rule.

22. *Section 1025.33.* Although none of the public comments addressed the section on the production of documents, the Commission has decided to amend § 1025.33 to make the language more consistent with the wording of Fed.R.Civ.P. 34. The reason is to insure that judicial interpretations of Fed. R. Civ. P. 34 will be more directly applicable to administrative interpretations of the scope of § 1025.33.

23. *Section 1025.35.* Three comments were directed to the requirements that good cause be shown for the taking of a deposition and that leave of the

Presiding Officer must be obtained for each deposition. The comments also objected to the requirement that depositions not be scheduled until after the first prehearing conference.

The Commission deliberately chose to depart from the procedures under the Federal Rules of Civil Procedure in establishing its requirements for the taking of depositions. For administrative law enforcement cases under the Consumer Product Safety Act and the Flammable Fabrics Act, as well as other cases which may be heard pursuant to these Rules, the Commission's view is that the adjudicative process will be better served by placing the noticing and taking of depositions under the control of the Presiding Officer and, at the same time, vesting broad powers in the Presiding Officer under § 1025.42. The Commission believes that scrutiny by the Presiding Officer is desirable to prevent dilatory tactics, as well as harrassment or abuse. To permit the Presiding Officer to exercise proper control over depositions, this form of discovery may not commence prior to the first pretrial conference, although other forms of discovery may commence with the filing of the answer.

24. *Section 1025.38(d).* Two comments addressed the provision containing the procedure for issuing subpoenas; this authority is reserved to the Commission. The commenters expressed the view that the Commission should seek legislative relief from the language contained in Section 27(b)(3)(9) of the Consumer Product Safety Act, 15 U.S.C. 2076(b)(3)(9), which provides that the issuance of a subpoena is a non-delegable function of the Commission. The same comments suggested that the power to issue subpoenas be delegated to the Presiding Officer under the Flammable Fabrics Act.

Since at the present time the power to issue subpoenas under the Consumer Product Safety Act cannot be delegated, the Commission has chosen not to delegate such power to the Presiding Officer under the Flammable Fabrics Act. The Commission's position is that uniform procedures under both Acts is the preferable option.

25. *Section 1025.39.* One comment suggested that the portion of § 1025.39 concerning the granting of immunity be modified to cover proceedings under the Consumer Product Safety Act, as well as those under the Flammable Fabrics Act. The Commission, as discussed below, lacks the statutory authority to grant immunity under the CPSA.

Title 18, United States Code, section 6002, which is referenced in § 1025.39, deals with immunity from prosecution when compelled to testify or provide other information in any proceedings before an agency of the United States. As stated in House Report No. 91–1549 (September 30, 1970), 18 U.S.C. 6001 defines the term "agency of the United States", as used in 18 U.S.C. § 6002, to mean—

> "any executive department or military department and certain independent agencies. The agencies enumerated are those having immunity granting power under present law."

See *1970 U.S. Cong. & Adm. News* at p. 4017. Those independent agencies enumerated in 18 U.S.C. § 6001 include the Federal Trade Commission, but section 6001 has not been amended to include the Consumer Product Safety Commission. For this reason, § 1025.39 of the Commission's Rules is limited to the Flammable Fabrics Act, which is enforced pursuant to the Federal Trade Commission Act (15 U.S.C. 41 *et seq.).*

26. *Sections 1025.43 (b) and (c).* Several comments addressed the section concerning burden of proof and presumptions. They stated that the language is needlessly ambiguous, unclear and fails to properly reflect the Administrative Procedure Act. In light of the comments, and after further consideration, the Commission has chosen to retain § 1025.43(b) but has decided to delete proposed § 1025.43(c) from the final Rules. The Commission believes that § 1025.43(b) is sufficiently clear and complies with 5 U.S.C. 556. It is not necessary to state that Complaint Counsel bears the burden of proof for the order since the relief afforded in the order must be supported by the evidence in the record. Proposed § 1025.43(c) has been dropped as unnecessary because § 1025.43(a) provides that the Federal Rules of Evidence are applicable to proceedings conducted under these Rules. The provisions of the rules concerning presumptions are therefore incorporated here by reference. *See* Fed. R. Evid. 301.

27. *Section 1025.44(b).* One comment suggested that respondents be given preferential treatment over the Commission staff by requiring the staff to file the direct testimony of its expert witnesses twenty (20) days before the commencement of a hearing, with a respondent being required to file the direct testimony of its expert witnesses ten (10) days thereafter.

The Commission views the section as proposed as being more equitable to all parties, since it requires the concurrent exchanging and filing of expert witnesses' direct testimony. Therefore, it has declined to adopt the recommended change.

28. *Section 1025.45.* One comment on the provisions concerning confidential material suggested a presubmittal determination of confidentiality for materials deemed by a respondent to be privileged from public disclosure and for which *in camera* protection is sought. The procedure suggested is both cumbersome and unnecessary. Any party may request *in camera* treatment for any material it claims is confidential or privileged, and therefore not subject to discovery. The Presiding Officer is authorized by § 1025.45(b) to grant that request; a denial may be immediately appealed to the Commission pursuant to § 1025.24(b)(i). Thus, the Rules already provide for adequate review prior to disclosure. Furthermore, in view of the limitations imposed on the Commission by Section 6(a) of the Consumer Product Safety Act, 15 U.S.C. 2055(a), which prohibits the release of information, trade secrets or other matters referred to in 18 U.S.C. 1905 (except when relevant in any proceedings under the CPSA), the Commission's position is that a respondent's rights are adequately protected under § 1025.45. Such disclosure is, of course, subject to all other applicable provisions of law.

It should be noted, however, that in the interest of equal treatment for all parties, the first sentence of § 1025.45(c) has been amended to delete the words "enforcement and". The significance of the deletion is to place the enforcement staff of the Commission in no better position than any other party to any adjudicatory proceedings.

29. *Section 1025.53(b).* Although no public comments addressed the requirements for the appeal briefs, the Commission has significantly changed the requirements imposed upon participants in their filing of appeal briefs. The Commission believes that meaningful public participation in all phases of its regulatory activities, including matters in adjudication, is desirable and should be encouraged. For this reason, the more stringent legal requirements for a participant's brief have been deleted. In deleting the legalistic burdens imposed upon participants, the Commission does not intend, however, to lower its standard for meaningful participation by the public. For this reason, participants are encouraged to articulate their views as clearly and succinctly as possible in any briefs which are filed in any adjudicative proceedings.

30. *Section 1025.54* One comment suggested that in an instance where the Commission elects to review an Initial Decision in the absence of appeal by a party, the respondent be granted the

right to file a brief on all issues deemed by the respondent to be relevant and not be limited solely to issues specified by the Commission. The same comment suggested that the section be amended to designate which party shall have the burden of going first with respect to briefing and which party may file an answering brief.

The Commission believes the comment has merit and has decided to amend § 1025.54 by adding the following sentences after the end of the first paragraph of the section as proposed:

"If the filing of briefs is scheduled by the Commission, the order shall designate which party or parties shall have the burden of filing an initial brief and which party or parties may thereafter file an answering brief, or the order may designate the simultaneous filing of briefs by the parties. If the filing of briefs is scheduled by the Commission, any party may address all issues deemed by the party to be relevant and not be limited solely to the issues specified by the Commission in its order."

This change adequately addresses the concern raised in the comment.

31. *Section 1025.57.* Two comments suggested that orders of the Commission in any proceedings arising under the Consumer Product Safety Act become effective upon receipt by a respondent, rather than effective when issued. Since such orders often carry an obligation to take certain action, usually within a prescribed period of time, fairness requires that the obligation of compliance begin with actual receipt of the order. The Commission has amended § 1025.57(a) accordingly. Section 1025.57(b)(1) has been amended to provide that consent orders under the Flammable Fabrics Act became effective when the respondent receives notice, which may be by telephone of Commission issuance of an order following acceptance of an offer of settlement.

32. *Section 1025.59 (as proposed).* Two comments addressed the proposed section on related proceedings. One stated that the provision is unsound and the other suggested that the provision be deleted. Both expressed the view that significant Constitutional rights have been cut off by the section, which provided that any related proceedings shall be conducted in accordance with the Commission's Proposed and Interim Rules for Expedited Procedures, 16 CFR Part 1026 (42 FR 31446, June 21, 1977).

The Commission has considered these comments, as well as its prior determination to have rules to expedite certain proceedings. The Commission concluded that two sets of procedural rules are unnecessary and confusing. Accordingly, the Commission revoked the Proposed and Interim Rules for Expedited Procedures, 16 CFR Part 1026, on May 1, 1980.

In making its decision to delete the entire proposed provision on related proceedings, the Commission considered that, the determination of whether two matters share common questions of fact or issues of law could create an independent controversy. The delay resulting from the need to resolve that controversy as a preliminary matter could outweigh any benefit to be achieved from the now-abandoned procedure.

In addition, to eliminate any potential Constitutional question of due process rights, as well as to eliminate (in the absence of stipulation of the parties) any postponement of the hearing which might be caused in initially determining what questions of fact or issues of law are in common, the Commission has decided that the better approach is to allow each matter in controversy to proceed independent of any prior adjudication and to rely upon the Presiding Officer to use his/her broad discretion to insure that the matter in litigation is resolved without undue delay.

34. *Section 1025.67.* The Commission received one comment concerning the post-employment restrictions on former members and employees. Actually a comment previously submitted to the Internal Revenue Service on that agency's proposed rules of practice, it urged adoption of the provisions of Opinion 342 of the American Bar Association's Committee on Ethics and Professional Responsibilities. Under Opinion 342, a law firm employing a former government employee has the first obligation to disqualify any former member or employee from representing a client and to avoid the appearance of impropriety. The commenter urged the IRS to write its rules to take an active role in preventing a former employee from representing a client before the agency if the law firm failed to do so.

As proposed, the restrictions on former members and employees incorporates by reference the Commission's regulations on post employment activities, 16 CFR Part 1030, Subpart L. Since that rule was promulgated, there has been considerable discussion and activity concerning the activities of former Commission members and employees. The Ethics in Government Act, Pub. L. 95–521, was enacted on October 26, 1978. Given the uncertainty resulting from recent and proposed changes in law, the Commission has decided to promulgate § 1025.67 as proposed but to continue consideration of revisions through later amendments that will reflect the comment discussed above, actual experience and statutory changes. This decision is based upon the conclusion that the promulgation of these Rules of Practice should not be further delayed while changes in § 1025.67 are considered.

35. The Commission on Federal Paperwork was established by Pub. L. 93–556 to study the burden of submitting information in compliance with Federal statutes and regulations. It recommended that agencies reconsider all multicopy requirements for submission from the public and, wherever possible, to require only the original document in submissions, in an effort to lessen the burden of government paperwork on the public.

Section 1025.14 contains the requirements for the form and number of documents to be submitted to the Commission. As proposed, § 1025.14(c) requires an original and nine (9) copies of all documents filed with the Commission in any adjudicative proceedings. The Commission has decided that the requirement may be reduced to an original and three (3) copies. In addition, the requirements for the form of documents filed with the Commission found in § 1025.14(e) have been simplified from the proposal to cover page size, print size and fastening. Documents that fail to comply may be returned by the Secretary.

Rules promulgated under 5 U.S.C. 553 are generally required to be published at least thirty days prior to their effective date. 5 U.S.C. 553(b)(A), however, expressly exempts rules of agency procedure or practice from the requirements for publication. In addition, 5 U.S.C. 553(d)(3) provides that a rule may be made effective upon publication provided the agency finds good cause for so doing.

As stated above, the Commission has revoked its interim Expedited Rules (45 FR 27923, April 25, 1980). Thus, adjudications to assess civil penalties will be treated as all other adjudications. If the effective date of these Rules of Practice were delayed thirty days, the Commission would be compelled to delay initiation of civil penalty adjudications for up to thirty days, or conduct them under the less satisfactory interim rules of practice currently in effect. To avoid this result, the Commission finds that good cause exists for making these Rules of Practice effective May 1, 1980.

Accordingly, pursuant to the provisions of the Consumer Product Safety Act (sections 15, 20 and 27, 15 U.S.C. 2064, 2069 and 2076), the Flammable Fabrics Act (section 5, 15

U.S.C. 1194) and the Federal Trade Commission Act (15 U.S.C. 45), the Commission amends Title 16 of the Code of Federal Regulations by revising Part 1025 to read as follows:

PART 1025—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Subpart A—Scope of Rules, Nature of Adjudicative Proceedings, Definitions

Sec.
1025.1 Scope of the rules.
1025.2 Nature of adjudicative proceedings.
1025.3 Definitions.

Subpart B—Pleadings, Form, Execution, Service of Documents

1025.11 Commencement of proceedings.
1025.12 Answer.
1025.13 Amendments and supplemental pleadings.
1025.14 Form and filing of documents.
1025.15 Time.
1025.16 Service.
1025.17 Intervention.
1025.18 Class actions.
1025.19 Joinder of proceedings.

Subpart C—Prehearing Procedures, Motions, Interlocutory Appeals, Summary Judgments, Settlements

1025.21 Prehearing conferences.
1025.22 Prehearing briefs.
1025.23 Motions.
1025.24 Interlocutory appeals.
1025.25 Summary decisions and orders.
1025.26 Settlements.

Subpart D—Discovery, Compulsory Process

1025.31 General provisions governing discovery.
1025.32 Written interrogatories to parties.
1025.33 Production of documents and things.
1025.34 Requests for admission.
1025.35 Depositions upon oral examination.
1025.36 Motions to compel discovery.
1025.37 Sanctions of failure to comply with discovery orders.
1025.38 Subpoenas.
1025.39 Orders requiring witnesses to testify or provide other information and granting immunity.

Subpart E—Hearings

1025.41 General rules.
1025.42 Powers and duties of presiding officer.
1025.43 Evidence.
1025.44 Expert witnesses.
1025.45 *In Camera* materials.
1025.46 Proposed findings, conclusions and order.
1025.47 Record.
1025.48 Official docket.
1025.49 Fees.

Subpart F—Decision

1025.51 Initial decision.
1025.52 Adoption of initial decision.
1025.53 Appeal from initial decision.
1025.54 Review of initial decision in absence of appeal.
1025.55 Decision on appeal or review.
1025.56 Reconsideration.

Sec.
1025.57 Effective date of order.
1025.58 Reopening of proceedings.

Subpart G—Appearances, Standards of Conduct

1025.61 Who may make appearances.
1025.62 Authority for representation.
1025.63 Written appearances.
1025.64 Attorneys.
1025.65 Persons not attorneys.
1025.66 Qualifications and standards of conduct.
1025.67 Restrictions as to former members and employees.
1025.68 Prohibited communications.

Authority: Consumer Product Safety Act (Secs. 15, 20, 27 (15 U.S.C. 2064, 2069, 2076), the Flammable Fabrics Act (Sec. 5 15 U.S.C. 1194), the Federal Trade Commission Act (15 U.S.C. 45))

Subpart A—Scope of Rules, Nature of Adjudicative Proceedings, Definitions

§ 1025.1 Scope of the Rules.

The Rules in this part govern procedures in adjudicative proceedings relating to the provisions of Section 15(c), (d) and (f) and 17(b) of the Consumer Product Safety Act (15 U.S.C. 2064(c), (d) and (f); 2066(b)), and Sections 3 and 8(b) of the Flammable Fabrics Act (15 U.S.C. 1192, 1197(b)), which are required by statute to be determined on the record after opportunity for a public hearing. These rules will also govern adjudicative proceedings for the assessment of civil penalties under Section 20(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)), except in those instances where the matter of a civil penalty is presented to a United States District Court in conjunction with an action by the Commission for injunctive or other appropriate relief. These Rules may also be used for such other adjudicative proceedings as the Commission, by order, shall designate. A basic intent of the Commission in the development of these rules has been to promulgate a single set of procedural rules which can accommodate both simple matters and complex matters in adjudication. To accomplish this objective, broad discretion has been vested in the Presiding Officer who will hear a matter being adjudicated to allow him/her to alter time limitations and other procedural aspects of a case, as required by the complexity of the particular matter involved. A major concern of the Commission is that all matters in adjudication move forward in a timely manner, consistent with the Constitutional due process rights of all parties. It is anticipated that in any adjudicative proceedings for the assessment of civil penalties there will be less need for discovery since most factual matters will already be known by the parties. Therefore, the Presiding Officer should, whenever appropriate, expedite the proceedings by setting shorter time limitations than those time limitations generally applicable under these Rules. For example, the 150-day limitation for discovery, as provided in § 1025.31(g), should be shortened, consistent with the extent of discovery reasonably necessary to prepare for the hearing.

§ 1025.2 Nature of adjudicative proceedings.

Adjudicative proceedings shall be conducted in accordance with Title 5, United States Code, sections 551 through 559, and these Rules. It is the policy of the Commission that adjudicative proceedings shall be conducted expeditiously and with due regard to the rights and interests of all persons affected and in locations chosen with due regard to the convenience of all parties. Therefore, the Presiding Officer and all parties shall make every effort at each stage of any proceedings to avoid unnecessary delay.

§ 1025.3 Definitions.

As used in this part:

(a) "Application" means an *ex parte* request by a party for an order that may be granted or denied without opportunity for response by any other party.

(b) "Commission" means the Consumer Product Safety Commission or a quorum thereof.

(c) "Commissioner" means a Commissioner of the Consumer Product Safety Commission.

(d) "Complaint Counsel" means counsel for the Commission's staff.

(e) "Motion" means a request by a party for a ruling or order that may be granted or denied only after opportunity for responses by all other parties.

(f) "Party" means any named person or any intervenor in any proceedings governed by these Rules.

(g) "Person" means any individual, partnership, corporation, unincorporated association, public or private organization, or a federal, state or municipal governmental entity.

(h) "Petition" means a written request, addressed to the Commission or the Presiding Officer, for some affirmative action.

(i) "Presiding Officer" means a person who conducts any adjudicative proceedings under this part, and may include an administrative law judge qualified under Title 5, United States Code, section 3105, but shall not include a Commissioner.

(j) "Respondent" means any person against whom a complaint has been issued.

(k) "Secretary" means the Secretary of the Consumer Product Safety Commission.

(l) "Staff" means the staff of the Consumer Product Safety Commission.

Additional definitions relating to prohibited communications are in § 1025.68.

Subpart B—Pleadings, Form, Execution, Service of Documents

§ 1025.11 Commencement of proceedings.

(a) *Notice of Institution of Enforcement Proceedings.* Any adjudicative proceedings under this part shall be commenced by the issuance of a complaint, authorized by the Commission, and signed by the Associate Executive Director for Compliance and Enforcement.

(b) *Form and Content of Complaint.* The complaint shall contain the following:

(1) A statement of the legal authority for instituting the proceedings, including the specific sections of statutes, rules and regulations involved in each allegation.

(2) Identification of each respondent or class of respondents.

(3) A clear and concise statement of the charges, sufficient to inform each respondent with reasonable definiteness of the factual basis or bases of the allegations of violation or hazard. A list and summary of documentary evidence supporting the charges shall be attached.

(4) A request for the relief which the staff believes is in the public interest.

(c) *Notice to the Public.* Once issued, the complaint shall be submitted without delay to the Federal Register for publication.

§ 1025.12 Answer.

(a) *Time for Filing.* A respondent shall have twenty (20) days after service of a complaint to file an answer.

(b) *Contents of Answer.* The answer shall contain the following:

(1) A specific admission or denial of each allegation in the complaint. If a respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state. Such statement shall have the effect of a denial. Allegations that are not denied shall be deemed to have been admitted.

(2) A concise statement of the factual or legal defenses to each allegation of the complaint.

(c) *Default.* Failure of a respondent to file an answer within the time provided, unless extended, shall constitute a waiver of the right to appear and contest the allegations in the complaint, and the Presiding Office may make such findings of fact and conclusions of law as are just and reasonable under the circumstances.

§ 1025.13 Amendments and supplemental pleadings.

The Presiding Officer may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceedings or cause undue delay.

§ 1025.14 Form and filing of documents.

(a) *Filing.* Except as otherwise provided in these Rules, all documents submitted to the Commission or the Presiding Officer shall be addressed to, and filed with, the Secretary. Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.

(b) *Caption.* Every document shall contain a caption setting forth the name of the action, the docket number, and the title of the document.

(c) *Copies.* An original and three (3) copies of all documents shall be filed. Each copy must be clear and legible.

(d) *Signature.* (1) The original of each document filed shall be signed by a representative of record for the party or participant; or in the case of parties or participants not represented, by the party or participant; or by a partner, officer or other appropriate official of any corporation, partnership, or unincorporated association, who files an appearance on behalf of the party or participant.

(2) By signing a document, the signer represents that the the signer has read it and that to the best of the signer's knowledge, information and belief, the statements made in it are true and that it is not filed for purposes of delay.

(e) *Form.* (1) All documents shall be dated and shall contain the address and telephone number of the signer.

(2) Documents shall be on paper approximately 8½ x 11 inches in size. Print shall not be less than standard elite or 12 point type. Pages shall be fastened in the upper left corner or along the left margin.

(3) Documents that fail to comply with this section may be returned by the Secretary.

§ 1025.15 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared as a holiday by the President or the Congress of the United States.

(b) *Additional Time After Service by Mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period.

(c) *Extensions.* For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed by these rules or by order of the Commission or the Presiding Officer, except for those sections governing the filing of interlocutory appeals and appeals from Initial Decisions and those sections expressly requiring Commission action. Except as otherwise provided by law, the Commission, for good cause shown, may extend any time limit prescribed by these rules or by order of the Commission or the Presiding Officer.

§ 1025.16 Service.

(a) *Mandatory Service.* Every document filed with the Secretary shall be served upon all parties to any proceedings, *i.e.*, Complaint Counsel, respondent(s), and party intervenors, as well as the Presiding Officer. Every document filed with the Secretary shall also be served upon each participant, if the Presiding Officer or the Commission so directs.

(b) *Service of Complaint, Ruling, Petition for Interlocutory Appeal, Order, Decision, or Subpoena.* A complaint, ruling, petition for interlocutory appeal, order, decision, or subpoena shall be served in one of the following ways:

(1) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his/her/its residence or principal office or place of business and sent by registered or certified mail; or

(2) *By delivery to an individual.* A copy of the document may be delivered to the person to be served; or to a member of the partnership to be served;

or to the president, secretary, or other executive officer, or a director of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(3) *By delivery to an address.* If the document cannot be served in person or by mail as provided in paragraphs (b)(1) or (b)(2) of this section, a copy of the document may be left at the principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer or a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served; or

(4) By publication in the **Federal Register.** A respondent that cannot be served by any of the methods already described in this section may be served by publication in the **Federal Register** and such other notice as may be directed by the Presiding Officer or the Commission, where a complaint has issued in a class action pursuant to § 1025.18.

(c) *Service of Other Documents.* Except as otherwise provided in paragraph (b) of this section, when service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document may be served as provided in paragraph (b) of this section or by ordinary first-class mail, properly addressed, postage prepaid.

(d) *Service on a Representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service upon the party.

(e) *Certificate of Service.* The original of every document filed with the Commission and required to be served upon all parties to any proceedings, as well as participants if so directed by the Presiding Officer, shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party and participant to the proceedings. Certificates of service may be in substantially the following form:

I hereby certify that I have served the attached document upon all parties and participants of record in these proceedings by mailing, postage prepaid, (or by delivering in person) a copy to each on

_____

_____

(Signature)

For _____

(f) *Date of Service.* The date of service of a document shall be the date on which the document is deposited with the United States Postal Service, postage prepaid, or is delivered in person.

§ 1025.17 Intervention.

(a) *Participation as an Intervenor.* Any person who desires to participate as a party in any proceedings subject to these rules shall file a written petition for leave to intervene with the Secretary and shall serve a copy of the petition on each party.

(1) A petition shall ordinarily be filed not later than the convening of the first prehearing conference. A petition filed after that time will not be granted unless the Presiding Officer determines that the petitioner has made a substantial showing of good cause for failure to file on time.

(2) A petition shall (i) identify the specific aspect or aspects of the proceedings as to which the petitioner wishes to intervene, (ii) set forth the interest of the petitioner in the proceedings, (iii) state how the petitioner's interest may be affected by the results of the proceedings, and (iv) state any other reasons why the petitioner should be permitted to intervene as a party, with particular reference to the factors set forth in paragraph (d) of this section. Any petition relating only to matters outside the jurisdiction of the Commission shall be denied.

(3) Any person whose petition for leave to intervene is granted by the Presiding Officer shall be known as an "intervenor" and as such shall have the full range of litigating rights afforded to any other party.

(b) *Participation by a Person Not an Intervenor.* Any person who desires to participate in the proceedings as a non-party shall file with the Secretary a request to participate in the proceedings and shall serve a copy of such request on each party to the proceedings.

(1) A request shall ordinarily be filed not later than the commencement of the hearing. A petition filed after that time will not be granted unless the Presiding Officer determines that the person making the request has made a substantial showing of good cause for failure to file on time.

(2) A request shall set forth the nature and extent of the person's alleged interest in the proceedings. Any request relating only to matters outside the jurisdiction of the Commission shall be denied.

(3) Any person who files a request to participate in the proceedings as a non-party and whose request is granted by the Presiding Officer shall be known as a "Participant" and shall have the right to participate in the proceedings to the extent of making a written or oral statement of position, filing proposed findings of fact, conclusions of law and a post hearing brief with the Presiding Officer, and filing an appellate brief before the Commission if an appeal is taken by a party or review is ordered by the Commission in accordance with § 1025.53 or § 1025.54, as applicable, of these rules.

(c) *Response to Petition to Intervene.* Any party may file a response to a petition for leave to intervene after the petition is filed with the Secretary, with particular reference to the factors set forth in paragraph (d) of this section.

(d) *Ruling by Presiding Officer on Petition.* In ruling on a petition for leave to intervene, the Presiding Officer shall consider, in addition to all other relevant matters, the following factors:

(1) The nature of the petitioner's interest, under the applicable statute governing the proceedings, to be made a party to the proceedings;

(2) The nature and extent of the petitioner's interest in protecting himself/herself/itself or the public against unreasonable risks of injury associated with consumer products;

(3) The nature and extent of the petitioner's property, financial or other substantial interest in the proceedings;

(4) Whether the petitioner would be aggrieved by any final order which may be entered in the proceedings;

(5) The extent to which the peititioner's intervention may reasonably be expected to assist in developing a sound record;

(6) The extent to which the petitioner's interest will be represented by existing parties;

(7) The extent to which the petitioner's intervention may broaden the issues or delay the proceedings; and

(8) The extent to which the petitioner's interest can be protected by other available means.

If the Presiding Officer determines that a petitioner has failed to make a sufficient showing to be allowed to intervene as a party, the Presiding Officer shall view such petition to intervene as if it had been timely filed as a request to participate in the proceedings as a participant pursuant to paragraph (b) of this section.

(e) *Ruling by Presiding Officer on Request.* In ruling on a request to participate as a participant, the Presiding Officer, in the exercise of his/her discretion, shall be mindful of the

Commission's mandate under its enabling legislation (see 15 U.S.C. 2051 *et seq.*) and its affirmative desire to afford interested persons, including consumers and consumer organizations, as well as governmental entities, an opportunity to participate in the agency's regulatory processes, including adjudicative proceedings. The Presiding Officer shall consider, in addition to all other relevant matters, the following factors:

(1) The nature and extent of the person's alleged interest in the proceedings;

(2) The possible effect of any final order which may be entered in the proceedings on the person's interest; and

(3) The extent to which the person's participation can be expected to assist the Presiding Officer and the Commission in rendering a fair and equitable resolution of all matters in controversy in the proceedings.

The Presiding Officer may deny a request to participate if he/she determines that the person's participation cannot reasonably be expected to assist the Presiding Officer or the Commission in rendering a fair and equitable resolution of matters in controversy in the proceedings or if he/she determines that the person's participation would unduly broaden the issues in controversy or unduly delay the proceedings.

(f) *Designation of Single Representative.* If the Presiding Officer determines that a petitioner pursuant to paragraph (a) of this section or a person requesting to participate pursuant to paragraph (b) of this section is a member of a class of prospective intervenors or participants, as applicable, who share an identity of interest, the Presiding Officer may limit such intervention or participation, as applicable, through designation of a single representative by the prospective intervenors or participants, as applicable, or, if they are unable to agree, by designation of the Presiding Officer.

§ 1025.18 Class actions.

(a) *Prerequisites to a Class Action.* One or more members of a class of respondents may be proceeded against as representative parties on behalf of all respondents if (1) the class is so numerous or geographically dispersed that joinder of all members is impracticable; (2) there are questions of fact or issues of law common to the class; (3) the defenses of the representative parties are typical of the defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Composition of Class.* A class may be composed of (1) manufacturers, distributors, or retailers, or a combination of them, of products which allegedly have the same defect, or (2) manufacturers, distributors, or retailers, or a combination of them, of products which allegedly fail to conform to an applicable standard, regulation, or consumer product safety rule, or (3) manufacturers, distributors, or retailers, or a combination of them, who have themselves allegedly failed to conform to an applicable standard, regulation, or consumer product safety rule. When appropriate, a class may be divided into subclasses and each subclass shall be treated as a class.

(c) *Notice of Commencement.* A complaint issued under this section shall identify the class, the named respondents considered to be representative of the class, and the alleged defect or nonconformity common to the products manufactured, imported, distributed or sold by the members of the class. The complaint shall be served upon the parties in accordance with § 1025.16.

(d) *Proper Class Action Determination.* Upon motion of Complaint Counsel and as soon as practicable after the commencement of any proceedings brought as a class action, the Presiding Officer shall determine by order whether the action is a proper class action. It is a proper class action if the prerequisites of paragraph (a) of this section are met and if the Presiding Officer finds that:

(1) The prosecution of separate actions against individual members of the respondent class might result in (i) inconsistent or varying determinations with respect to individual members of the class which might produce incompatible or conflicting results, or (ii) determinations with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members who are not parties to the proceedings or would substantially impair or impede the ability of the absent members to protect their interests; or

(2) The Commission has acted on grounds generally applicable to the class, thereby making appropriate an order directed to the class as a whole.

In reaching a decision, the Presiding Officer shall consider the interests of members of the class in individually controlling the defense of separate actions, the extent and nature of any proceedings concerning the controversy already commenced against members of the class, the desirability or undesirability of concentrating the litigation in one adjudication, and the difficulties likely to be encountered in the management of a class action, as well as the benefits expected to result from the maintenance of a class action.

(e) *Revision of Class Membership.* Upon motion of any party or any member of the class, or upon the Presiding Officer's own initiative, the Presiding Officer may revise the membership of the class.

(f) *Orders in Conduct of Class Actions.* In proceedings to which this section applies, the Presiding Officer may make appropriate orders:

(1) Determining the course of the proceedings or prescribing measures to prevent undue repetition and promote the efficient presentation of evidence or argument;

(2) Requiring (for the protection of the members of the class, or otherwise for the fair conduct of the action) that notice be given, in such manner as the Presiding Officer may direct, of any step in the action, of the extent of the proposed order, or of the opportunity for members to inform the Presiding Officer whether they consider the representation to be fair and adequate, or of the opportunity for class members to intervene and present defenses;

(3) Requiring that the pleadings be amended to eliminate allegations concerning the representation of absent persons; or

(4) Dealing with other procedural matters.

The orders may be combined with a prehearing order under § 1025.21 of these rules and may be altered or amended as may be necessary.

(g) *Scope of Final Order.* In any proceedings maintained as a class action, any Decision and Order of the Presiding Officer or the Commission under § 1025.51 or § 1025.55, as applicable, whether or not favorable to the class, shall include and describe those respondents whom the Presiding Officer or the Commission finds to be members of the class.

(h) *Notice of Results.* Upon the termination of any adjudication that has been maintained as a class action, the best notice practicable of the results of the adjudication shall be given to all members of the class in such manner as the Presiding Officer or the Commission directs.

§ 1025.19 Joinder of proceedings.

Two or more matters which have been scheduled for adjudicative proceedings

and which involve similar issues may be consolidated for the purpose of hearing or Commission review. A motion for consolidation may be filed by any party to such proceedings not later than thirty (30) days prior to the hearing and served upon all parties to all proceedings in which joinder is contemplated. The motion may include a request that the consolidated proceedings be maintained as a class action in accordance with § 1025.18 of these rules. The proceedings may be consolidated to such extent and upon such terms as may be proper. Such consolidation may also be ordered upon the initiative of the Presiding Officer or the Commission. Single representatives may be designated by represented parties, intervenors, and participants with an identity of interests.

Subpart C—Prehearing Procedures, Motions, Interlocutory Appeals, Summary Judgments, Settlements

§ 1025.21 Prehearing conferences

(a) *When Held.* Except when the presiding officer determines that unusual circumstances would render it impractical or valueless, a prehearing conference shall be held in person or by conference telephone call within fifty (50) days after publication of the complaint in the **Federal Register** and upon ten (10) days' notice to all parties and participants. At the prehearing conference any or all of the following shall be considered:

(1) Petitions for leave to intervene;

(2) Motions, including motions for consolidation of proceedings and for certification of class actions;

(3) Identification, simplification and clarification of the issues;

(4) Necessity or desirability of amending the pleadings;

(5) Stipulations and admissions of fact and of the content and authenticity of documents;

(6) Oppositions to notices of depositions;

(7) Motions for protective orders to limit or modify discovery;

(8) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;

(9) Limitation of the number of witnesses, particularly to avoid duplicate expert witnesses;

(10) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and consumer product safety rules;

(11) Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into evidence;

(12) Consideration of offers of settlement;

(13) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties; and

(14) Such other matters as may aid in the efficient presentation or disposition of the proceedings.

(b) *Public Notice.* The Presiding Officer shall cause a notice of the first prehearing conference, including a statement of the issues, to be published in the **Federal Register** at least ten (10) days prior to the date scheduled for the conference.

(c) *Additional Conferences.* Additional prehearing conferences may be convened at the discretion of the Presiding Officer, upon notice to the parties, any participants, and to the public.

(d) *Reporting.* Prehearing conferences shall be stenographically reported as provided in § 1025.47 of these rules and shall be open to the public, unless otherwise ordered by the Presiding Officer or the Commission.

(e) *Prehearing Orders.* The Presiding Officer shall issue a final prehearing order in each case after the conclusion of the final prehearing conference. The final prehearing order should contain, to the fullest extent possible at that time, all information which is necessary for controlling the course of the hearing. The Presiding Officer may require the parties to submit a jointly proposed final prehearing order, such as in the format set forth in Appendix I.

§ 1025.22 Prehearing briefs.

Not later than ten (10) days prior to the hearing, unless otherwise ordered by the Presiding Officer, the parties may simultaneously serve and file prehearing briefs which should set forth (a) a statement of the facts expected to be proved and of the anticipated order of proof; (b) a statement of the issues and the legal arguments in support of the party's contentions with respect to each issue; and (c) a table of authorities relied upon.

§ 1025.23 Motions.

(a) *Presentation and Disposition.* During the time a matter in adjudication is before the Presiding Officer, all motions, whether oral or written, except those filed under § 1025.42(e), shall be addressed to the Presiding Officer, who shall rule upon them promptly, after affording an opportunity for response.

(b) *Written Motions.* All written motions shall state with particularity the order, ruling, or action desired and the reasons why the action should be granted. Memoranda, affidavits, or other documents supporting a motion shall be served and filed with the motion. All motions shall contain a proposed order setting forth the relief sought. All written motions shall be filed with the Secretary and served upon all parties, and all motions addressed to the Commission shall be in writing.

(c) *Opposition to Motions.* Within ten (10) days after service of any written motion or petition or within such longer or shorter time as may be designated by these Rules or by the Presiding Officer or the Commission, any party who opposes the granting of the requested order, ruling or action may file a written response to the motion. Failure to respond to a written motion may, in the discretion of the Presiding Officer, be considered as consent to the granting of the relief sought in the motion. Unless otherwise permitted by the Presiding Officer or the Commission, there shall be no reply to the response expressing opposition to the motion.

(d) *Rulings on Motions for Dismissal.* When a motion to dismiss a complaint or a motion for other relief is granted, with the result that the proceedings before the Presiding Officer are terminated, the Presiding Officer shall issue an Initial Decision and Order in accordance with the provisions of § 1025.51. If such a motion is granted as to all issues alleged in the complaint in regard to some, but not all, respondents or is granted as to any part of the allegations in regard to any or all respondents, the Presiding Officer shall enter an order on the record and consider the remaining issues in the Initial Decision. The Presiding Officer may elect to defer ruling on a motion to dismiss until the close of the case.

§ 1025.24 Interlocutory appeals.

(a) *General.* Rulings of the Presiding Officer may not be appealed to the Commission prior to the Initial Decision, except as provided in this section.

(b) *Exceptions.* (1) Interlocutory appeals to Commission. The Commission may, in its discretion, consider interlocutory appeals where a ruling of the Presiding Officer:

(i) Requires the production of records claimed to be confidential;

(ii) Requires the testimony of a supervisory official of the Commission other than one especially knowledgeable of the facts of the matter in adjudication;

(iii) Excludes an attorney from participation in any proceedings pursuant to § 1025.42(b);

(iv) Denies or unduly limits a petition for intervention pursuant to the provisions of § 1025.17.

(2) Procedure for interlocutory appeals. Within ten (10) days of issuance of a ruling other than one ordering the production of records claimed to be confidential, any party may petition the Commission to consider an interlocutory appeal of a ruling in the categories enumerated above. The petition shall not exceed fifteen (15) pages. Any other party may file a response to the petition within ten (10) days of its service except where the order appealed from requires the production of records claimed to be confidential. The response shall not exceed fifteen (15) pages. The Commission shall decide the petition or may request such further briefing or oral presentation as it deems necessary.

(3) If the Presiding Officer orders the production of records claimed to be confidential a petition for interlocutory appeal shall be filed within five (5) days of the entry of the order. Any opposition to the petition shall be filed within five (5) days of service of the petition. The order of the Presiding Officer shall be automatically stayed until five (5) days following the date of entry of the order to allow an affected party the opportunity to file a petition with the Commission for an interlocutory appeal pursuant to § 1025.24(b)(2). If an affected party files a petition with the Commission pursuant to § 1025.24(b)(2) within the 5-day period, the stay of the Presiding Officer's order is automatically extended until the Commission decides the petition.

(4) Interlocutory appeals from all other rulings.

(i) Grounds. Interlocutory appeals from all other rulings by the Presiding Officer may proceed only upon motion to the Presiding Officer and a determination by the Presiding Officer in writing that the ruling involves a controlling question of law or policy as to which there is substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation, or that subsequent review will be an inadequate remedy. The Presiding Officer's certification shall state the reasons for the determination.

(ii) Form. If the Presiding Officer makes the determination described in paragraph (b)(4)(i) of this section, a petition for interlocutory appeal under this subparagraph may be filed in accordance with paragraph (b)(2) of this section.

(c) *Proceedings Not Stayed.* Except as otherwise provided under this section, a petition for interlocutory appeal shall not stay the proceedings before the Presiding Officer unless the Presiding Officer or the Commission so orders.

§ 1025.25 Summary decisions and orders.

(a) *Motion.* Any party may file a motion, with a supporting memorandum, for a Summary Decision and Order in its favor upon all or any of the issues in controversy. Complaint Counsel may file such a motion at any time after thirty (30) days following issuance of a complaint, and any other party may file a motion at any time after issuance of a complaint. Any such motion by any party shall be filed at least twenty (20) days before the date fixed for the adjudicative hearing.

(b) *Response to Motion.* Any other party may, within twenty (20) days after service of the motion, file a response with a supporting memorandum.

(c) *Grounds.* A Summary Decision and Order shall be granted if the pleadings and any depositions, answers to interrogatories, admissions, or affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a Summary Decision and Order as a matter of law.

(d) *Legal Effect.* A Summary Decision and Order upon all the issues being adjudicated shall constitute the Initial Decision of the Presiding Officer and may be appealed to the Commission in accordance with § 1025.53 of these rules. A Summary Decision, interlocutory in character, may be rendered on fewer than all issues and may not be appealed prior to issuance of the Initial Decision.

(e) *Case Not Fully Adjudicated on Motion.* A Summary Decision and order that does not dispose of all issues shall include a statement of those material facts about which there is no substantial controversy and of those material facts that are actually and in good faith controverted. The Summary Order shall direct such further proceedings as are appropriate.

§ 1025.26 Settlements.

(a) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(b) *Form.* Offers of settlement shall be filed *in camera* and the form of a consent agreement and order, shall be signed by the respondent or respondent's representative, and may be signed by any other party. Each offer of settlement shall be accompanied by a motion to transmit the proposed agreement and order to the Commission. The motion shall outline the substantive provisions of the agreement and state reasons why it should be accepted by the Commission.

(c) *Contents.* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps and of all rights to seek judicial review or otherwise to contest the validity of the Commission order;

(3) Provisions that the allegations of the complaint are resolved by the consent agreement and order;

(4) A description of the alleged hazard, noncompliance, or violation;

(5) If appropriate, a listing of the acts or practices from which the respondent shall refrain; and

(6) If appropriate, a detailed statement of the corrective action(s) which the respondent shall undertake. In proceedings arising under Section 15 of the Consumer Product Safety Act, 15 U.S.C. 2064, this statement shall contain all the elements of a "Corrective Action Plan," as outlined in the Commission's Interpretation, Policy, and Procedure for Substantial Product Hazards, 16 CFR Part 1115.

(d) *Transmittal.* The Presiding Officer may transmit to the Commission for decision all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph (c) of this section. The Presiding Officer shall consider whether an offer of settlement is clearly frivolous, duplicative of offers previously made and rejected by the Commission or contrary to establish Commission policy. The Presiding Officer may, but need not, recommend acceptance of offers. Any party may object to the transmittal to the Commission of a proposed consent agreement by filing a response opposing the motion.

(e) *Stay of Proceedings.* When an offer of settlement has been agreed to by all parties and has been transmitted to the Commission, the proceedings shall be stayed until the Commission has ruled on the offer. When an offer of settlement has been made and transmitted to the Commission but has not been agreed to by all parties, the proceedings shall not be stayed pending Commission decision on the offer, unless otherwise ordered by the Presiding Officer or the Commission.

(f) *Commission Ruling.* The Commission shall rule upon all transmitted offers of settlement. If the Commission accepts the offer, the Commission shall issue an appropriate

order, which shall become effective upon issuance.

(g) *Commission Rejection.* If the Commission rejects an offer of settlement, the Secretary, in writing, shall give notice of the Commission's decision to the parties and the Presiding Officer. If the proceedings have been stayed, the Presiding Officer shall promptly issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

(h) *Effect of Rejected Offer.* Neither rejected offers of settlement, nor the fact of the proposal of offers of settlement are admissible in evidence.

Subpart D—Discovery, Compulsory Process

§ 1025.31 General provisions governing discovery.

(a) *Applicability.* The discovery rules established in this Subpart are applicable to the discovery of information among the parties in any proceedings. Parties seeking information from persons not parties may do so by subpoena in accordance with § 1025.38 of these rules.

(b) *Discovery Methods.* Parties may obtain discovery by one or more of the following methods: (1) Written interrogatories; (2) requests for production of documents or things; (3) requests for admission; or (4) depositions upon oral examination. Unless the Presiding Officer otherwise orders under paragraph (d) of this section, the frequency of use of these methods is not limited.

(c) *Scope of Discovery.* The scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is within the Commission's statutory authority and is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Privilege.* Discovery may be denied or limited, or a protective order may be entered, to preserve the privilege of a witness, person, or governmental agency as governed by the Constitution, any applicable Act of Congress, or the principles of the common law as they may be interpreted by the Commission in the light of reason and experience.

(3) *Hearing Preparation: Materials.* Subject to the provisions of paragraph (c)(4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (c)(1) of this section and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including his attorney or consultant) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without unique hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Presiding Officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(4) *Hearing Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (c)(1) of this section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(i)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify, and to provide a summary of the grounds for each opinion.

(B) Upon motion, the Presiding Officer may order further discovery by other means upon a showing of substantial cause and may exercise discretion to impose such conditions, if any, as are appropriate in the case.

(ii) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(iii) The Presiding Officer may require as a condition of discovery that the party seeking discovery pay the expert a reasonable fee, but not more than the maximum specified in 5 U.S.C. 3109 for the time spent in responding to discovery.

(d) *Protective Orders.* Upon motion by a party and for good cause shown, the Presiding Officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, competitive disadvantage, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery shall not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery shall be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters shall not be inquired into or that the scope of discovery shall be limited to certain matters; (5) that discovery shall be conducted with no one present except persons designated by the Presiding Officer; (6) that a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way or only to designated parties; and (7) that responses to discovery shall be placed *in camera* in accordance with § 1025.45 of these rules. If a motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms or conditions as are appropriate, order that any party provide or permit discovery.

(e) *Sequence and Timing of Discovery.* Discovery may commence at any time after filing of the answer. Unless otherwise provided in these Rules or by order of the Presiding Officer, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(f) *Supplementation of Responses.* A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement that response to include information later obtained.

(g) *Completion of Discovery.* All discovery shall be completed as soon as practical but in no case longer than one hundred fifty (150) days after issuance of a complaint, unless otherwise ordered by the Presiding Officer in exceptional circumstances and for good cause shown. All discovery shall be commenced by a date which affords the party from whom discovery is sought the full response period provided by these Rules.

(h) *Service and Filing of Discovery.* All discovery requests and written

responses, and all notices of deposition, shall be filed with the Secretary and served on all parties and the Presiding Officer.

(i) *Control of Discovery.* The use of these discovery procedures is subject to the control of the Presiding Officer, who may issue any just and appropriate order for the purpose of ensuring their timely completion.

§ 1025.32 Written interrogatories to parties.

(a) *Availability; Procedures for Use.* Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or unincorporated association or governmental entity, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of the Presiding Officer, be served upon any party after the filing of an answer.

(b) *Procedures for Response.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. Each answer shall be submitted in double-spaced typewritten form and shall be immediately preceded by the interrogatory, in single-spaced typewritten form, to which the answer is responsive. The answers are to be signed by the person making them, and the objections signed by the person or representative making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after service of the interrogatories. The Presiding Officer may allow a shorter or longer time for response. The party submitting the interrogatories may move for an order under § 1025.36 of these rules with respect to any objection to, or other failure to answer fully, an interrogatory.

(c) *Scope of Interrogatories.* Interrogatories may relate to any matters which can be inquired into under § 1025.31(c), and the answers may be used to any extent permitted under these rules. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory would involve an opinion or contention which relates to fact or to the application of law to fact, but the Presiding Officer may order that such an interrogatory need not be answered until a later time.

(d) *Option to Produce Business Records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary of those records, and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

§ 1025.33 Production of documents and things.

(a) *Scope.* Any party may serve upon any other party a request (1) to produce and permit the party making the request, or someone acting on behalf of that party, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and any other data compilation from which information can be obtained, translated, if necessary, by the party in possession through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of § 1025.31(c) and which are in the possession, custody, or control of the party upon whom the request is served, or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection (including photographing), or sampling any designated object or operation within the scope of § 1025.31(c).

(b) *Procedure for Request.* The request may be served at any time after the filing of an answer without leave of the Presiding Officer. The request shall set forth the items to be inspected, either by individual item or by category, and shall describe each item or category with reasonable particularity. The request shall specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(c) *Procedure for Response.* The party upon whom the request is served shall respond in writing within thirty (30) days after service of the request. The Presiding Officer may allow a shorter or longer time for response. The response shall state, with respect to each item or category requested, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an item or category, that part shall be specified. The party submitting the request may move for an order under § 1025.36 with respect to any objection to or other failure to respond to the request or any part thereof, or to any failure to permit inspection as requested.

(d) *Persons Not Parties.* This section does not preclude an independent action against a person not a party for production of documents and things.

§ 1025.34 Requests for admission.

(a) *Procedure for Request.* A party may serve upon any other party a written request for the admission, for the purposes of the pending proceedings only, of the truth of any matters within the scope of § 1025.31(c) set forth in the request that relate to statements of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter about which an admission is requested shall be separately set forth.

(b) *Procedure for Response.* The matter about which an admission is requested will be deemed admitted unless within thirty (30) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representative and stating the reasons for the objections. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny a fact unless the party states that he/she has made reasonable inquiry and that the information known or readily available to him/her is insufficient to enable him/her to admit or deny a fact. A party who considers that a matter to which an admission has been requested presents a genuine issue for hearing may not, on

that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of any answer or objection in accordance with § 1025.36 of these Rules. If the Presiding Officer determines that an answer does not comply with the requirements of this section, he/she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of Admission.* Any matter admitted under this section is conclusively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party who obtained the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this section is for the purposes of the pending adjudication only and is not an admission by that party for any other purposes, nor may it be used against that party in any other proceedings.

§ 1025.35 Depositions upon oral examination.

(a) *When Depositions May Be Taken.* At any time after the first prehearing conference, upon leave of the Presiding Officer and under such terms and conditions as the Presiding Officer may prescribe, any party may take the deposition of any other party, including the agents, employees, consultants, or prospective witnesses of that party at a place convenient to the deponent. The attendance of witnesses and the production of documents and things at the deposition may be compelled by subpoena as provided in § 1025.38 of these rules.

(b) *Notice of Deposition*—(1) *Deposition of a Party.* A party desiring to take a deposition of another party to the proceedings shall, after obtaining leave from the Presiding Officer, serve written notice of the deposition on all other parties and the Presiding Officer at least ten (10) days before the date noticed for the deposition. The notice shall state (i) the time and place for the taking of the deposition; (ii) the name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify him/her; and (iii) the subject matter of the expected testimony. If a subpoena *duces tecum* is to be served on the person to be deposed, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice of deposition.

(2) *Deposition of a Non-party.* A party desiring to take a deposition of a person who is not a party to the proceedings shall make application for the issuance of a subpoena, in accordance with § 1025.38 of these rules, to compel the attendance, testimony, and/or production of documents by such non-party. The paty desiring such deposition shall serve written notice of the deposition on all other parties to the proceedings, after issuance of the subpoena. The date specified in the subpoena for the deposition shall be at least twenty (20) days after the date on which the application for the subpoena is made to the Presiding Officer.

(3) *Opposition to Notice.* A person served with a notice of deposition may oppose, in writing, the taking of the deposition within five (5) days of service of the notice. The Presiding Officer shall rule on the notice and any opposition and may order the taking of all noticed depositions upon a showing of good cause. The Presiding Officer may, for good cause shown, enlarge or shorten the time for the taking of a deposition.

(c) *Persons Before Whom Depositions May be Taken.* Depositions may be taken before any person who is authorized to administer oaths by the laws of the United States or of the place where the examination is held. No deposition shall be taken before a person who is a relative, employee, attorney, or representative of any party, or who is a relative or employee of such attorney or representative, or who is financially interested in the action.

(d) *Taking of Deposition.*—(1) *Examination.* Each deponent shall testify under oath, and all testimony shall be recorded. All parties or their representatives may be present and participate in the examination. Evidence objected to shall be taken subject to any objection. Objections shall include the grounds relied upon. The questions and answers, together with all objections made, shall be recorded by the official reporter before whom the deposition is taken. The original or a verified copy of all documents and things produced for inspection during the examination of the deponent shall, upon a request of any party present, be marked for identification and made a part of the record of the deposition.

(2) *Motion to Terminate or Limit Examination.* At any time during the deposition, upon motion of any party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Presiding Officer may order the party conducting the examination to stop the deposition or may limit the scope and manner of taking the deposition as provided in § 1025.31(d) of these rules.

(3) *Participation by Parties Not Present.* In lieu of attending a deposition, any party may serve written questions in a sealed envelope on the party conducting the deposition. That party shall transmit the envelope to the official reporter, who shall unseal it and read the questions to the deponent.

(e) *Transcription and Filing od Depositions.—(1) Transcription.* Upon request by any party, the testimony recorded at a deposition shall be transcribed. When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature and shall be read to or by the deponent, unless such examination and signature are waived by the deponent. Any change in form or substance which the deponent desires to make shall be entered upon the deposition by the official reporter with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the deponent waives signature or is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty (30) days of its submission to him/her, the official reporter shall sign the deposition and state on the record the fact of the waiver of signature or of the illness or absence of the deponent or of the refusal to sign, together with a statement of the reasons therefor. The deposition may then be used as fully as though signed, in accordance with paragraph (i) of this section.

(2) *Certification and filing.* The official reporter shall certify on the deposition that it was taken under oath and that the deposition is a true record of the testimony given and corrections made by the deponent. The official reporter shall then seal the deposition in an envelope endorsed with the title and docket number of the action and marked "Deposition of [name of deponent]" and shall promptly file the deposition with the Secretary. The Secretary shall notify all parties of the filing of the deposition and shall furnish a copy of the deposition to any party or to the deponent upon payment of reasonable charges.

(f) *Costs of Deposition.* The party who notices the deposition shall pay for the deposition. The party who requests transcription of the deposition shall pay for the transcription.

(g) *Failure to Attend or to Serve Subpoena; Expenses.* If a party who notices a deposition fails to attend or conduct the deposition, and another party attends in person or by a representative pursuant to the notice, the Presiding Officer may order the party who gave the notice to pay to the attending party the reasonable expenses incurred. If a party who notices a deposition fails to serve a subpoena upon the deponent and as a result the deponent does not attend, and if another party attends in person or by a representative because that party expects the deposition to be taken, the Presiding Officer may order the party who gave notice to pay to the attending party the reasonable expenses incurred.

(h) *Deposition to Preserve Testimony.*—(1) *When Available.* By leave of the Presiding Officer, a party may take the deposition of his/her own witness for the purpose of perpetuating the testimony of that witness. A party who wishes to conduct such a deposition shall obtain prior leave of the Presiding Officer by filing a motion. The motion shall include a showing of substantial reason to believe that the testimony could not be presented at the hearing. If the Presiding Officer is satisfied that the perpetuation of the testimony may prevent a failure of justice or is otherwise reasonably necessary, he/she shall order that the deposition be taken.

(2) *Procedure.* Notice of a deposition to preserve testimony shall be served at least fifteen (15) days prior to the deposition unless the Presiding Officer authorizes less notice when warranted by extraordinary circumstances. The deposition shall be taken in accordance with the provisions of paragraph (d) of this section. Any deposition taken to preserve testimony shall be transcribed and filed in accordance with paragraph (e) of this section.

(i) *Use of Depositions.* At the hearing or upon a petition for interlocutory appeal, any part or all of a deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition, in accordance with any of the following:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of anyone who at the time of the taking of the deposition was an officer, director, managing agent, or person otherwise designated to testify on behalf of a public or private corporation, partnership or unincorporated association or governmental entity which is a party to the proceedings, may be used by any adverse party for any purpose.

(3) The deposition of a witness may be used by any party for any purpose if the Presiding Officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the depostion has been unable to procure the attendance of the witness by subpoena; or (v) that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally during the hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may move to introduce any other part of the deposition.

§ 1025.36 Motions to compel discovery.

If a party fails to respond to discovery, in whole or in part, the party seeking discovery may move within twenty (20) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery. For purposes of this section, an evasive or incomplete response is to be treated as a failure to respond. When taking depositions, the discovering party shall continue the examination to the extent possible with respect to other areas of inquiry before moving to compel discovery.

§ 1025.37 Sanctions for failure to comply with discovery orders.

If a party fails to obey an order to provide or permit discovery, the Presiding Officer may take such action as is just, including but not limited to the following:

(a) Infer that the admission, testimony, document or other evidence would have been adverse to the party;

(b) Order that for the purposes of the proceedings, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon the documents or other evidence withheld;

(d) Order that the party withholding discovery not introduce into evidence, or otherwise use at the hearing, information obtained in discovery;

(e) Order that the party withholding discovery forfeit its right to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(f) Order that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order was issued, be stricken, or that decision on the pleadings be rendered against the party, or both; and

(g) Exclude the party or representative from the proceedings, in accordance with § 1025.42(b) of these rules.

Any such action may be taken by order at any point in the proceedings.

§ 1025.38 Subpoenas.

(a) *Availability.* A subpoena shall be addressed to any person not a pary for the purpose of compelling attendance, testimony, and production of documents at a hearing or deposition, and may be addressed to any party for the same purposes.

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time, and place for compliance with its provisions; and shall be issued by order of the Commission and signed by the Secretary or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents, or other materials or data-compilations to be produced.

(c) *How Obtained*—(1) *Content of Application.* An application for the issuance of a subpoena, stating reasons, shall be submitted in triplicate to the Presiding Officer. The Presiding Officer shall bring the application to the attention of the Commission by forwarding it or by communicating its contents by any other means, e.g., by telephone, to the Commission.

(2) *Procedure for Application.* The original and two copies of the subpoena, marked "original," "duplicate" and "triplicate," shall accompany the application. The Commission shall rule upon an application for a subpoena *ex parte*, by issuing the subpoena or by issuing an order denying the application.

(d) *Issuance of a Subpoena.* The Commission shall issue a subpoena by authorizing the Secretary or the Presiding Officer to sign and date each copy in the lower right-hand corner. The "duplicate" and "triplicate" copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the "original" shall be retained by, or be forwarded to, the Secretary for retention in the docket of the proceedings.

(e) *Service of a Subpoena.* A subpoena may be served in person or by

registered or certified mail, return receipt requested, as provided in § 1025.16(b) of these rules. Service shall be made by delivery of the signed "duplicate" copy to the person named therein.

(f) *Return of Service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time, and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" copy of the subpoena, bearing or accompanied by the return of service, shall be returned without delay to the Secretary after service has been completed.

(g) *Motion to Quash or Limit Subpoena.* Within five (5) days of receipt of a subpoena, the person to whom it is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within five (5) days of service and shall be ruled on immediately. The order shall specify the date, if any, for compliance with the specifications of the subpoena.

(h) *Consequences of Failure to Comply.* In the event of failure by a person to comply with a subpoena, the Presiding Officer may take any of the actions enumerated in § 1025.37 of these rules, or may order any other appropriate relief to compensate for the withheld testimony, documents, or other materials. If in the opinion of the Presiding Officer such relief is insufficient, the Presiding Officer shall certify to the Commission a request for judicial enforcement of the subpoena.

§ 1025.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) *Applicability to Flammable Fabrics Act Only.* This section applies only to proceedings arising under the Flammable Fabrics Act.

(b) *Procedure.* A party who desires the issuance of an order requiring a witness or deponent to testify or provide other information upon being granted immunity from prosecution under Title 18, United States Code, section 6002, may make a motion to that effect. The motion shall be made and ruled on in accordance with § 1025.23 of these rules and shall include a showing:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest; and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of that individual's privilege against self-incrimination.

(c) *Approval of the Attorney General.* If the Presiding Officer determines that the witness' testimony appears necessary and that the privilege against self-incrimination may be invoked, he/she may certify to the Commission a request that it obtain the approval of the Attorney General of the United States for the issuance of an order granting immunity.

(d) *Issuance of Order Granting Immunity.* Upon application to and approval by the Attorney General of the United States, and after the witness has invoked the privilege against self-incrimination, the Presiding Officer shall issue the order granting immunity unless he/she determines that the privilege was improperly invoked.

(e) *Sanctions for Failure to Testify.* Failure of a witness to testify after a grant of immunity or after a denial of a motion for the issuance of an order granting immunity shall result in the imposition of appropriate sanctions as provided in § 1025.37 of these rules.

Subpart E—Hearings

§ 1025.41 General rules.

(a) *Public Hearings.* All hearings conducted pursuant to these Rules shall be public unless otherwise ordered by the Commission or the Presiding Officer.

(b) *Prompt Completion.* Hearings shall proceed with all reasonable speed and, insofar as practicable and with due regard to the convenience of the parties, shall continue without suspension until concluded, except in unusual circumstances or as otherwise provided in these Rules.

(c) *Rights of Parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, brief, and argument.

(d) *Rights of Participants.* Every participant shall have the right to make a written or oral statement of position and to file proposed findings of fact, conclusions of law, and a post hearing brief, in accordance with § 1025.17(b) of these Rules.

(e) *Rights of Witnesses.* Any person compelled to testify in any proceedings in response to a subpoena may be accompanied, represented, and advised by legal counsel or other representative, and may purchase a transcript of his/her testimony.

§ 1025.42 Powers and duties of presiding officer.

(a) *General.* A Presiding Officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He/she shall have all powers necessary to that end, including the following powers:

(1) To administer oaths and affirmations;

(2) To compel discovery and to impose appropriate sanctions for failure to make discovery;

(3) To rule upon offers of proof and receive relevant, competent, and probative evidence;

(4) To regulate the course of the proceedings and the conduct of the parties and their representatives;

(5) To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;

(6) To consider and rule, orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;

(7) To issue Summary Decisions, Initial Decisions, Recommended Decisions, rulings, and orders, as appropriate;

(8) To certify questions to the Commission for its determination; and

(9) To take any action authorized by these Rules or the provisions of Title 5, United States Code, §§ 551–559.

(b) *Exclusion of Parties by Presiding Officer.* A Presiding Officer shall have the authority, for good cause stated on the record, to exclude from participation in any proceedings any party, participant, or representative who violates the requirements of § 1025.66 of these rules. Any party, participant or representative so excluded may appeal to the Commission in accordance with the provisions of § 1025.24 of these rules. If the representative of a party or participant is excluded, the hearing may be suspended for a reasonable time so that the party or participant may obtain another representative.

(c) *Substitution of Presiding Officer.* In the event of the substitution of a new Presiding Officer for the one originally designated, any motion predicated upon such substitution shall be made within five (5) days.

(d) *Interference.* In the performance of adjudicative functions, a Presiding Officer shall not be responsible to or subject to the supervision or direction of any Commissioner or of any officer, employee, or agent engaged in the

performance of investigative or prosecuting functions for the Commission. All directions by the Commission to a Presiding Officer concerning any adjudicative proceedings shall appear on and be made a part of the record.

(e) *Disqualification of Presiding Officer.* (1) When a Presiding Officer considers himself/herself disqualified to preside in any adjudicative proceedings, he/she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judge and the Secretary of such withdrawal.

(2) Whenever, for good and reasonable cause, any party considers the Presiding Officer to be disqualified to preside, or to continue to preside, in any adjudicative proceedings, that party may file with the Secretary a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Secretary on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days to respond in writing to such motion. However, the motion shall not stay the proceedings unless otherwise ordered by the Presiding Officer or the Commission. If the Presiding Officer does not disqualify himself/herself, the Commission shall determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose and, in the event of disqualification, shall take appropriate action by assigning another Presiding Officer or requesting loan of another Administrative Law Judge through the U.S. Office of Personnel Management.

§ 1025.43 Evidence.

(a) *Applicability of Federal Rules of Evidence.* Unless otherwise provided by statute or these rules, the Federal Rules of Evidence shall apply to all proceedings held pursuant to these Rules. However, the Federal Rules of Evidence may be relaxed by the Presiding Officer if the ends of justice will be better served by so doing.

(b) *Burden of Proof.* (1) Complaint counsel shall have the burden of sustaining the allegations of any complaint.

(2) Any party who is the proponent of a legal or factual proposition shall have the burden of sustaining that proposition.

(c) *Admissibility.* All relevant and reliable evidence is admissible, but may be excluded by the Presiding Officer if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence.

(d) *Official Notice.*—(1) *Definition.* Official notice means use by the Presiding Officer or the Commission of facts not appearing on the record and legal conclusions drawn from those facts. An officially noticed fact or legal conclusion must be one not subject to reasonable dispute in that it is either (i) generally known within the jurisdiction of the Commission or (ii) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(2) *Method of taking official notice.* The Presiding Officer and/or the Commission may at any time take official notice upon motion of any party or upon its own initiative. The record shall reflect the facts and conclusions which have been officially noticed.

(f) *Offer of Proof.* When an objection to proffered testimony or documentary evidence is sustained, the sponsoring party may make a specific offer, either in writing or orally, of what the party expects to prove by the testimony or the document. When an offer of proof is made, any other party may make a specific offer, either in writing or orally, of what the party expects to present to rebut or contradict the offer of proof. Written offers of proof or of rebuttal, adequately marked for identification, shall accompany the record and be available for consideration by any reviewing authority.

§ 1025.44 Expert witnesses.

(a) *Definition.* An expert witness is one who, by reason of education, training, experience, or profession, has peculiar knowledge concerning the subject matter to which his/her testimony relates and from which he/she may draw inferences based upon hypothetically stated facts or offer opinions from facts involving scientific or technical knowledge.

(b) *Method of Presenting Testimony of Expert Witness.* Except as may otherwise be ordered by the Presiding Officer, the direct testimony of an expert witness shall be in writing and shall be filed on the record and exchanged between the parties no later than ten (10) days preceding the commencement of the hearing. The written testimony of an expert witness shall be incorporated into the record and shall constitute the direct testimony of that witness. Upon a showing of good cause, the party sponsoring the expert witness may be permitted to amplify the written direct testimony during the hearing.

(c) *Cross-Examination and Redirect Examination of Expert Witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness shall proceed in due course based upon the written testimony and any amplifying oral testimony.

(d) *Failure to File or Exchange Written Testimony.* Failure to file or exchange written testimony of expert witnesses as provided in this section shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented, unless the opposing parties consent or the Presiding Officer otherwise orders in unusual circumstances.

§ 1025.45 In camera materials.

(a) *Definition. In camera* materials are documents, testimony, or other data which by order of the Presiding Officer or the Commission are kept confidential and excluded from the public record.

(b) *In Camera Treatment of Documents and Testimony.* The Presiding Officer or the Commission shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserve *in camera.* The order shall specify the length of time for *in camera* treatment and shall include:

(1) A description of the documents or testimony;

(2) The reasons for granting *in camera* treatment for the specified length of time; and

(3) The terms and conditions imposed by the Presiding Official, if any, limiting access to or use of the *in camera* material.

(c) *Access and Disclosure to Parties.* (1) Commissioners and their staffs, Presiding Officers and their staffs, and Commission staff members concerned with judicial review shall have complete access to *in camera* materials. Any party to the proceedings may seek access only in accordance with paragraph (c)(2) of this section.

(2) Any party desiring access to, or disclosure of, *in camera* materials for the preparation and presentation of that party's case shall make a motion which sets forth its justification. The Presiding Officer or the Commission may grant such motion for good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring any other necessary safeguards. The Presiding Officer or the Commission may examine the *in camera* materials and excise any portions prior to disclosure of the materials to the moving party.

(d) *Segregation of In Camera Materials. In camera* materials shall be segregated from the public record and protected from public view.

(e) *Public Release of In Camera Materials. In camera* materials constitute a part of the confidential records of the Commission and shall not be released to the public until the expiration of *in camera* treatment.

(f) *Reference to In Camera Materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of *in camera* materials. However, such refraining shall not preclude general references to such materials. To the extent that parties consider necessary the inclusion of specific details of *in camera* materials, those references shall be incorporated into separate proposed findings, conclusions, briefs, or other documents marked "Confidential, Contains *In Camera* Material," which shall be placed *in camera* and become part of the *in camera* record. Those documents shall be served only on parties accorded access to the *in camera* materials by these rules, the Presiding Officer, or the Commission.

§ 1025.46 Proposed findings, conclusions, and order.

Within a reasonable time after the closing of the record and receipt of the transcript, all parties and participants may file, simultaneously unless otherwise directed by the Presiding Officer, post-hearing briefs, including proposed findings of fact and conclusions of law, as well as a proposed order. The Presiding Officer shall establish a date certain for the filing of the briefs, which shall not exceed fifty (50) days after the closing of the record except in unusual circumstances. The briefs shall be in writing and shall be served upon all parties. The briefs of all parties shall contain adequate references to the record and authorities relied upon. Replies shall be filed within fifteen (15) days of the date for the filing of briefs unless otherwise established by the Presiding Officer. The parties and participants may waive either or both submissions.

§ 1025.47 Record.

(a) *Reporting and Transcription.* Hearings shall be recorded and transcribed by the official reporter of the Commission under the supervision of the Presiding Officer. The original transcript shall be a part of the record of proceedings. Copies of transcripts are available from the reporter at a cost not to exceed the maximum rates fixed by contract between the Commission and the reporter. In accordance with Section 11 of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C.A. Appendix I), copies of transcripts may be made by members of the public or by Commission personnel, when available, at the Office of the Secretary at reproduction costs as provided in § 1025.49.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner described in this section. The Presiding Officer may order corrections, either on his/her own motion or on motion of any party. The Presiding Officer shall determine the corrections to be made and shall so order. Corrections shall be interlineated or otherwise inserted in the official transcript so as not to obliterate the original text.

§ 1025.48 Official docket.

The official docket in any adjudicatory proceedings shall be maintained in the Office of the Secretary and be available for public inspection during normal business hours of the Commission.

§ 1025.49 Fees.

(a) *Fees for Deponents and Witnesses.* Any person compelled to appear in person in response to a subpoena or notice of deposition shall be paid the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, section 1821. The fees and mileage referred to in this paragraph shall be paid by the party at whose instance deponents or witnesses appear.

(b) *Fees for Production of Records.* Fees charged for production or disclosure of records contained in the official docket shall be in accordance with the Commission's "Procedures for Disclosures or Production of Information Under the Freedom of Information Act," Title 16, Code of Federal Regulations, § 1015.9.

Subpart F—Decision

§ 1025.51 Initial decision.

(a) *When Filed.* The Presiding Officer shall endeavor to file an Initial Decision with the Commission within sixty (60) days after the closing of the record or the filing of post-hearing briefs, whichever is later.

(b) *Content.* The Initial Decision shall be based upon a consideration of the entire record and shall be supported by reliable, probative, and substantial evidence. The Initial Decision shall include:

(1) Findings and conclusions, as well as the reasons or bases for such findings and conclusions, upon the material questions of fact, material issues of law, or discretion presented on the record, and should, where practicable, be accompanied by specific page citations to the record and to legal and other materials relied upon; and

(2) An appropriate order.

(c) *By Whom Made.* The Initial Decision shall be made and filed by the Presiding Officer who presided over the hearing, unless otherwise ordered by the Commission.

(d) *Reopening of Proceedings by Presiding Officer; Termination of Jurisdiction.* (1) At any time prior to, or concomitant with, the filing of the Initial Decision, the Presiding Officer may reopen the proceedings for the reception of further evidence.

(2) Except for the correction of clerical errors, or where the proceeding is reopened by an order under paragraph (d)(1) of this section, the jurisdiction of the Presiding Officer is terminated upon the filing of the Initial Decision, unless and until such time as the matter may be remanded to the Presiding Officer by the Commission.

§ 1025.52 Adoption of initial decision.

The Initial Decision and Order shall become the Final Decision and Order of the Commission forty (40) days after issuance unless an appeal is noted and perfected or unless review is ordered by the Commission. Upon the expiration of the fortieth day, the Secretary shall prepare, sign, and enter an order adopting the Initial Decision and Order, unless otherwise directed by the Commission.

§ 1025.53 Appeal from initial decision.

(a) *Who May File Notice of Intention.* Any party may appeal an Initial Decision to the Commission, provided that within ten (10) days after issuance of the Initial Decision such party files and serves a notice of intention to appeal.

(b) *Appeal Brief.* An appeal is perfected by filing a brief within forty (40) days after service of the Initial Decision. The appeal brief must be served upon all parties. The appeal brief shall contain, in the order indicated, the following:

(1) A subject index of the matters in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A concise statement of the case;

(3) A statement containing the reasons why the party believes the Initial Decision is incorrect;

(4) The argument, presenting clearly the points of fact and law relied upon to support each reason why the Initial Decision is incorrect, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of order for the Commission's consideration in lieu of the order contained in the Initial Decision.

(c) *Answering Brief.* Within thirty (30) days after service of the appeal brief upon all parties, any party may file an answering brief which shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto. Such brief shall present clearly the points of fact and law relied upon in support of the reasons the party has for each position urged, with specific page references to the record and legal or other materials relied upon.

(d) *Participant's Brief.* Within thirty (30) days after service of the appeal brief upon all parties, any participant may file a brief on appeal, presenting clearly the position urged.

(e) *Cross Appeal.* If a timely notice of appeal is filed by a party, any other party may file a notice of cross appeal within ten (10) days of the date on which the first notice of appeal was filed. Cross-appeals shall be included in the answering brief and shall conform to the requirements for form, content, and filing specified in paragraph (b) of this section for an appeal brief. If an appeal is noticed but not perfected, no cross-appeal shall be permitted and the notice of cross-appeal shall be deemed void.

(f) *Reply Brief.* A reply brief shall be limited to rebuttal of matters presented in answering briefs, including matters raised in cross-appeals. A reply brief shall be filed and served within fourteen (14) days after service of an answering brief, or on the day preceding the oral argument, whichever comes first.

(g) *Oral Argument.* The purpose of an oral argument is to emphasize and clarify the issues. The Commission may order oral argument upon request of any party or upon its own initiative. A transcript of oral arguments shall be prepared. A Commissioner absent from an oral argument may participate in the consideration of and decision on the appeal.

§ 1025.54 Review of initial decision in absence of appeal.

The Commission may, by order, review a case not otherwise appealed by a party. Should the Commission so order, the parties shall, and participants may, file briefs in accordance with § 1025.53, except that the Commission may, in its discretion, establish a different briefing schedule in its order. The Commission shall issue its order within forty (40) days after issuance of the Initial Decision. The order shall set forth the issues which the Commission will review and may make provision for the filing of briefs. If the filing of briefs is scheduled by the Commission, the order shall designate which party or parties shall file the initial brief and which party or parties may thereafter file an answering brief, or the order may designate the simultaneous filing of briefs by the parties.

§ 1025.55 Final decision on appeal or review.

(a) *Consideration of Record.* Upon appeal from or review of an Initial Decision, the Commission shall consider the record as a whole or such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition, shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the Initial Decision.

(b) *Rendering of Final Decision.* In rendering its decision, the Commission shall adopt, modify, or set aside the findings, conclusions, and order contained in the Initial Decision, and shall include in its Final Decision a statement of the reasons for its action and any concurring or dissenting opinions. The Commission shall issue an order reflecting its Final Decision.

(c) Except as otherwise ordered by the Commission, the Commission shall endeavor to file its Decision within ninety (90) days after the filing of all briefs or after receipt of transcript of the oral argument, whichever is later.

§ 1025.56 Reconsideration.

Within twenty (20) days after issuance of a Final Decision and Order by the Commission, any party may file a petition for reconsideration of such decision or order, setting forth the relief desired and the grounds in support of the petition. Any petition filed under this section must be confined to new questions raised by the decision or order upon which the petitioner had no previous opportunity to argue. Any party desiring to oppose such a petition shall file an opposition to the petition within ten (10) days after sevice of the petition. The filing of a petition for reconsideration shall not stay the effective date of the Final Decision and Order or toll the running of any statutory time period affecting the Decision or Order unless specifically ordered by the Commission.

§ 1025.57 Effective date of order.

(a) *Orders in Proceedings Arising Under the Consumer Product Safety Act.* An order of the Commission in proceedings arising under the Consumer Product Safety Act becomes effective upon receipt, unless otherwise ordered by the Commission.

(b) *Orders in Proceedings Arising Under the Flammable Fabrics Act.*—(1) *Consent orders.* An order in proceedings arising under the Flammable Fabrics Act, which has been issued following the Commission's acceptance of an offer of settlement in accordance with § 1025.26 of these rules, becomes effective upon receipt of notice of Commission acceptance, unless otherwise ordered by the Commission.

(2) *Litigated orders.* All other orders in proceedings arising under the Flammable Fabrics Act become effective upon the expiration of the statutory period for court review specified in Section 5(c) of the Federal Trade Commission Act, Title 15, United States Code, section 45(c), or, if a petition for review has been filed, upon a court's affirmance of the Commission's order.

(c) *Consequences of Failure to Comply With Effective Order.* A respondent against whom an order has been issued who is not in compliance with such order on or after the date the order becomes effective is in violation of such order and is subject to an immediate action for the civil or criminal penalties provided for in the applicable statute.

§ 1025.58 Reopening of proceedings.

(a) *General.* Any proceedings may be reopened by the Commission at any time, either on its own initiative or upon petition of any party to the proceedings.

(b) *Exception.* Proceedings arising under the Flammable Fabrics Act shall not be reopened while pending in a United States court of appeals on a petition for review after the transcript of the record has been filed, or while pending in the Supreme Court of the United States.

(c) *Commission-Originated Reopening.*—(1) *Before effective date of order.* At any time before the effective date of a Commission order, the Commission may, upon its own initiative and without prior notice to the parties, reopen any proceedings and enter a new decision or order to modify or set aside, in whole or in part, the decision or order previously issued.

(2) *After effective date of order.* Whenever the Commission is of the

opinion that changed conditions of fact or law or the public interest may require that a Commission decision or order be altered, modified, or set aside in whole or in part, the Commission shall serve upon all parties to the original proceedings an order to show cause, stating the changes the Commission proposes to make in the decision or order and the reasons such changes are deemed necessary. Within thirty (30) days after service of an order to show cause, any party to the original proceedings, may file a response. Any party not responding to the order to show cause within the time allowed shall be considered to have consented to the proposed changes.

(d) *Petition for Reopening.* Whenever any person subject to a final order is of the opinion that changed conditions of fact or law require that the decision or order be altered, modified, or set aside, or that the public interest so requires, that person may petition the Commission to reopen the proceedings. The petition shall state the changes desired and the reasons those changes should be made, and shall include such supporting evidence and argument as will, in the absence of any opposition, provide the basis for a Commission decision on the petition. The petition shall be served upon all parties to the original proceedings. Within thirty (30) days after service of the petition, Complaint Counsel shall file a response. Any other party to the original proceedings also may file a response within that period.

(e) *Hearings*—(1) *Unopposed.* Where an order to show cause or petition to reopen is not opposed, or is opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause or petition and responses, or it may serve upon the parties a notice of hearing containing the date when the matter will be heard. The proceedings normally will be limited to the filing of briefs but may include oral argument when deemed necessary by the Commission.

(2) *Factual Issues.* When the pleadings raise substantial factual issues, the Commission may direct such hearings as it deems appropriate. Upon conclusion of the hearings, and after opportunity for the parties to file post-hearing briefs containing proposed findings of fact and conclusions of law, as well as a proposed order, the Presiding Officer shall issue a Recommended Decision, including proposed findings and conclusions, and the reasons, as well as a proposed Commission order. If the Presiding Officer recommends that the Commission's original order be reopened, the proposed order shall include appropriate provisions for the alteration, modification or setting aside of the original order. The record and the Presiding Officer's Recommended Decision shall be certified to the Commission for final disposition of the matter.

(f) *Commission Disposition.* Where the Commission has ordered a hearing, upon receipt of the Presiding Officer's Recommended Decision, the Commission shall make a decision and issue an order based on the hearing record as a whole. If the Commission determines that changed conditions of fact or law or the public interest requires, it shall reopen the order previously issued; alter, modify, or set aside the order's provisions in whole or in part; and issue an amended order reflecting the alterations, modifications, or deletions. If the Commission determines that the original order should not be reopened, it shall issue an order affirming the original order. A decision stating the reasons for the Commission's order shall accompany the order.

Subpart G—Appearances, Standards of Conduct

§ 1025.61 Who may make appearances.

A party or participant may appear in person, or by a duly authorized officer, partner, regular employee, or other agent of the party or participant, or by counsel or other duly qualified representative, in accordance with § 1025.65.

§ 1025.62 Authority for representation.

Any individual acting in a representative capacity in any adjudicative proceedings may be required by the Presiding Officer or the Commission to show his/her authority to act in such capacity. A regular employee of a party who appears on behalf of the party may be required by the Presiding Officer or the Commission to show his/her authority to so appear.

§ 1025.63 Written appearances.

(a) *Filing.* Any person who appears in any proceedings shall file a written notice of appearance with the Secretary or deliver a written notice of appearance to the Presiding Officer at the hearing, stating for whom the appearance is made and the name, address, and telephone number (including area code) of the person making the appearance and the date of the commencement of the appearance. The written appearance shall be made a part of the record.

(b) *Withdrawal.* Any person who has previously appeared in any proceedings may withdraw his/her appearance by filing a written notice of withdrawal of appearance with the Secretary. The notice of withdrawal of appearance shall state the name, address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance. Such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance.

§ 1025.64 Attorneys.

Any attorney at law who is admitted to practice before any United States court or before the highest court of any State, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Commission. An attorney's own representation that he/she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise directed by the Presiding Officer or the Commission.

§ 1025.65 Persons not attorneys.

(a) *Filing and Approval of Proof of Qualifications.* Any person who is not an attorney at law may be admitted to appear in any adjudicative proceedings as a representative of any party or participant if that person files proof to the satisfaction of the Presiding Officer that he/she possesses the necessary knowledge of administrative procedures, technical, or other qualifications to render valuable service in the proceedings and is otherwise competent to advise and assist in the presentation of matters in the proceedings. An application by a person not an attorney at law for admission to appear in any proceedings shall be submitted in writing to the Secretary, not later than thirty (30) days prior to the hearing. The application shall set forth in detail the applicant's qualifications to appear in the proceedings.

(b) *Exception.* Any person who is not an attorney at law and whose application has not been approved shall not be permitted to appear in Commission proceedings. However, this provision shall not apply to any person who appears before the Commission on his/her own behalf or on behalf of any corporation, partnership, or unincorporated association of which the person is a partner or general officer.

§ 1025.66 Qualifications and standards of conduct.

(a) *Good Faith Transactions.* The Commission expects all persons

appearing in proceedings before the Commission or the Presiding Officer to act with integrity, with respect, and in an ethical manner. Business transacted before and with the Commission or the Presiding Officer shall be conducted in good faith.

(b) *Exclusion of Parties, Participants, or Their Representatives.* To maintain orderly proceedings, the Commission or the Presiding Officer may exclude parties, participants, or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition in § 1025.68 against certain *ex parte* communications.

(c) *Exclusions from the Record.* The Presiding Officer or the Commission may disregard and order the exclusion from the record of any written or oral submissions or representations which are not made in good faith or which are unfair, incomplete, or inaccurate.

(d) *Appeal by Excluded Party.* An excluded party, participant, or representative may petition the Commission to entertain an interlocutory appeal in accordance with § 1025.24 of these rules. If, after such appeal, the representative of a party or participant is excluded, the hearing shall, at the request of the party or participant, be suspended for a reasonable time so that the party or participant may obtain another representative.

§ 1025.67 Restrictions as to former members and employees.

(a) *Generally.* Except as otherwise provided in paragraph (b) of this section, the post-employee restrictions applicable to former Commission members and employees, as set forth in the Commission's "Post Employment Restrictions Applicable to Former Commission Officers and Employees", 16 CFR Part 1030, Subpart L, shall govern the activities of former Commission members and employees in matters connected with their former duties and responsibilities.

(b) *Participation as Witness.* A former member or employee of the Commission may testify in any proceeding subject to these Rules concerning his/her participation in any Commission activity. This section does not constitute a waiver by the Commission of any objection provided by law to testimony that would disclose privileged or confidential material. The provisions of 18 U.S.C. 1905 prohibiting the disclosure of trade secrets also applies to testimony by former members and employees.

(c) *Procedure for Requesting Authorization to Appear.* In cases to which paragraph (a) of this section is applicable, a former member or employee of the Commission may request authorization to appear or participate in any proceedings or investigation by filing with the Secretary a written application disclosing the following information:

(1) The nature and extent of the former member's or employee's participation in, knowledge of, and connection with the proceedings or investigation during his/her service with the Commission;

(2) Whether the files of the proceedings or investigation came to his/her attention;

(3) Whether he/she was employed in the directorate, division, or other organizational unit within the Commission in which the proceedings or investigation is or has been pending;

(4) Whether he/she worked directly or in close association with Commission personnel assigned to the proceedings or investigation and, if so, with whom and in what capacity; and

(5) Whether during service with the Commission, he/she was engaged in any matter concerning the person involved in the proceedings or investigation.

(d) *Denial of Request to Appear.* The requested authorization shall not be given in any case:

(1) Where it appears that the former member or employee, during service with the Commission, participated personally and substantially in the proceedings or investigation; or

(2) Where the Commission is not satisfied that the appearance or participation will not involve any actual or apparent impropriety; or

(3) In any case which would result in a violation of Title 18, United States Code, section 207.

§ 1025.68 Prohibited communications.

(a) *Applicability.* This section is applicable during the period commencing with the date of issuance of a complaint and ending upon final Commission action in the matter.

(b) *Definitions.*—(1) *Decision-maker.* Those Commission personnel who render decisions in adjudicative proceedings under these rules, or who advise officials who render such decisions, including:

(i) The Commissioners and their staffs;

(ii) The Administrative Law Judges and their staffs;

(iii) The General Counsel and his/her staff, unless otherwise designated by the General Counsel.

(2) *Ex parte communication.* (i) Any written communication concerning a matter in adjudication which is made to a decision-maker by any person subject to these Rules, which is not served on all parties; or

(ii) Any oral communication concerning a matter in adjudication which is made to a decision-maker by any person subject to these Rules, without advance notice to all parties to the proceedings and opportunity for them to be present.

(c) *Prohibited Ex Parte Communications.* Any oral or written *ex parte* communication relative to the merits of any proceedings under these Rules is a prohibited *ex parte* communication, except as otherwise provided in paragraph (d) of this section.

(d) *Permissible Ex Parte Communications.* The following communications shall not be prohibited under this section.

(1) *Ex parte* communications authorized by statute or by these rules. (See, for example, § 1025.38 which governs applications for the issuance of subpoenas.)

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Commission.

(e) *Procedures for Handling Prohibited Ex Parte Communication*—(1) *Prohibited written ex parte communication.* To the extent possible, a prohibited written *ex parte* communication received by any Commission employee shall be forwarded to the Secretary rather than to a decision-maker. A prohibited written *ex parte* communication which reaches a decision-maker shall be forwarded by the decision-maker to the Secretary. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) *Prohibited oral ex parte communication.* (i) If a prohibited oral *ex parte* communication is made to a decision-maker, he/she shall advise the person making the communication that the communication is prohibited and shall terminate the discussion; and

(ii) In the event of a prohibited oral *ex parte* communication, the decision-maker shall forward to the Secretary a signed and dated statement containing such of the following information as is known to him/her.

(A) The title and docket number of the proceedings;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties and/or participants to the proceedings;

(C) The date and time of the communication, its duration, and the circumstances (e.g., telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed; and

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) *Filing.* All communications and statements forwarded to the Secretary under this section shall be placed in a public file which shall be associated with, but not made a part of, the record of the proceedings to which the communication or statement pertains.

(4) *Service on parties.* The Secretary shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Secretary that service of the communication or statement would be unduly burdensome, he/she, in lieu of service, may notify all parties in writing that the communication or statement has been made and filed and that it is available for insection and copying.

(5) *Service on maker.* The Secretary shall forward to the person who made the prohibited *ex parte* communication a copy of each communication or statement filed under this section.

(f) *Effect of Ex Parte Communications.* No prohibited *ex parte* communication shall be considered as part of the record for decision unless introduced into evidence by a party to the proceedings.

(g) *Sanctions.* A person subject to these Rules who make, a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

Appendix I—Suggested Form of Final Prehearing Order

Case Caption

A final prehearing conference was held in this matter, pursuant to Rule 21 of the Commission's Rules of Practice for Adjudicative Proceedings (6 CFR 1025.21), on the ——— day of ————————, 19—, at —— o'clock, —m.

Counsel appeared as follows:

For the Commission staff:

For the Respondent(s):

Others:

1. Nature of Action and Jurisdiction. This is an action for ———————— and the jurisdiction of the Commission is invoked under United States Code, Title————————, Section ———————— and under the Code of Federal Regulations, Title ————, Section ————. The jurisdiction of the Commission is (not) disputed. The question of jurisdiction was decided as follows:

2. Stipulations and Statements. The following stipulation(s) and statement(s) were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Complaint Counsel must set forth the claimed facts, specifically; for example, if a violation is claimed, Complaint Counsel must assert specifically the acts of violation complained of; each respondent must reply with equal clarity and detail.)

(c) Written stipulation(s) or statement(s) setting forth the qualifications of the expert witnesses to be called by each party;

(d) Written list(s) of the witnesses whom each party *will* call, written list(s) of the additional witnesses whom each party *may* call, and a statement of the subject matter on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, or separate statements by each party of any contested issues of fact and law not agreed to;

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments but will not be offered in evidence. If any other such objects are to be used by any party, those objects will be submitted to opposing counsel at least three days prior to the hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to the hearing;

(h) Written waivers of claims or defenses which have been abandoned by the parties.

The foregoing were modified at the pretrial conference as follows:

(To be completed at the conference itself. If none, recite "none".)

3. Complaint Counsel's Evidence. 3.1 The following exhibits were offered by Complaint Counsel, received in evidence, and marked as follows:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by Complaint Counsel and marked for identification. There was reserved to the respondent(s) (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

4. Respondent's Evidence. 4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

5. Party Intervenor's Evidence. 5.1 The following exhibits were offered by the party intervenor(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

5.2 The following exhibits were offered by the party intervenor(s) and marked for identification. There was reserved to Complaint Counsel and respondent(s) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

Note.—If any other exhibits are to be offered by any party, such exhibits will be submitted to opposing counsel at least ten

(10) days prior to hearing, and a supplemental note of evidence filed into this record.

6. Additional Actions. The following additional action(s) were taken:

(Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary)

7. Limitations and Reservations. 7.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to commencement of the hearing by furnishing opposing counsel with the name and address of the witness and general subject matter of his/her testimony and by filing a supplement to this pretrial order. Thereafter, additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

7.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

7.3 The probable length of hearing is —— days. The hearing will commence on the —— day of ————, 19—, at — o'clock —m. at ————.

7.4 Prehearing briefs will be filed not later than 5:00 p.m. on ———— (Insert date not later than ten (10) days prior to the hearing.) All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing. It will control the course of the hearing, and it may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

Presiding Officer.

Dated:

Approved as to Form and Substance

Date:

Complaint Counsel.

Attorney for Respondent(s)

*Attorney for Intervenors

*Note.—Where intervenors appear pursuant to § 1025.17 of these Rules, the prehearing order may be suitably modified; the initial page may be modified to reflect the intervention.

Dated: April 28, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-13433 Filed 4-30-80; 8:45 am]

BILLING CODE 6355-01-M

federal register

Thursday
May 1, 1980

Part V

Department of Energy

Economic Regulatory Administration

Proposed Voluntary Guideline for the Automatic Adjustment Clauses Standard and Public Hearing

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-80-08]

Voluntary Guideline for the Automatic Adjustment Clauses Standard Under the Public Utility Regulatory Policies Act of 1978; Proposed Guideline and Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed voluntary guideline and public hearing.

SUMMARY: Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA) established Federal purposes and policy standards for the regulation of electric utilities and imposes obligations upon State regulatory authorities and certain nonregulated utilities with respect to the standards established by sections 111 and 113.

Under section 131 of PURPA, the Secretary of Energy is authorized to prescribe voluntary guidelines respecting consideration of the standards. The appendix to this Notice is the proposed voluntary guideline for the automatic adjustment clauses standard established by section 113(b)(2) of PURPA. Written comments will be received and a public hearing will be held with respect to the proposed guideline.

DATES: Comment by 4:30 p.m., July 10, 1980. Requestes to speak by June 12, 1980, 4:30 p.m. Public Hearing on June 19, 1980, 9:30 a.m.

ADDRESSES: *All comments addressed to:* Department of Energy, Office of Public Hearings Management, Docket No. ERA-R-80-08, 2000 M Street, NW., Room 2313, Washington, D.C. 20461.

Requests to speak addressed to: Department of Energy, Office of Public Hearings Management, Docket No. ERA-R—80-08, 2000 M Street, NW., Room 2313, Washington, D.C. 20461.

Hearing location: Department of Energy, 2000 M Street, NW., Room 2105, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Skjei, Division of Regulatory Assistance, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 4016D, Washington, D.C. 20461, telephone (202) 653-3913.

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, telephone (202) 653-4055.

Mary Ann Masterson, Office of the Gereral Counsel, Department of Energy, James Forrestal Building, Room 1E-254, Washington, D.C. 20585, telephone (202) 252-9516.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1978, the President signed into law the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) as one part of the National Energy Act.

Section 113(b)(2) of PURPA establishes a standard for automatic adjustment clauses. The standard, which must be considered by State regulatory authorities and certain nonregulated utilities in a manner specified by PURPA, defines an automatic adjustment clause as:

> A provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

The standard provides that no electric utility may increase any rate pursuant to such clause unless the clause meets the requirements of PURPA section 115(e). Section 115(e) provides that an automatic adjustment clause must be determined at least every 4 years, by the State regulatory authority or nonregulated electric utility, after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy), and must be reviewed at least every 2 years, to insure the maximum economices in those operations and purchases which affect the rates to which the clause applies.

Section 115(e) is not intended by Congress to encourage or discourage the use of automatic adjustment clauses. In addition, this section is not meant to indicate a preference for the inclusion or exclusion of any particular item(s) in an automatic adjustment clause.

An automatic adjustment clause is a tariff provision, approved in advance by the regulatory body, whereby a price change in a preselected cost item or items will automatically permit a change in rates without formal regulatory hearings.

The purpose of an automatic adjustment clasue is to allow a utility to adjust its collection of revenue to compensate for changes in actual costs of a major expense item(s) over which it presumably has little or no control. The objective is to mitigate the effect of relatively volatile cost items which a utility purchases on a continual basis. A prime example in the case of electric utilities is fuel.

Automatic adjustmenmt mechanisms serve to recover or refund expenses pursuant to an approved formula without the necessity of a formal rate case, thus easing both financial and administrative burdens. In addition, the automatic adjustment clause can, in theory, mitigate risk and thus reduce the cost of capital to the utility.

Two requirements are generally inherent in automatic adjustment provisions. First, the expense for which automatic adjustment is allowed should be a relatively uncontrollable expense. Second, the expense should be variable with the volume of electricity sales; otherwise cost allocation is difficult and the adjustment cannot be made so as to recover for the utility precisely the increase (or decrease) which has occurred in operating costs.

The inclusion of fuel costs in adjustment clauses is intended to ensure the stability of utility earnings as fuel costs rise, while permitting rapid credits to consumers if fuel costs decline. Fuel costs are particularly significant because they account for a substantial percentage of the total cost of supplying electricity and have increased dramatically in recent years.

While fuel clauses are intended to protect a utility's earnings stability, they do not ensure that a utility's fuel purchase policies and practices are the most economical and efficient possible. In fact, fuel adjustment clauses in providing for automatic pass-through of certain costs, may permit, and even foster, inefficiency in fuel procurement practices and other utility management decisions. The automatic adjustment clauses standard established by PURPA is intended to address this situation by requiring regulatory authorities to build efficiency incentives into automatic adjustment clauses.

II. Alternative Approaches to the Automatic Adjustment Clauses Standard

In developing this guideline, DOE considered a number of approaches for providing incentives for efficient use of resources through the operation of an automatic adjustment clause. One possible form of incentive is to prohibit automatic adjustments altogether. While such a policy should motivate the utility to use resources efficiently and to purchase fuel and electric energy at the lowest evaluated cost, for most utilities it would imperil cash flow and thus the utility's ability to (a) provide needed maintenance on existing plants and

equipment, (b) provide reliable electric service, and (c) finance construction projects needed to meet increasing demands for electricity or displace existing oil- or gas-fired generation capacity. Accordingly, such an approach was rejected by DOE in developing the guideline. Instead, it focuses on the types of incentives which will comply with the intent of PURPA without impeding a utility's ability to cover its costs and provide service.

Ultimately, DOE identified two different approches. One approach is to provide incentives through regulatory review, including public scrutiny and in-depth staff analysis of utility procurement and resource use practices. A second approach is to provide incentives through the provisions of the clause itself by including financial rewards (or penalties) for the efficient (inefficient) use of resources. One of the most direct of such mechanisms is a fuel price index which allows automatic recovery of only those cost changes occasioned by changes in the prices paid by utilities for fuel.

A. *Periodic Review.* A public evidentiary review of those utility procurements and operations related to fuel, purchased power, and other costs recovered under an automatic adjustment clause should encourage utilities to use sound procurement practices and to operate and maintain their plant and equipment to assure maximum productivity. Such a review should include periodic audits of fuel and purchased power accounts, audits of procurement practices, and a detailed analysis of the utility's current level of powerplant productivity and planned future activities to improve productivity and reduce consumption of oil and natural gas.

A number of regulatory authorities have independent audits of accounting, utility operations and management practices under automatic adjustment clauses. This type of review should be combined with a procedure by which refunds to the consumers are ordered if inefficient or otherwise unwarranted activities occur. After-the-fact review has proven itself especially useful in connection with fuel procurement activities and regulatory oversight to ensure that fuel is acquired at the lowest evaluated cost.

DOE supports this approach to providing incentives for efficient resource utilization but argues that such audits be expanded to address the underlying rationale for fuel consumption patterns and opportunities for reducing reliance on scarce fuels. The effectiveness of after-the-fact review is highly dependent on the availability and careful analysis of relevant data, meaningful assessment criteria, and on the willingness of the regulatory authority to take appropriate corrective action when inefficiencies are identified.

B. *Price Index Adjustment.* A fuel price index clause provides incentives for a utility to use an economically efficient kilowatt-hour generation mix (weighted energy production by fuel type) by allowing for timely recovery only of those costs directly attributable to changes in fuel prices, and by delaying recovery (via a deferred fuel account) for variations in energy costs due to increased fuel use (e.g., an unacceptably high forced outage rate for efficient baseload units).

In a fuel price index, any adjustment allowed automatically in any time period would reflect changes in the prices of the fuels used, with each adjustment charge weighted in proportion to the role of the fuel in the base generation mix. The generation mix used to establish this price index would be fixed each time the fuel adjustment clause is reviewed in a general rate case (or in a periodic review process). The base generation mix used would include all costs of generation and transmission of purchased power, e.g., energy charges, adders and capacity charges. If the utility actually used a different generation mix than was embodied in the base period for its fuel adjustment procedure, the revenue excess or deficiency attributable to changes in the generation mix would be debited or credited to a deferred fuel account for subsequent review an amortization.

Such indexes were used in the 1950's and 1960's and automatically provide, without the need for subsequent regulatory action, incentives for utilities to keep their plant and equipment in sound operating condition. However, they may not provide, by themselves, needed incentives for sound fuel procurement practices. Further, they could lend to situations in which utilities are penalized, or rewarded, for events which are not, in fact, within their control.

Because of the complexities in designing and administering an effective price indexing system, DOE is not proposing such an approach in the guideline. However, comments on its design and implementation are specifically invited in order to privide DOE with current, accurate data on price indexing.

III. Guideline Issues

DOE is proposing that four major issues be addressed by State regulatory authorities or nonregulated electric utilities in designing an automatic adjustment clause. These include (a) incentives for effective fuel and purchased power procurement practices, (b) incentives for economic and efficient generation of electricity, (c) fuel adjustment charges incorporated into the rate structure, and (d) incentives for the displacement of oil and natural gas in the generation mix.

A. *Incentives for Effective Fuel and Purchased Power Procurement Practices.* DOE's review of existing automatic adjustment clauses found no generally acceptable method of providing incentives for effective fuel and purchased power procurement practices other than the regulatory authority's detailed review of the utility's planned and actual procurement practices. As stated above, permitting no fuel and purchased power cost increase pass through was rejected since it would tend to weaken the utility's financial ability to perform necessary maintenance, reliability, and construction programs. A planned delay in the recovery of all or part of the increased fuel expenses was also considered but was rejected since it would provide a needless penalty for those utilities which already have efficient procurement practices.

The guideline ties the regulatory authority's review of the utility's procurement practices to a potential refund to consumers if the utility's procurement practices for fuel and energy are determined to be inadequate.

Certain items set forth in the guideline should be included in the procedural review. Additional items, as necessary, may be added since the list is not intended to be inclusive. Special attention should be given to those cases where the utility purchases fuel or power from an affiliate or an interlocking directorate since arms-length negotiations as well as reasonableness of prices and costs must be ensured.

B. *Incentives for Economic and Efficient Generation of Electricity.* DOE believes that the most appropriate incentive for economic and efficient generation of electricity is provided by a regulatory authority's review of the utility's performance in achieving certain goals for economic and efficient generation of electricity. Factors to be considered by both the utility and the regulatory authority in setting such goals are included in the guideline. Although not proposed by DOE in the guideline, other methods of promoting generation efficiency, such as partial recovery of increased fuel costs not attributable to increases in fuel price, may be used along with the after-the-fact review.

DOE believes such a review is necessary for any automatic adjustment clause procedure. The guideline indicates that the continuation of an automatic adjustment clause should be made contingent upon the utility's avoiding abuses in its administration and, where appropriate, undertaking cost-effective programs for reducing utility consumption of scarce fuels.

C. *Fuel Adjustment Charges Incorporated Into the Rate Structure.* DOE believes that fuel costs should be incorporated into the rate structure in a manner which provides proper price signals to the consumer. Policies which fail to pass through unavoidable cost increases, or which impose substantial time lags, distort the proper price signals. The price of electricity should continuously reflect the economic cost of providing service to the maximum extent possible so as to provide the consumer with valid price signals on which to base his/her consumption decisions.

The guideline states that the basic rate structure should reflect marginal energy costs and that appropriate fuel cost surcharges should be properly allocated to the applicable time-of-use periods. The fuel charge in the basic rate structure and the surcharge imposed under an automatic adjustment clause should be time-differentiated to reflect the different prices of the mix of fuels used during onpeak and offpeak periods.

Any fuel or purchased power cost surcharges under an automatic adjustment clause should be small. As they become larger, adjustments to the basic rate structure are appropriate. In this regard, the use of zero-based fuel costs are discouraged in the guideline.

D. *Incentives for the Displacement of Oil and Natural Gas in the Generation Mix.* DOE believes that it is in the national interest to minimize the use of oil and natural gas for the generation of electricity. In accomplishing this objective many existing oil and gas-fired plants should be considered as potential candidates for conversion to, or replacement by, coal units. An automatic adjustment clause should be designed to facilitate rather than hinder such activity. In addition, the utility should periodically be required to establish that its projected system generation fuel mix is economically justified.

IV. The Proposed Guideline

As discussed above, two approaches which provide for efficiency and economy in the operation of automatic adjustment clauses are: (1) an adjustment clause which provides for periodic review of the utility's procurement operations and productivity improvement progress, and (2) a fuel price index which permits flow through of fuel price changes but places other fuel cost changes due solely to modifications in base generation mix into a deferred fuel account for subsequent review before recovery.

Both alternatives may provide incentives for efficient use of resources, as well as for increased economy in utility operations, while providing for timely recovery of costs that are not within the direct control of the utility. DOE believes that either alternative may permit the utility to recover legitimate and unavoidable fuel price increases while protecting the ratepayer from those increases that may result from poor management decision making.

It is DOE's conclusion that a careful procedural review of utility fuel procurement practices and generation operations, i.e., periodic audits, best serves to ensure incentives and economy where automatic adjustment clauses are used. Such a review requires establishing some criteria for determining whether utilities are operating efficiently. In the proposed guideline (see Appendix) DOE sets forth such a detailed procedural review as the preferred approach to satisfying PURPA section 115 requirements.

While comments are invited on all aspects of the proposal, comments are specifically requested on:

(1) The design of an automatic adjustment clause relative to time-varying rates;

(2) Emergency capacity and energy purchase pass-through provisions of an automatic adjustment clause;

(3) The use of an automatic adjustment clause to pass through a significant portion of profits on interchange sales;

(4) The use and administration of a deferred fuel account;

(5) Methods to encourage the replacement of oil and gas-fired generation with more abundant and economical fuels;

(6) The impact of an automatic adjustment clause design on energy conservation;

(7) The timing and scope of the utility auditing procedures;

(8) Methods of reflecting the marginal cost of fuel price signals in the automatic adjustment clause; and

(9) The criteria relevant to determining the efficiency of a utility's operation.

DOE also solicits comments, with respect to these items, on the fuel price indexing approach described above and the issues identified in Part III.

The guideline, when promulgated in final form, will be advisory in nature and not legally binding. It will, however, constitute DOE policy respecting consideration of the Federal standard for automatic adjustment clauses.

V. Written Comments and Public Hearing Procedures

A. Written Comments

The public is invited to participate in this proceeding by submitting to DOE's Economic Regulatory Administration (ERA) information, views or arguments with respect to the proposal set forth in the Appendix to this Notice. In addition, DOE welcomes comments on the fuel price indexing approach discussed in Part II above, as well as on any other approaches or issues pertinent to the automatic adjustment clauses standard. Comments should be submitted by 4:30 p.m. [70 days from date of publication], to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside of the envelope and on documents submitted with the designation: "Proposed Voluntary Guideline on Automatic Adjustment Clauses, Docket No. ERA–R–80–08." Five copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, GA–152, James Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, and the ERA Office of Public Information, Room B–110, 2000 M Street, NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information which he or she believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy and five copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Public Hearing

(1) *Procedures for Request To Make Oral Presentation.* The time and place for the hearing are indicated in the "DATES" and "ADDRESSES" sections of this Notice. Any person who has an interest in this proposed guideline or represents a person, group or class of persons that has an interest, may make a written request for an opportunity to speak at the public hearing. Requests to speak must be sent to the address

shown in the "ADDRESSES" section and be received by June 12, 1980. The request should include a telephone number where the speaker may be contacted through the day before the hearing.

All persons participating in the hearing will be so notified on or before June 16, 1980. Speakers should submit 100 copies of their hearing testimony for distribution at the hearing by 4:30 p.m., June 18, 1980, to the Office of Public Hearings Management, U.S. Department of Energy, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

(2) *Conduct of the Hearing.* ERA reserves the right to schedule participants' presentations and to establish the procedures governing the conduct of the hearing. ERA may limit the length of each presentation based on the number of persons requesting to be heard. ERA encourages groups that have similar interests to choose one appropriate spokesperson qualified to represent the views of the group.

ERA will designate officials to preside at the hearing. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if time permits, to make a rebuttal statement. Rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Questions to be asked at the hearing should be submitted in writing to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer. The presiding officer will announce any further procedural rules needed for the proper conduct of the hearings.

ERA will have a transcript made of the hearing and will retain the entire record of the hearing, including the transcript. The record will be available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, and the ERA Office of Public Information, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. A copy of the transcript may be purchased from the reporter.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 950-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*))

Issued in Washington, D.C. on April 24, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

Appendix.—PURPA Guideline Number 3: Automatic Adjustment Clauses

A. *Introduction.* On November 8, 1978, the President signed into law the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) as one part of the National Energy Act.

Section 113(b)(2) of PURPA establishes a standard for automatic adjustment clauses for State regulatory authorities and certain nonregulated electric utilities. The standard provides that no electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements set forth in PURPA section 115(e). Automatic adjustment clauses are tariff provisions that permit electric utilities to incorporate changes in selected costs—the most important and largest of which is fuel costs—into their rates without going through a full rate hearing. The adjustments to rates that occur under these clauses are intended to protect an electric utility's financial condition from large unavoidable cost changes which, because of their frequency, are difficult and costly for regulatory authorities to deal with in a timely manner.

Under section 115(e) of PURPA, an automatic adjustment clause is defined as:

> A provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to later determination of the appropriate amount of the rate.

Section 115(e) further requires that an automatic adjustment clause must be determined, at least every 4 years, by the State regulatory authority or nonregulated electric utility, after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy), and must be reviewed at least every 2 years, to insure the maximum economies in those operations and purchases which affect the rates to which the clause applies.

Although the standard is primarily procedural in its orientation, it does clearly indicate that incentives for the economical purchase and use of fuel and electric energy should be part of any automatic adjustment clause. These incentives may be provided in a number of ways. They may be principally financial in nature, that is, an automatic adjustment clause may provide the utility with an inducement for the efficient use of fuel or the development of sound fuel procurement practices. Incentives may also be provided through regular public review and in-depth staff analysis of utility fuel procurement practices and use of generating resources.

In addition, incentives for the efficient use of resources may also emerge as a consequence of the rates charged for electricity. Electric utility rates based on marginal costs confront users with a price for electricity which more closely reflects the cost of the fuel used in its generation than rates based on average cost. If electric energy must compete with other sources of energy on its economic merits, through a system of marginal cost-based rates, utilities will have strong incentives to purchase and use fuels economically.

B. *Coverage.* This guideline covers the PURPA standard on automatic adjustment clauses and applies specifically to all automatic fuel adjustment clauses for covered electric utilities.

C. *Definitions.* As used in this guideline, except as otherwise specifically provided—

"Automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

"Electric consumer" means any person, State agency or federal agency to which electric energy is sold other than for purposes of resale.

"Electric utility" means any person, State agency, or Federal agency which sells electric energy.

"Nonregulated electric utility" means any electric utility other than a State regulated electric utility.

"Rate" means (a) any price, rate, charge, or classification made, demanded, observed, or received with respect to sale of electric energy by an electric utility to an electric consumer, (b) any rule, regulation, or practice respecting any such rate, charge, or classification, and (c) any contract pertaining to the sale of electric energy to an electric consumer.

"Rate schedule" means the designation of the rates which an electric utility charges for electric energy.

"State agency" means a state, political subdivision thereof, and any agency or instrumentality of either.

"State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has rate making authority, such term means the Tennessee Valley Authority.

D. *DOE Guidance.* Incentives which are established by regulators must be carefully designed. They can promote the efficient use of resources, but they can also place a utility in a position where its continued ability to provide reliable service to its customers is jeopardized. Extreme financial disincentives can seriously imperil a utility's cash flow and thus its ability:

(a) To provide needed maintenance on its existing plants and equipment:

(b) To continue to provide reliable electric service; and

(c) To finance construction projects needed to meet increasing demands for electricity or displace existing oil or gas fired generating capacity.

For these reasons, in designing for incorporation into an automatic adjustment clause, it is important to consider whether the incentives would tend to impede a utility's ability to provide service.

This guideline is organized around four major issues which State regulatory authorities and nonregulated utilities should address in their consideration of the automatic adjustment clauses standard to determine if a utility is achieving the highest levels of economy and efficiency in fuel procurement and system operations. These include:

(1) Provision of Incentives for Effective Fuel and Purchased Power Procurement Practices;

(2) Provision of Incentives for Economic and Efficient Generation of Electricity;

(3) Incorportion of Fuel Adjustment Charges Into the Rate Structure.

(4) Provision of Incentives for the Displacement of Oil and Natural Gas in the Generation Mix.

Each of these issues is discussed below.

(1) Incentives for Effective Procurement Practices. Incentives for effective procurement practices are most appropriately provided by a periodic review of fuel purchases with potential refunds for costs deemed to have been unjustifiably incurred. With respect to economic purchase of fuel, standardized methods for measuring management effectiveness are not readily available. Whether a utility has used sound procurement practices in purchasing fuels is best determined on a case-by-case basis, with appropriate opportunities for public participation.

Procedural review of management activities and procurement practices can be especially effective when tied to a potential refund obligation of unjustified expenses. The utility should carry the burden of showing that its reported policies and practices are economical and efficient. The review process should include, but not be limited to, the following items:

(a) An account audit of fuel (and purchased power) transactions to:

(i) Determine if the fuel associated costs (handling, etc.) are properly identified and recorded in the appropriate Uniform System of Accounts (Accounts 151, 501, 518, etc.). Included in this determination should be a review of the current treatment of nuclear fuel costs (handling, storage and disposal costs, depreciation, etc.), a review of invoices, and a review of discount dates;

(ii) Determine if purchased power and associated costs included therein are properly identified. Assure that purchases displacing higher cost self generation are distinguished from purchases made for other reasons;

(iii) Determine if the accounting treatment of interchange transactions is proper; and

(iv) Determine if opportunities for profitable sales of interchange capacity and energy are being aggressively pursued.

(b) A management audit of the utility's current procurement practices including such practices as delegation of responsibility for procurement (organization), capacity to address both near and long-term requirements (current planning), updating procurement plans and monitoring (plan execution), and allowance and treatment of specific accounts within the fuel adjustment clause and fuel source bids (soliciting); also included in this audit would be a review of fuel quality and quality control, sizing of fuel stock levels, contract price measured against reasonably available alternatives, taking into account relevant terms and conditions and regional market prices, and any variations from contract terms.

(c) An analysis of a utility's plans to improve procurement procedures and measure quality of procurement operations (develop an effective planning and decision model for achieving lowest evaluated long-term fuel prices and periodic independent review of procedures under (a) and (b) above).

Scrutiny of automatic adjustment factors by the regulatory authority should cover an additional item where either fuel or purchased power is obtainable from an affiliate or through an interlocking directorate. The existence of such a relationship may necessitate reviewing transactions to insure arms-length negotiations as well as reasonableness of prices or costs passed through to the utility's customers. The Federal Energy Regulatory Commission (FERC) has some authority and responsibility in this area; however, utility systems operation and planning (which affect utility rates) occur at a regional level. As such, it is the responsibility of the State regulatory authority to determine the reasonableness of costs ultimately to be paid by ratepayers within its jurisdiction.

(2) Incentives for Economic and Efficient Generation of Electricity. The economical use of fuel should be assessed, where possible, by how efficiently a utility operates its baseload plants; by the capacity and availability factors of these plants, and, where relevant, by the heat rates of these plants. In addition, opportunities for improving fuel economy through engineering modifications to plants should also be identified and established.

Useful data on capacity and availability factors achieved from nuclear generating units are available from the Nuclear Regulatory Commission. Similar data for coal plants are available from the Office of Utility Systems, Economic Regulatory Administration, DOE, and the National Electric Reliability Council. These data can be used as reference points by both the utility and the regulatory authority for determining general levels of efficiency for baseload plants and for designing programs for productivity improvements.

The utility's avoiding abuses in the administration of the fuel adjustment clause and, where appropriate, undertaking cost-effective programs for reducing consumption of scarce fuels should be made a review criterion for continuation or approval of an automatic adjustment clause. This review of a utility's performance should address the following:

(a) Availability and capacity factors of baseload generation units,

(b) Utility's forecast for improved availability and proposals to achieve higher levels of performance,

(c) Progesss made previously in improving capacity factors,

(d) Identification of needed capital improvements,

(e) Plans for effective preventive and outage maintenance of baseload generation units,

(f) Capital and operating cost increases necessary to achieve improved productivity from baseload units,

(g) Demonstrated current activity to obtain cost-effective power transactions,

(h) Specific plans for decreased use of scarce fuels,

(i) Analysis of fuel cost implications of meeting environmental standards, e.g., low sulfur coal versus high sulfur coal with scrubbers based on minimum present worth of life cycle revenue requirements,

(j) Demonstrations that purchased power displaced higher cost self-generation, particularly that using scarce fuels, as a condition of recovering the total cost of such purchases, and

(k) Demonstrations that power purchases, for reasons other than displacement of higher cost self-generation, were prudent and justified as a condition of recovering the excess of the total cost of such purchases over the fuel cost component.

Reliance on after-the-fact reviews places a burden on the regulatory authority to determine whether a utility is fully identifying and exploiting cost-effective opportunities for increasing the performance of baseload generation. In addition, regulatory authorities will also need to be able to differentiate between situations in which an unplanned outage is due to events beyond the utility's control and those in which it is not. Authorities will likely have to increase their expertise in the area of powerplant performance and maintenance in order to determine the level of expenditures which is in the best interest of utility customers.

(3) Incorporation of Fuel Adjustment Charges Into the Rate Structure. The economical use of electric power by end-users can be affected by the way base period fuel costs are incorporated into rate structures. Fuel adjustment charges should be incorporated into rate structures in such a manner as to least distort the incentives for conservation.

Automatic adjustment clauses have generally been designed to track changes in average fuel costs because, like rates in general, they must conform to a revenue requirement based on average total costs. However, rates provide the best incentives for end-use efficiency (conservation) and for efficient use of utility resources when they reflect marginal costs rather than average costs. Special attention must, therefore, be given to the way in which fuel adjustment surcharges affect the rate structure of an electric utility, to ensure that fuel adjustments do not unnecessarily distort incentives for energy conservation that have been incorporated into that rate structure.

The maintenance of appropriate onpeak/offpeak price differential where time-varying rates are in effect is a specific problem that arises in this regard. The problem is likely to be greatest where the onpeak rate reflects the costs of oil-fired generation and the offpeak rate does not. If oil prices increase more rapidly than the prices for coal or nuclear fuel, then the onpeak/offpeak rate differential should widen. The challenge is to develop a fuel adjustment procedure that comes as close as possible to capturing the proper differentials in both fuel prices and generation mix used in different time periods.

Automatic adjustment surcharges should be small; the basic rate structure should be readjusted when fuel cost changes become large. Rate structures with zero-based fuel costs, where the entire fuel expense is covered in the adjustment surcharge, are generally inappropriate and misleading to the consumer.

(4) *Incentives for Displacement of Scarce Fossil Fuels in the Generation Mix.* By allowing a utility to pass through fuel price increases automatically, automatic adjustment clauses reduce incentives for replacement of oil and gas-fired capacity with new coal or nuclear capacity. Utility decisions to invest in new generation sources which use alternative fuels and which displace uneconomic uses of oil and gas can reduce the total revenues (and present value of life-cycle revenue requirements) collected from utility customers over the operating life of a new plant using coal, nuclear, or renewable energy resources.

Automatic adjustment clauses directly limit the timing and level of recovery of fuel costs and can bias decisions involving the replacement of oil and gas in the generation mix with coal and nuclear. The large capital costs of new baseload powerplants may result in cash flow problems even with adjustment clauses that permit complete recovery of all fuel expenses. Where automatic adjustment clauses contain financial penalties, they may impede a utility's ability to undertake construction programs which would replace scarce fossil fuels with coal, nuclear, or renewable resources in the generation mix. Conversely, automatic flowthrough of fuel costs may also dissuade utilities from investing in capital intensive generating capacity. In the consideration of the standard, the impact of any clause on a utility's ability and incentive to implement a system generation plan which minimizes total generation costs over time should receive careful analysis, including periodic reviews of system expansion plans, to establish that the long-term system fuel mix is economically justified.

[FR Doc. 80-13436 Filed 4-30-80; 8:45 am]

BILLING CODE 6450-02-M

federal register

Thursday
May 1, 1980

Part VI

Department of Justice

Immigration and Naturalization Service

Designation of Fort Lauderdale-Hollywood Airport as Sole Port of Entry for Aliens Arriving By Civil Aircraft on Flights Originating in Cuba

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 239

Landing Requirements; Designation of Fort Lauderdale-Hollywood Airport as Sole Port of Entry for Aliens Arriving by Civil Aircraft on Flights Originating in Cuba

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This amendment to the regulations of the Immigration and Naturalization Service requires aircraft carrying passengers or crew required to be inspected under the Immigration and Nationality Act on flights originating in Cuba to land only at Fort Lauderdale-Hollywood Airport, unless prior permission to land elsewhere is obtained from the District Director of the Service in Miami, Florida.

EFFECTIVE DATE: April 28, 1980.

FOR FURTHER INFORMATION CONTACT:

FOR GENERAL INFORMATION: Stanley J. Keiszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633-3048.

FOR SPECIFIC INFORMATION: Edward K. Burns, Immigration Inspector, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 633-3996.

SUPPLEMENTARY INFORMATION: Recently many Cubans have been brought from Cuba to the United States without proper visas or other documentation in violation of the Immigration and Nationality Act. The Department of Justice has issued statements that such unauthorized bringing of aliens to the United States is illegal and will subject carriers to fines and seizure of the conveyances used in such illegal activities. In order to provide for an orderly processing of arrivals from Cuba, the Immigration and Naturalization Service, along with the Customs Service and other Federal agencies concerned, have assigned special personnel to certain ports of entry to process Cuban arrivals. In addition, because of the conditions under which flights from Cuba are being made, arrival of such flights may present unusual dangers to the safety of the public, passengers, and crews involved. Therefore, it has become necessary to have all flights arriving in the United States which originated in Cuba, report to one airport which has been specially staffed to process such arrivals. This airport is the Fort Lauderdale-Hollywood Airport, Fort Lauderdale, Florida. Section 239.2 of Title 8 will be amended to require flights originating in Cuba to land only at Fort Lauderdale-Hollywood Airport unless advance permission to land elsewhere has been obtained from the District Director of the Immigration and Naturalization Service at Miami, Florida.

In the public interest and because of practical necessity, the provisions of the Administrative Procedure Act (5 U.S.C. 553) relative to notice of proposed rulemaking and delayed effective date will be waived.

Accordingly, the following amendment is made to Chapter I of Title 8 of the Code of Federal Regulations:

PART 239—SPECIAL PROVISIONS RELATING TO AIRCRAFT: DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

8 CFR 239.2(a) is amended by adding the following sentence between the first and second sentences of the subparagraph:

§ 239.2 Landing requirements.

(a) *Place of landing.* * * * Notwithstanding the foregoing, aircraft carrying passengers or crew required to be inspected under the Act on flights originating in Cuba shall land only at Fort Lauderdale-Hollywood Airport, Fort Lauderdale, Florida, unless advance permission to land elsewhere has been obtained from the District Director of the Immigration and Naturalization Service at Miami, Florida.

* * * * *

(Secs. 103, 231, and 239 (8 U.S.C. 1103, 1221, and 1229))

Effective date: This amendment became effective on April 28, 1980.

Dated: April 29, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-13584 Filed 4-29-80; 4:41 pm]

BILLING CODE 4410-10-M

federal register

Thursday
May 1, 1980

Part VII

Department of the Treasury

Customs Service

Entry and Clearance of Aircraft Proceeding Between United States and Cuba to Fort Lauderdale-Hollywood International Airport

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 80-116]

Entry and Clearance of Aircraft Proceeding Between United States and Cuba to Fort Lauderdale-Hollywood International Airport

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation.

SUMMARY: This document amends the Customs Regulations pertaining to air commerce to provide: (1) That aircraft clearing the United States for, or entering the United States from, Cuba shall obtain permission to depart from or enter at the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida; and (2) procedures to be followed by pilots clearing or entering there. The amendment is being made to provide for the safe and expeditious transportation of persons between Cuba and the United States.

EFFECTIVE DATE: April 29, 1980. This amendment is being published as an interim regulation, effective on April 29, 1980. However, written comments received on or before June 2, 1980, will be considered in determining whether any change to the regulation is required before a permanent rule is published.

FOR FURTHER INFORMATION CONTACT: John A. Mathis, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Ave., N.W., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Because of the present situation involving aliens attempting to reach the U.S. from Cuba, there is serious reason to believe that unsafe and unlawful means of transportation will be utilized. It has therefore become imperative to issue an emergency regulation to ensure compliance with Customs and related laws and regulations, and to provide for the safe and expeditious transportation of persons between Cuba and the United States in accordance with all applicable U.S. laws. Customs, therefore, has determined that it is desirable to amend its regulations, effective April 29, 1980, to establish procedures relating to transportation by aircraft. These procedures particularly apply to limiting clearance and entry of aircraft proceeding between the United States and Cuba to the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida, and are undertaken in accordance with regulations propounded by the Federal Aviation Administration (14 CFR 91.101), the Immigration and Naturalization Service (8 CFR Parts 231, 239), and the Department of Commerce (15 CFR 371.19).

Comments

Before adopting this regulation as a permanent rule, consideration will be given to any written comments timely submitted to the Commission of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Room 2426, 1301 Constitution Ave., NW., Washington, D.C. 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

In view of the exigencies relating to this matter, Customs has determined that pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, and pursuant to 5 U.S.C. 553(d)(3), good cause exists for dispensing with a delayed effective date.

Amendment to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended by adding a new § 6.3a, to read as follows:

§ 6.3a. Entry and Clearance; Cuba.

(a) Unless otherwise authorized by the Regional Commissioner of Customs, Miami, Florida, the owner or person in command of any aircraft clearing the United States for, or entering the United States from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, shall:

(1) Clear or obtain permission to depart from, or enter at, the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida;

(2) Before arrival from Cuba, furnish a notice of intended arrival to the Customs Service, either by or at the request of the commander of the aircraft, not less than 15 minutes before crossing the United States coast or border. The notice shall be furnished through the Federal Aviation Administration flight notification procedures or directly to the Customs officer in charge at the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida. The notice shall include the following:

(i) Aircraft registration number;

(ii) Name of aircraft commander;

(iii) Number of United States citizen passengers;

(iv) Number of alien passengers;

(v) Place of last foreign departure;

(vi) Estimated time and location of crossing United States coast or border; and

(vii) Estimated time of arrival.

(3) Upon arrival, present a manifest of all passengers on board, as required by 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer.

(4) As a condition precedent to clearance, present to Customs:

(i) The documents required by section 6.8 of this Part; and

(ii) A validated license issued by the Department of Commerce, as provided for in 15 CFR Part 371, or a license issued by the Department of State, as provided in 22 CFR Part 123. See footnote (2) to section 6.3 of this Part.

(b) No passenger arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart, before the passenger is released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

(c) All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this section.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 79 Stat. 799, as amended (19 U.S.C. 66, 1624, 49 U.S.C. 1509))

Regulation Determined to be Nonsignificant

In a directive published in the **Federal Register** on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations", the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codified in the Code of Federal Regulations to be "significant".

However, regulations of this nature, which are nonsubstantive, are essentially procedural, and do not impose substantial additional costs on those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that this amendment does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

R. E. Chasen,

Commissioner of Customs.

Approved: April 29, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-13617 Filed 4-29-80; 5:13 pm]

BILLING CODE 4810-22-M

federal register

Thursday
May 1, 1980

Part VIII

Department of Commerce

National Oceanic and Atmospheric Administration

Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Emergency interim regulations and requests for comments.

SUMMARY: These emergency interim regulations implement an amendment to the "Fishery Management Plan for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California" (FMP). This amendment, which follows the preamble, was adopted by the Pacific Fishery Management Council (Council) and approved by the Assistant Administrator for Fisheries (Assistant Administrator) on April 23, 1980. The regulations control commercial and recreational salmon fishing in the fishery conservation zone (FCZ) off the coast of Washington, Oregon, and California for the purpose of meeting conservation needs of the resource, insuring appropriate allocations between user groups, and providing for an orderly fishery.

EFFECTIVE DATE: These emergency regulations become effective at 0001 hours local time May 1, 1980, and shall remain in effect until 2400 hours, local time, June 15, 1980. Written comments on the interim regulations are invited until July 1, 1980.

ADDRESS: Send comments to: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Kruse, Acting Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109, (206) 442-7575.

SUPPLEMENTARY INFORMATION: The commercial and recreational ocean salmon fishery off the coasts of Washington, Oregon and California was managed in 1977 by regulations implementing an FMP developed by the Council. That FMP was replaced by a second FMP in 1978. The Council subsequently amended the 1978 FMP to impose more restrictive management measures on the ocean fishery in 1979 to provide added protection to depressed salmon stocks. Following implementation of the 1979 amendments, an action was filed in the Federal District Court for Oregon by four Columbia River treaty-Indian tribes (*Confederated Tribes vs. Kreps*) claiming that the 1979 regulations would not provide a sufficient escapement of salmon to the Columbia River to fulfill their treaty fishing rights under the Columbia River Agreement. The District Court determined that the existing regulations did not assure compliance with the United States' obligations to the treaty Indian fishermen. As a consequence, the commercial ocean fishery was closed for an additional 18 days.

The Council has amended the FMP to provide management measures for the 1980 salmon season. The measures are more restrictive of the ocean fishery than those contained in the 1979 regulations. A supplement to the Environmental Impact Statement (EIS) has been prepared. A notice of availability of the draft supplemental EIS appeared in the Federal Register (45 FR 6472) on January 28, 1980.

The Assistant Administrator has reviewed the 1980 amendments to the FMP and has determined that the management measures are consistent with the provisions of the Fishery Conservation and Management Act (Act), including the national standards in section 303, and with other applicable law, including treaty obligations. The 1980 amendments and these regulations are intended to: (1) Provide adequate spawning escapements for the various salmon runs subject to the ocean salmon fishery; (2) Meet treaty obligations to Indian fishermen; and (3) Allow for a viable harvest for each segment of the salmon fishery, including the commercial and recreational ocean fisheries and the various internal water fisheries.

In order for the Council to develop management measures for the 1980 fishing season, nine management options were assembled in January of 1980 in a document entitled "Proposed Plan for Managing the 1980 Salmon Fisheries off the Coast of California, Oregon, and Washington". The options developed by the Council's Salmon Plan Development Team were based on recommendations in whole or in part, by representatives from the respective fishery agencies of the three States, treaty Indian tribal representatives, and by representatives from the recreational and commercial fisheries. This document was widely distributed. Six public hearings were held between February 19–22 in the three coastal states and in the state of Idaho. Several updated impact analyses were prepared as new information became available and distributed for both Council and public consideration.

Status of the Salmon Resource in 1980

Current information on the abundance of the major chinook and coho salmon stocks in 1980 indicates that many of the stocks continue to be depressed as they were in 1979 and that their future productivity will be in serious jeopardy if ocean harvests are not reduced. Consequently, the Council has adopted more stringent management measures for the ocean fishery in 1980 than in previous years. It is expected that the management objectives set forth in the FMP would not be attained without these additional ocean-harvest restrictions.

The following summarizes expectations regarding stock abundance in 1980:

1. Oregon coastal and Columbia River coho stocks are predicted to be at a near-record low status in 1980.

Restricted harvest of these stocks in the ocean is necessary to achieve the escapement goal. This continuing decline in Oregon's coastal coho stocks, following the poor returns for the past three years, indicates that extra efforts are needed to increase the numbers of coho salmon reaching those spawning grounds.

2. As in 1979, the natural runs of Washington coastal coho stocks continue to be in a depressed condition. Returns of artificially-propagated stocks to hatcheries are expected to be similar to those of 1979. Restriction of the ocean harvests is necessary to meet natural-stock escapement goals and treaty-Indian allocation obligations.

3. Puget Sound coho stocks are predicted to be above average for both hatchery and natural stocks.

4. Basically, three distinct runs of chinook spawn in the Columbia River system. The spring chinook enter the river from February through May. Summer chinook enter the river from June through mid-August. Fall chinook enter the river from mid-August through October. These runs are divided into upriver chinook, those that spawn in areas above the Bonneville Dam, and lower river chinook which spawn below that point.

The upriver spring and summer chinook are expected to remain at low levels of abundance in 1980; it is not expected that escapement goals will be met. These stocks, however, make up only a minor part of the catch off the Washington and Oregon coasts because most of the spring chinook will have entered the river before the ocean

fishing season begins. Only about four percent of the troll catch during May is comprised of spring chinook. All fall chinook runs are expected to be depressed in 1980, but slightly more abundant than in 1979.

5. California chinook stocks remain depressed. Klamath River chinooks are predicted to be at the same level as in 1979; Sacramento River chinooks may be slightly below the 1979 level and well below historical levels. Effects of the 1975–77 drought in California are still evident in the low level of salmon produced in those areas and these effects will likely continue through the 1981 ocean fisheries.

These regulations are intended to provide sufficient protection to the salmon runs so that adequate numbers of salmon reach the rivers for both spawning purposes and for the Indian fisheries.

The Fisheries

Ocean fishery—The ocean salmon fishery primarily harvests chinook and coho salmon. The fishery includes commercial trollers and recreational participants, a significant portion of whom are dependent upon commercially-operated charterboats for access to the ocean fishery. Ocean harvest also affects the numbers of fish returning to spawning grounds and to internal water fisheries as far as several hundred miles inland. Coho and chinook salmon range widely during their lives in the ocean, and are harvested there while the races from different spawning grounds are indistinguishably mixed. The quality of chinook and coho salmon that enter the consumer market can vary with their stage of life; those caught in the ocean are considered by many people to be of the highest quality. Market qualities are also affected by the size and maturity of the fish, type of fishing gear used, and the degree of care in handling and processing the catch. All of these factors affect prices, market supplies and demands.

The commercial salmon fishery and the recreational salmon fishery have different motivations and satisfactions. The regulations are intended to recognize these differences. The management goals for the commercial fishery, after giving full consideration to resource conservation requirements and obligations to treaty Indian fishermen, are designed to optimize the poundage yield and economic returns to the commercial fishermen. Management of the recreational fishery is directed toward achieving the greatest amount of angler participation and recreational satisfaction. The ocean recreational catch in 1979 was very low. The regulations are intended to help restore the historic balance between the recreational and commercial ocean catches.

Treaty Indian and Internal Water Fisheries

Some of the runs of salmon that contribute to the ocean fisheries are also subject to treaties between the United States and various Indian tribes in Washington and on the Columbia River. The treaties reserve to the tribes a right to harvest a portion of the runs that pass through their usual and accustomed fishing grounds. Recent Federal court decisions, affirmed by the United States Supreme Court, have interpreted the treaties as reserving to some tribes the right to harvest up to fifty per cent of the runs that would return to their tribal fishing grounds. For Columbia River stocks, a separate agreement sets forth the obligations regarding the management of ocean fishery salmon returning to tribal fishing grounds. That agreement, which was signed by the Columbia River Tribes, the United States, Washington and Oregon, and adopted by the District Court in a consent decree, establishes numerical goals for salmon escapement from the ocean into the Columbia River and in-river allocation principles which are in lieu of the 50/50 allocation formula of the other treaty fisheries. Fishery management in the FCZ must be consistent with the treaty obligations as interpreted by the Federal courts and as set forth in the Columbia River Agreement.

The Council, in developing the 1980 amendments to the management measures in the FMP, gave extensive consideration to the impacts that various management options would have on the rights of treaty Indian fishermen. The Council gave a thorough consideration to the expected returns of salmon to each of the areas of interest to the treaty tribes under each management option it considered. The management measures adopted by the Council are intended to be consistent with the treaty obligations. The in-season adjustment provision—a management measure new in this amendment to the Plan, should provide additional assurance that treaty-Indian fishery obligations will be met.

Certain season and area closures have been applied to both commercial and recreational fisheries in the ocean to reduce ocean harvests and to provide a greater proportion of the stocks to reach inshore areas, not only for treaty Indian fishermen but also for non-Indian "inside" net fisheries, recreational river fisheries, and, most importantly, for spawning escapement to ensure not only maintenance of the runs but increased productivity of the salmon resources. There are significant non-Indian commercial harvests in the internal waters of Washington State and on the Columbia River. There is also an Indian reservation fishery on the Klamath River of California. These fisheries are expected to receive additional benefit under the 1980 regulations.

1980 Management Measures

The regulations published here are intended to prevent overfishing in the ocean fisheries and to minimize impacts on weaker stocks, while equitably apportioning the increased regulatory burden in the ocean and minimizing shifts in fishing effort along the coast. For *California*, the regulations include a June 1–30 closure of the commercial fishery south of Cape Vizcaino and a June 1–July 15 closure north of that point. In 1979, the commercial fishery off California was closed for only two weeks in June. Recreational restrictions remain the same as in 1979. The additional restrictions are intended to protect depressed salmon stocks, particularly chinook stocks of the Klamath and Sacramento Rivers and the coho stocks of the Oregon and Washington coasts. The regulations also are expected to allow for approximately a 30,000 chinook harvest by Indian tribes of the Klamath River who have a recognized right to fish on their reservation.

The regulations are expected to achieve 75 percent of the long-term fall chinook spawning escapement goals for both the Klamath and Sacramento Rivers. This should allow for rebuilding these stocks over an extended period. The regulations are also expected to reduce the catch in some areas by as much as 30 percent from the record commercial chinook harvest in 1979. For *Oregon*, the regulations (both north and south of Cape Falcon) provide for an all-species commercial season from July 15 to September 8. This is two weeks shorter than the all-species season in 1979. A June 16–30 chinook-only season is established for the area from Cape Falcon to Cape Blanco with terminal gear restricted to whole baits or salmon plugs six inches or longer.

The recreational season is from May 10 to September 14, with a chinook-only season south of Cape Falcon from September 15 to October 31. The daily catch limit is increased from two fish in 1979 to three fish in 1980, with a provision that the catch limit be reduced to two fish if, during the season, the recreational catch is projected to exceed

240,000 coho in the Oregon Production Index area by September 14.

The regulations are intended to protect depressed Oregon coastal coho stocks while allowing a harvest of abundant Oregon coastal chinook stocks. The regulations are expected to provide a 235,000–260,000 coho spawning escapement. The escapement goal is 260,000 fish. The selective June chinook-only season would allow harvest of surplus Oregon chinook, and is expected to have only a minor impact on coho and California and Columbia River chinook escapements.

For *Oregon north of Cape Falcon* and *Washington,* the regulations provide for a commercial chinook-only season during May, a June 1–June 15 closure and a July 15–September 8 all-species season. This latter season starts fifteen days later than the season did in 1979. This additional closure comes at a time when commercial coho catch and effort are normally at a seasonal high. The recreational daily catch limit is increased from 2 to 3 fish in 1980. However, it would be reduced from three fish to two fish per day, if the rate of catch is projected in August to exceed 333,000 coho by September 14.

The 300,000 in-river run size goal for Columbia River upriver fall chinook set forth in the Columbia River Agreement is not likely to be achieved in 1980, since the total run size is expected to be only slightly greater than in 1979. The ocean harvest of that run under the regulations, given the conservative assumption that the total run size is no greater than in 1979, is expected to be of the same magnitude as last year's harvest of 51,900.

The in-river run, given the same assumption, is expected to be 169,000 fish. However, of the more restrictive ocean management options examined by the Council, only that option providing for total elimination of the ocean fishery in 1980 off the coasts of Washington and northern Oregon, would be expected to provide a significant increase to the in-river harvest. The impact on Columbia River spring and summer runs is expected to be relatively minor, since those stocks comprise a small portion of the ocean harvest. Additional restrictions suggested to the Council, such as a May commercial closure, were predicted to be of minor benefit to those stocks.

The regulations are intended to provide an escapement of at least 240,000 coho to the north coastal streams of Washington, which would meet spawning goals and allow a coho harvest by the coastal treaty fishermen of 50% of the Washington north coastal coho. For Puget Sound, the escapement goal of 1.1 million coho, which is intended to be consistent with spawning needs and treaty fishing rights, is expected to be achieved under the proposed regulations.

Regulations applicable to the treaty-Indian fishermen with usual and accustomed fishing grounds in the FCZ are the same as in 1979. These include the required use of barbless hooks prior to July 1 and a minimum size limit of 28 inches for commercially caught chinook. Those restrictions are intended to serve a conservation purpose since they protect immature fish and increase escapements from the ocean, particularly with respect to spring and summer chinook.

In addition, it was anticipated that differing size limits for treaty and non-treaty commercial fishermen could create enforcement difficulties.

Inseason Management Procedures

An in-season adjustment provision based upon in-season measurement of coho abundance and ocean fishery effort off Washington and Oregon is included in the 1980 regulations. This measure recognizes that pre-season estimates of coho abundance north of Cape Falcon, Oregon, are of limited reliability and that projections of total ocean harvest and effort for that area and the Oregon Production Index (OPI) area early in the season are uncertain and subject to a variety of factors that cannot be determined in advance (e.g. availability of albacore tuna as substitute commercial targets, weather conditions, salmon prices, and vessel operating costs). The proposal does not include chinook, since numerical abundance estimates cannot be made with accuracy during the ocean fishing season.

The in-season adjustment measure provides for monitoring the fishery and updating the estimates and projections for coho as the 1980 season progresses and more data become available. Based on these updates, the Northwest Regional Director of the National Marine Fisheries Service, after consulting the State fishery agencies and the Pacific Council and, considering relevant public comments could, on August 22, issue a field order modifying the all-species time/area regulations and recreational catch limits to ensure adequate escapement of coho from the ocean fisheries to meet spawning escapements, or treaty Indian obligations. Action taken by the Regional Director would be based upon several specified factors, including the 1971–75 harvest ratio between the ocean troll and recreational fisheries for coho and, to the extent possible, would maintain those harvest ratios. The ocean harvest ratio for the Washington coho stocks has been established at 60% for the troll fishery and 40% for the recreational fishery, respectively. In the OPI area south of Leadbetter Point to the California-Oregon border, the troll-recreational harvest ratio has been 71% and 29%, respectively.

A preliminary determination of stock abundance and ocean fishing effort would be published in the **Federal Register** and in public news media on August 7. This is considered the earliest date that reliable stock abundance estimates are available. The public could submit comments relevant to the factors to be considered by the Regional Director under the regulations until August 22. It is expected that fishing effort data will not be sufficient for final projections until August 22. During the comment period the data relied on by the Regional Director would be made available to the public as it is compiled.

Public comments on these regulations are invited for a period of sixty (60) days from the date of publication.

In compliance with Executive Order 12044, a draft regulatory analysis has been prepared for these emergency and interim final regulations. The draft has been reviewed in Washington and is being revised for submittal in final form prior to publishing final regulations. Copies of a draft Supplement to the Fianal Environmental Impact Statement/Fisheries Management Plan for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon and California were distributed to over 2,870 individuals, associations and agencies. This draft also is being revised for submittal in final form prior to publishing final regulations. Copies may be obtained from Regional Director at the above address in Seattle, Washington.

Recognizing the critical needs for reductions in the ocean harvests of these salmon stocks, the Assistant Administrator has determined that an emergency exists and that emergency promulgation of these regulations under the provisions of sec. 305(e) of the FCMA is required to meet this emergency. The Assistant Administrator also finds that formal notice of proposed rulemaking is impractical, unnecessary, and contrary to the public interest because of the emergency described above.

Signed at Washington, D.C., this the 29th day of April 1980.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

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

The fishery management plan amendment follows:

Amendment to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coast of Washington, Oregon, and California in 1978

1. Section 9.4 and page ii through v of the summary of the FMP (as previously amended) and section 1.4 of the FEIS (as previously amended) are supplemented as follows:

The 1979 ocean salmon regulations are amended to provide seasons and bag limits for commercial and recreational fisheries in 1980 and to provide for in-season modifications to these as set forth below:

Commercial Troll Seasons

California:		
South of Cape Vizcaino	All salmon except coho	May 1 through May 15.
	All salmon	May 16 through May 31.
	All salmon	July 1 through September 30.
North of Cape Vizcaino	All salmon except coho	May 1 through May 15.
	All salmon	May 16 through May 31.
	All salmon	July 16 through September 30.
Oregon:		
South of Cape Falcon to Oregon/California border.	All salmon except coho	May 1 through May 31.
	All salmon	July 15 through September 8.
	All salmon except coho	September 9 through October 31.
South of Cape Falcon to Cape Blanco.	Chinook only	June 16 through June 30 with terminal gear restricted to whole bait or 6" minimum plugs.
Washington and Oregon: North of Cape Falcon.	All salmon except coho	May 1 through May 31.
	All salmon	July 15 through September 8.

Size limits and other regulations for the ocean commercial troll fishery are the same as 1979.

The 1979 regulation allowing retention by a freezer trolling vessel of dressed, head-off salmon is continued. However, removal of the head of any salmon which is missing the adipose fin is prohibited.

Recreational Seasons and Bag Limits

California	All salmon—2 fish bag limit	February 17 through October 4.
Oregon: South of Cape Falcon	All salmon—3 fish bag limit initially (see below).	May 10 through September 14.
	All salmon—3 fish bag limit	September 15 through October 31.
Washington and Oregon: North of Cape Falcon.	All salmon—3 fish bag limit initially (see below).	May 10 through September 14.

Size limits and other regulations for the ocean recreational fishery are the same as 1979.

Figure 1 compares the 1980 seasons and recreational bag limits with those in effect in 1979. Figure 2 shows the coastal landmarks that delineate ocean fishery management areas off California, Oregon and Washington. Other portions of the 1979 management measures are modified for 1980 as follows:

Inseason Bag Limit Modifications

Off Oregon south of Cape Falcon the 3 fish bag limit will be adjusted downward to 2 fish if the rate of catch is projected to exceed a catch in the OPI area of 240,000 coho by September 14. The fishery will be monitored weekly with an initial prediction to be made on July 15 and a final prediction on August 15.

Off Washington and Oregon north of Cape Falcon the 3 fish bag limit will be adjusted downward to 2 fish if the rate of catch is projected to exceed a catch for the area of 333,000 coho by September 14. The fishery will be monitored weekly. An initial prediction will be made on July 15 and a final prediction on August 15.

Inseason Modifications of All-Species Area/Time Restrictions

Recognizing that early season estimates of coho stock strength north of Cape Falcon, Oregon, are of limited reliability and that projections of total ocean harvest and effort for that area and the Oregon Production Index (OPI) over the course of the season are uncertain and subject to a variety of independent variables outside the Council's control (e.g., availability of albacore, weather conditions, salmon prices, and vessel operating costs), the Council endorses a system for in-season modification of regulations to achieve escapement goals for spawning and to fulfill legal requirements for allocation of up to 50% of the harvestable run of relevant stocks to certain treaty Indians.

Such a system should provide the flexibility to respond to situations during the season when it becomes apparent that either poor stock strength, higher effort or increased ocean harvest will preclude attainment of escapement goals and/or allocation requirements of that improved stock strength, reduced effort or lower ocean harvest than originally anticipated will warrant a longer fishing season. Likewise, the system should allow some control in the division of catch to assure a degree of equitable distribution between the ocean recreational and commercial fisheries.

Washington Coastal and Puget Sound Coho

Based on escapement guidelines endorsed by the Council, escapement for inside harvest (both treaty and non-treaty) and spawning (in-river run size) on the order of 240,000 Washington coastal coho and 1,100,000 Puget Sound coho is desirable. The pre-season prediction of ocean harvest north of Cape Falcon to accomplish this escapement to inside areas is 833,000 coho.

It is recognized, however, that given the maximum 50% harvest allocation requirement, deviations of in-season estimates of stock strength and total ocean harvest from pre-season forecasts could warrant a modification of escapement to inside areas during the season.

On August 7, the Regional Director of the National Marine Fisheries Service, Northwest Region, after consultation with the Washington Department of Fisheries (WDF) and the Pacific Fishery Management Council, shall, on the basis of the best scientific information then available, make a *preliminary* projection of coho stock strength and total ocean harvest (broken down by troll and recreational components) to the end of the season and a preliminary determination of what, if any, modification might be made to the regulations. The preliminary determination will show what closure or other regulatory action (including changes necessary to restore the historic troll/recreational harvest ratio north of Cape Falcon to 60% and 40%, respectively) will be taken for various levels of effort that are projected on August 22 as provided for in the regulations. As the all-species troll season north of Cape Falcon does not begin until July 15, August 7 is considered the earliest practicable time for making useful projections. Such

projections and preliminary determinations shall be published in the **Federal Register** and other public media together with the reasons therefor on August 7 or as soon as practicable. Supporting data, in aggregate form, shall be made available for public inspection at the Regional office as it is compiled. The preliminary projections and determinations shall be subject to public comment for a reasonable time.

On August 22, the Regional Director shall consider all information supplied by the public, all public comments received, and all data used in making the preliminary projections (as updated by more recent WDF information) and shall make *final* projections of stock strength and total ocean harvest (broken down into troll and recreational components) to the end of the season. At the same time and on the basis of data supplied by the Washington Department of Fisheries, and other sources, the Regional Director will also make a final projection of ocean fishing effort by fishery (troll and recreational) to the end of the season. As historic trends indicate that ocean fishing effort immediately following a closure is disproportionately high as compared to average effort over the course of a season, August 22 is considered the earliest time that reliable projections of effort to season's end can be made.

If final projections of stock strength, total ocean harvest and ocean fishing effort indicate that pre-season figures for escapement to inside areas (240,000 Washington coastal and 1,100,000 Puget Sound coho) will fall short or exceed that originally thought to be necessary to fulfill the 50% allocation requirement and meet spawning escapement goals, pre-season figures for escapement to inside areas will be correspondingly modified.

Based on projections of stock strength, total ocean harvest and ocean fishing effort, if it appears on August 22 that escapement of coho to Washington coastal streams and rivers or Puget Sound will fall short or exceed figures for escapement to inside areas as modified above, the Regional Director shall change the all-species area/time restrictions north of Cape Falcon to provide for the modified escapement to inside areas and, to the extent possible, shall adjust restrictions north of Cape Falcon to attempt to meet a 60%–40% harvest ratio between the troll and recreational fisheries. Regardless of adjustments to accomplish the historical catch ratio, if either fishery is unable to take its share of the allowable ocean harvest, the Regional Director shall also modify area/time restrictions to allow the other fishery the opportunity to take the surplus. The final determination of the Regional Director, and any amendment to the regulations governing the ocean fisheries, shall be published in the **Federal Register** as soon as practicable after August 22 and shall be effective upon filing.

Columbia River and Oregon Coastal Coho (OPI)

Because there is no treaty Indian allocation requirement which applies to Oregon coastal coho, there should be no need over the course of a season to depart from the pre-season escapement goal of 260,000 coho in the OPI. The pre-season prediction of ocean harvest off California, Oregon, and Washington south of Leadbetter Point (OPI area) to accomplish escapement of 260,000 coho to the OPI is 820,000 coho. However, should total ocean harvest, stock strength or ocean fishing effort during the season deviate from pre-season estimates, it will be desirable to modify area/time ocean fishing restrictions to meet the intended escapement. On August 7, the Regional Director of the National Marine Fisheries Service, Northwest Region, after consultation with the Oregon Department of Fish and Wildlife (ODF&W) and the Pacific Fishery Management Council, shall, on the basis of the best scientific information then available, make a *preliminary* projection of coho stock strength and total ocean harvest (broken down into troll and recreational components) to the end of the season and a preliminary determination of what, if any, modification might be made to the regulations. The preliminary determination will show what closure or other regulatory action (including changes necessary to restore the historic ocean troll/recreational harvest ratio south of Leadbetter Point to 71% and 29%, respectively) will be taken for various levels of effort that are projected on August 22 as provided for in the regulations. As the all-species troll season north of Cape Vizcaino does not begin until July 16 (July 15 north of Cape Falcon), August 7 is considered the earliest practicable time for making useful projections. Such projections and preliminary determinations shall be published in the **Federal Register** and other public media together with the reasons therefore on August 7 or as soon as practicable. Supporting data in aggregate form shall be made available for public inspection at the Regional office as soon as it is compiled. The preliminary projections and determinations shall be subject to public comment for a reasonable time.

On August 22, the Regional Director shall consider all information supplied by the public, all public comments received and all data used in making the preliminary projections (as updated by more recent ODF&W information) and shall make *final* projections of stock strength and total ocean harvest to the end of the season (broken down into troll and recreational components). At the same time and on the basis of data supplied by the Oregon Department of Fish and Wildlife, and other sources, the Regional Director will also make a final projection of ocean fishing effort by fishery (troll and recreational) to the end of the season. As historic trends indicate that ocean fishing effort immediately following a closure is disproportionately high as compared to average effort over the course of a season, August 22 is considered the earliest time that reliable projections of effort to season's end can be made.

Based on projections of a stock strength, total ocean harvest and ocean fishing effort, if it appears on August 22 that escapement of coho to the OPI will fall short or exceed the pre-season escapement to inside areas (260,000), the Regional Director shall change the all-species area/time restrictions south of Leadbetter Point to the Oregon/California border to provide the desired escapement and, to the extent possible shall adjust restrictions south of Leadbetter Point to attempt to meet a 71%–29% harvest ratio between the troll and recreational fisheries. Regardless of adjustments to accomplish the historical catch ratio, if either fishery is unable to take its share of the allowable ocean harvest, the Regional Director shall also modify area/time restrictions to allow the other fishery the opportunity to take the surplus. The final determination of the Regional Director and any amendment to the regulations governing the ocean fisheries shall be published in the **Federal Register** as soon as practicable after August 22 and shall be effective upon filing with the **Federal Register.**

Council Involvement

If circumstances do not permit a *regular* meeting of the Council to be held in order to consult with the Regional Director, he shall, nevertheless, consult with the Executive Director, the Council Chairman, and all available Council members before making the projections which are indicated above.

Any final action taken by the Regional Director shall be *effective when* filed with the **Federal Register.** Efforts should also be made to notify the public via Council Newsletter, publicly circulated newspapers, and radio and television

broadcasts. In addition to any comment periods called for above, public comments should be received and considered by the Regional Director after the effective date of the action taken. During all of these periods, the Regional Director shall make available for public inspection the aggregate data on which the in-season action was based.

Treaty Indian Fishing

Size limits and other regulations for the treaty Indian ocean fishery are the same as those for 1979.

2. The last sentence in paragraph 1 of Section 1.0 of the FMP (as amended is amended to read as follows: "The Secretary of Commerce, upon approval of this fishery management plan, will issue regulations implementing the Plan in the Fishery Conservation Zone for 1978 and successive years until superseded or otherwise modified."

The purpose of this amendment is to allow the Plan and implementing regulations to stay in effect until superseded or modified by Plan amendment or otherwise. With the change, a Plan and regulations will remain in effect for successive years without Council or Secretarial action.

3. Sections 13.5 and 13.6 of the FMP (as amended) are replaced with the following:

13.5 Capacity and Extent of U.S. Harvest and Processing. At the highest conceivable level of present or future abundance, the salmon stocks can be harvested by U.S. fisheries. The domestic harvesting and processing capacity is sufficient to handle the entire anticipated allowable domestic salmon harvest in 1980. There is no recent record of processors refusing fish from fishermen due to inadequate processing capacity.

13.6 Allowable Level of Foreign Fishing. In view of the adequacy of the domestic fishing industry to harvest the highest conceivable level of abundance, the total allowable level of foreign fishing is zero. The United States historically has allowed Canadian fishing in U.S. waters under a reciprocal agreement until 1978. Negotiations between the two governments are continuing to seek a resolution of all salmon issues. These negotiations are aimed at stabilizing and reducing, where possible, the interception by fishermen of one country of salmon originating from the other country. No U.S.-Canada reciprocal salmon fishing is presently contemplated for 1980.

4. Four appendices [1] are added as follows:

Appendix XI—Proposed Plan for Managing the 1980 Salmon Fisheries off the Coast of California, Oregon, and Washington.

Appendix XII—Analysis of Impacts of Proposed 1980 Regulation Options on the Ocean Salmon Fisheries of California, Oregon, and Washington.

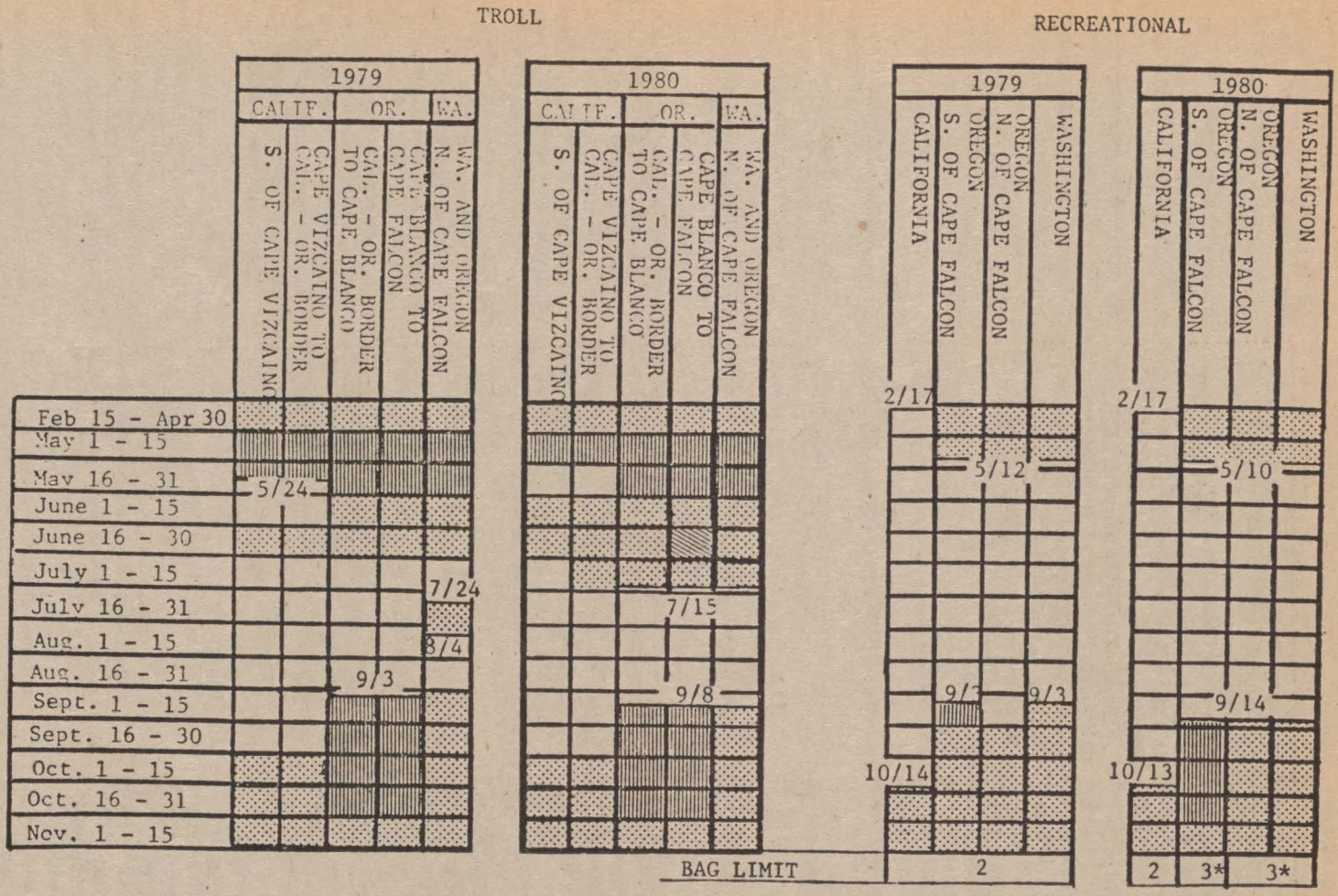
Appendix XIII—Comparative Impacts of Options V through VII Relative to Upper Columbia River Fall Chinook and Oregon and Washington Coho.

Appendix XIV—Analysis of Impacts of Adopted 1980 Regulations on the Ocean Salmon Fisheries of California, Oregon, and Washington.

BILLING CODE 3510-22-M

[1] Copies of these appendices are available from the Pacific Fishery Management Council, 526, S.W. Mill Street, Portland, Oregon 97201 (Phone: (503)-221-6352).

Figure 1 Comparison of 1979 and 1980 Ocean Commercial and Recreational Salmon Regulations
(For details see accompanying tables)



Dates are beginning or ending days of open season that do not coincide with semi-monthly period. Unless specified, size limits and other regulations are the same as in 1979.

OPEN CHINOOK ONLY CLOSED

CHINOOK ONLY-- with terminal gear restricted to whole bait or 6-inch plugs. Minimum hook size, 6/0.

*Begin season with 3-fish daily bag limit. Reduce limit to 2 fish daily if in-season data indicate by Sept. 14 that total catch will exceed 240,000 coho in the OPI or 333,000 coho north of Cape Falcon. Assessments to be made on July 15 and August 15.

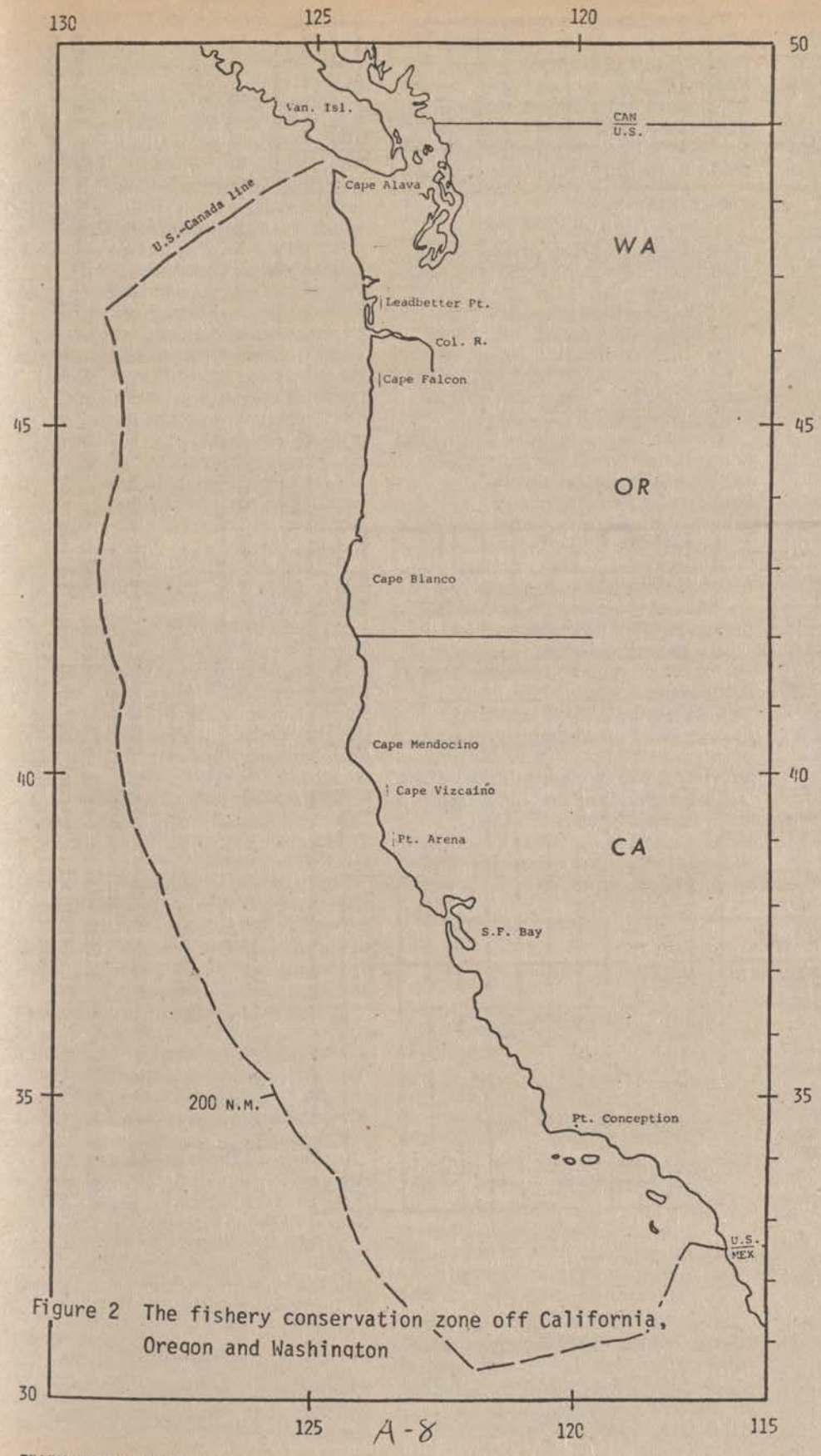


Figure 2 The fishery conservation zone off California, Oregon and Washington

A-8

BILLING CODE 3510-22-C

50 CFR Part 661 is revised to read as follows:

PART 661—SALMON FISHERY

Sec.

661.1 Purpose.
661.2 Relation to U.S.-Canada Sockeye and Pink Salmon Convention.
661.3 Relation to State laws.
661.4 Effective dates.
661.5 Definitions.
661.6 Salmon management sub-areas.
661.7 General restrictions.
661.8 Facilitation of enforcement.
661.9 Penalties.
661.10 Commercial fishing.
661.11 Recreational fishing.
661.12 In-Season adjustments.
661.13 Treaty Indian fishing.
661.14 Emergency regulations.
661.15 Catch reports.
661.16 Test fisheries.

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

§ 661.1 Purpose.

The purpose of this Part 661 is to provide for the management of the commercial and recreational salmon fisheries off the coasts of Washington, Oregon and California in the Fishery Conservation Zone (also known as the 3-to-200 mile zone) over which the United States exercises exclusive fisheries management authority (i.e., the Pacific Fishery Management Council Fishery Management Area). This Part 661 implements the Pacific Council's Fishery Management Plan for commercial and recreational salmon fisheries off the coasts of Washington, Oregon and California, pursuant to authority conferred by the Fishery Conservation and Management Act of 1976, as amended.

§ 661.2 Relation to U.S.-Canada Sockeye and Salmon Convention.

This Part 661 does not apply to fishing for pink and sockeye salmon conducted under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System as amended by the Pink Salmon Protocol, in U.S. Convention Waters between 48° North latitude and the provisional international boundary between the United States and Canada.

§ 661.3 Relation to State laws.

This Part 661 recognizes that any State law which pertains to vessels registered under the laws of that State while in the Pacific Council Fishery Management Area, and which is consistent with the Salmon Management Plan, including any State landing law, shall continue to have force and effect with respect to fishing activities addressed herein.

§ 661.4 Effective dates.

These regulations shall become effective as Emergency Regulations upon the date of publication in the **Federal Register**, and as Final Regulations when duly promulgated and published in the **Federal Register** as final rulemaking. They shall be effective until superseded or otherwise modified.

§ 661.5 Definitions.

(a) Act—Means the Fishery Conservation and Management Act of 1976, Public Law 94–265 (16 U.S.C. 1801–1882), as amended.

(b) Authorized Officer—Means:

(1) Any commissioned, warrant, or petty officer of the Coast Guard;

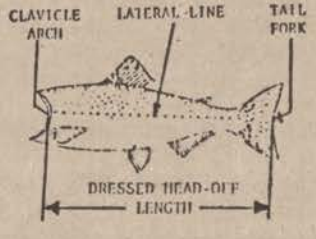
(2) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Act; and

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this subsection.

(c) Commercial fishing—Means fishing for the purpose of sale or barter of the catch.

(d) Dressed, Head-off Length of Salmon—Means the shortest distance between the mid-point of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.



(e) Dressed, Head-off Salmon—Means salmon that have been beheaded, gilled and gutted, without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

(f) Fishing—Means:

(1) The catching, taking or harvesting of fish;

(2) The attempted catching, taking or harvesting of fish; or

(3) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish.

(g) Fishing Vessel—Means any boat, ship or other floating craft which is used for, equipped to be used for, or of a type which is normally used for fishing.

(h) Freezer Trolling Vessel—Means a salmon trolling vessel which has capabilities for (1) on-board freezing of the catch, *and* (2) storage of the fish in a frozen condition until they are landed.

(i) Fishery Management Area—Means the fishery conservation zone off the coasts of Washington, Oregon and California between 3 and 200 miles offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico.

(j) Land or Landing—Means bringing fish to shore or off-loading fish from a fishing vessel.

(k) ODF&W—Means the Oregon Department of Fish and Wildlife.

(l) Oregon Production Index (OPI) Regulatory Area—Means that part of the Pacific Council's Fishery Management Area (as defined in § 661.5(i) of this Part) between a line extended due west from Leadbetter Point, Washington at 46°38'10" North latitude, southerly to a line extended due west at the Oregon-California border at 42°00'00" North latitude.

(m) Recreational fishing—Means fishing with recreational fishing gear as defined in Part 661.5(1) for personal use of the catch and for personal benefits of the fishing experience. The catch, if any, is not used for sale or barter.

(n) Recreational fishing gear—Means conventional angling tackle consisting of a rod, reel, line, and hooks with bait or lures attached; recreational fishing gear must be held by hand by the angler while the angler is playing a hooked fish and reducing it to possession.

(o) Regional Director—Means the Regional Director or Acting Regional Director of the Northwest Region of the National Marine Fisheries Service.

(p) Salmon—Means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to:

Chinook (King) salmon—*Oncorhynchus tshawytscha*
Coho (silver) salmon—*Oncorhynchus kisutch*
Pink (Humpback) salmon—*Oncorhynchus gorbuscha*

Chum (Dog) salmon—*Oncorhynchus keta*
Sockeye (Red) salmon—*Oncorhynchus nerka*

(q) Secretary—Means the Secretary of Commerce or a designee.

(r) Single, barbless hook—Means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point.

(s) Sub-area—Means one of the five salmon management subdivisions of the Pacific Fishery Management Council's Fishery Management area as specifically described in § 661.5 below.

(t) Total length of salmon—Means the shortest distance between the tip of the snout or jaw (whichever extends farthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

(u) Troll gear—Means commercial fishing gear that consists of one or more lines that drag hooks with bait or lures behind a moving fishing vessel, *and* which lines originate from a spool or receptacle which is fixed to the vessel during the fishing operation, *and* no part of this fishing gear is disengaged from the vessel at any time during the fishing operation.

(v) Washington Production Projection (WPP) Regulatory Area—Means that part of the Pacific Councils Fishery Management area (as defined in § 661.5(i) of this Part) between the U.S.-Canada boundary (as defined in § 661.6(a)(1) (i) and (ii) of this Part) and a line extended due west from Cape Falcon, Oregon at 45°46'00" North latitude.

(w) WDF—Means the Washington Department of Fisheries.

§ 661.6 Salmon management sub-areas.

(a) The Pacific Fishery Management Council's Fishery Management Area shall be divided into the following Sub-Areas for regulation of commercial and recreational salmon fishing, with the following designations and boundaries:

(1) Sub-Area A:

(i) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the U.S. and Canada (at 48°29'37" N. lat., 124°43'33" W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) Northern and northwestern boundary is a line[2] connecting the following coordinates:

48°29'37.19" N. lat., 124°43'33.19" W. long.;
48°30'11" N. lat., 124°47'13" W. long.;
48°30'22" N. lat., 124°50'21" W. long.;
48°30'14" N. lat., 124°52'52" W. long.;
48°29'57" N. lat., 124°59'14" W. long.;
48°29'44" N. lat., 125°00'06" W. long.;
48°28'09" N. lat., 125°05'47" W. long.;
48°27'10" N. lat., 125°08'25" W. long.;
48°26'47" N. lat., 125°09'12" W. long.;
48°20'16" N. lat., 125°22'48" W. long.;
48°18'22" N. lat., 125°29'58" W. long.;
48°11'05" N. lat., 125°53'48" W. long.;
47°49'15" N. lat., 126°40'57" W. long.;
47°36'47" N. lat., 127°11'58" W. long.;
47°22'00" N. lat., 127°41'23" W. long.;
46°42'05" N. lat., 128°51'56" W. long.;
46°31'47" N. lat., 129°07'39" W. long.

(iii) Southern boundary: a line extended due West from Cape Falcon, Oregon, at 45°46'00" N. lat.

(2) Sub-Area B:

(i) Northern Boundary: A line extended due west from Cape Falcon, Oregon, at 45°46'00" N. lat.

(ii) Southern Boundary: A line extended due west from Cape Blanco, Oregon, at 42°50'20" N. lat.

(3) Sub-Area C:

(i) Northern Boundary: A line extended due west from Cape Blanco, Oregon, at 42°50'20" N. lat.

(ii) Southern Boundary: A line extended due west from the California-Oregon border at 42°00'00" N. lat.

(4) Sub-Area D:

(i) Northern Boundary: A line extended due west from the California-Oregon border at 42°00'00" N. lat.

(ii) Southern Boundary: A line extended due west from Cape Vizcaino, California at 39°43'30" N. lat.

(5) Sub-Area E:

(i) Northern Boundary: A line extended due west from Cape Vizcaino, California at 39°43'30' N. lat.

(ii) Southern Boundary: The United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat. 117°27'49" W. Long.;
32°37'37" N. lat. 117°49'31" W. Long.;
31°07'58" N. lat. 118°36'18" W. Long.;
30°32'31" N. lat. 121°51'58" W. Long.

(b) Any person fishing subject to this Part 661 shall be bound by the above described international boundaries, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

[2] The line joining these coordinates is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18002.

(c) The inner boundary of the Fishery Management Area is a line coterminous with the seaward boundaries of the States of Washington, Oregon and California (the "3-mile limit").

(d) The outer boundary of the Fishery Management Area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 661.7 General restrictions.

The following restrictions apply to all commercial and recreational salmon fishing in Sub-Areas A through E, except that the restrictions in this Part 661 shall not apply to fishing for pink and sockeye salmon regulated under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System, as amended by the Pink Salmon Protocol, north of 48° North latitude.

(a) No person shall use nets to fish for salmon in the Fishery Management Area except that a hand-held net may be used to bring hooked salmon on board a vessel.

(b) No person shall fish for, or take and retain any species of salmon:

(1) During closed seasons or in closed areas specified in this Part;

(2) Once any catch limit specified in this Part is attained;

(3) By means of gear or methods prohibited by this part.

(4) In violation of any field order issued under § 661.12 of this Part.

(c) No person shall take and retain any species of salmon which is less than the minimum length specified in this Part [see §§ 661.5(d), (e) and (h), 661.7(f), (g), (h), and (i), 661.10(c); and 661.11(c), regarding "Dressed, Head-off" salmon aboard a "Freezer Trolling Vessel"].

(d) No person shall fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this Part.

(e) No person shall possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of salmon or salmon part which was taken in violation of the Act, this Part 661, or any regulation issued under the Act.

(f) No person shall possess on board a fishing vessel in the Pacific Council's Fishery Management Area any salmon for which a minimum total length is set by these regulations, in such condition that its total length cannot be determined; except that "Dressed, Head-off" salmon, [as defined in § 661.5(e)] may be possessed aboard a "Freezer

Trolling Vessel" [as defined in § 661.5(h)]. [Exception: see following paragraph.]

(g) No person shall remove the head of any salmon caught in the Pacific Council's Fishery Management area, nor possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin, which missing fin indicates that a Coded Wire Tag has been implanted in the head of the fish.

(h) No person while fishing shall possess on a fishing vessel during an open season in any Pacific Council Sub-Area, any salmon which is less than the minimum total length for that species in that Sub-Area; except that "Dressed, Head-off" salmon [as defined in § 661.5(e)] aboard a "Freezer Trolling Vessel" [as defined in § 661.5(h)] shall not be less than the "Dressed, Head-off length" [as defined in § 661.4(d)] for that species in that Sub-Area. (See exception in § 661.7(g).)

(i) No person, while on board a fishing vessel, shall mutilate or otherwise disfigure any salmon in a manner which extends its length to conform to any minimum "Total Length" or "Dressed, Head-off length" requirement specified in this Part. Salmon may be gilled and gutted, if in doing so there is no separation of vertebrae. In addition, on board a "Freezer Trolling Vessel" [as defined in § 661.5(h)] salmon may be prepared [as defined in § 661.5(e)] for on-board freezing, if in doing so there is no further separation of vertebrae. (See exception in § 661.7(g).)

(j) No person shall:

(1) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this Part, or any other regulation issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (1) of this subsection;

(3) Resist a lawful arrest for any act prohibited by this Part; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person by any Authorized Officer, for any act prohibited by this Part.

§ 661.8 Facilitation of enforcement.

The operator of each fishing vessel shall immediately comply with instructions given by Authorized Officers to facilitate safe boarding and inspection of the vessel for purposes of enforcing the Act and this Part.

§ 661.9 Penalties.

Any person or fishing vessel found to be in violation of this Part 661 will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act.

§ 661.10 Commercial fishing.

(a) *Open seasons and areas.* The Fishery Management Area is closed to commercial salmon fishing except as opened by this Part 661 or superseding regulations. All open fishing periods shall commence at 0001 hours and terminate at 2400 hours local time on the dates specified herein.

(1) Sub-Area A (U.S.-Canada Border to Cape Falcon, Oregon):

(i) The season for all salmon species except coho, shall begin on May 1, and terminate on May 31.

(ii) The season for all salmon species, including coho, shall begin on July 15, and terminate on September 8.

(2) Sub-Area B (Cape Falcon to Cape Blanco, Oregon):

(i) The season for all salmon species except coho, shall begin on May 1, and terminate on May 31. The season for all salmon species except coho, with fishing limited to specific terminal gear as defined in § 661.10(b)(3), shall begin on June 16 and terminate on June 30, from Cape Falcon, south to Cape Blanco.

(ii) The season for all salmon species including coho, shall begin on July 15, and terminate on September 8.

(iii) The season for all salmon species except coho, shall begin on September 9, and terminate on October 31.

(3) Sub-Area C (Cape Blanco to Oregon-California border):

(i) The season for all salmon species except coho, shall begin on May 1, and terminate on May 31.

(ii) The season for all salmon species, including coho, shall begin on July 15, and terminate on September 8.

(iii) The season for all salmon species except coho shall begin on September 9, and terminate on October 31.

(4) Sub-Area D (Oregon-California border to Cape Vizcaino):

(i) The season for all salmon species except coho, shall begin on May 1, and terminate on May 15.

(ii) The season for all salmon species, including coho, shall begin on May 16, and terminate on May 31.

(iii) The season for all salmon species, including coho, shall begin on July 16, and terminate on September 30.

(5) Sub-Area E (Cape Vizcaino to U.S.-Mexico border).

(i) The season for all salmon species except coho shall begin on May 1 and terminate on May 15.

(ii) The season for all salmon species, including coho, shall begin on May 16. This early season shall terminate on May 31.

(iii) The season for all salmon species, including coho, shall begin on July 1, and terminate on September 30.

(b) *Gear restrictions.* (1) No person shall engage in commercial salmon fishing using other than troll gear in the Pacific Council's Fishery Management Area; however, in Sub-Areas D and E, troll gear need not be fixed to the fishing vessel as specified in § 661.5(o).

(2) No person shall engage in commercial salmon fishing in the Pacific Council Fishery Management Area using other than single, barbless hooks during any open season prior to July 15 in Sub-Areas A, B and C, or prior to May 16, in Sub-Areas D and E, except that bait hooks with natural bait attached as the primary attraction and hooks on artificial salmon plugs may be barbed. Spoons, wobblers, dodgers, and flexible plastic lures shall not be considered artificial salmon plugs under this sub-paragraph, and therefore must be equipped with barbless hooks in all Sub-Areas during the time periods described in this § 661.10(b)(2).

(3) During the period June 16 to June 30 in Sub-Area B (Cape Falcon to Cape Blanco) no person shall use any terminal gear except whole, natural baits with hook sizes of 6/0 or larger, or artificial salmon plugs the bodies of which are greater than six (6) inches in length.

(c) *Length Restrictions.* Minimum total lengths of salmon and minimum dressed, head-off lengths of salmon are as follows:

		Minimum Total Length 1/	Minimum Dressed Head-Off Length 1/
SUB-AREA A	Chinook	28	21-1/2
	Coho	16	12
SUB-AREAS B & C	Chinook	26	19-1/2
	Coho	16	12
SUB-AREAS D & E	Chinook	26	19-1/2
	Coho	22	16-1/2
ALL SUB-AREAS	Species other than Chinook and Coho	None	None

1/ In inches.

(d) *Vessel Inspection and Certification.* Any vessel 26 feet or longer with coho salmon on board in Sub-Areas D and E between May 15 and May 24, shall have on board documentation of a current fishing-vessel hold inspection as required by the State of California.

(e) *Steelhead.* No person engaged in commercial salmon fishing shall take and retain or possess any steelhead

(*Salmo gairdneri*) within the Pacific Council's Fishery Management Area.

(f) *Restriction on recreational fishing from commercial troll vessel*—No person while on a fishing vessel with operable troll gear on board shall engage in recreational fishing for salmon during any period closed to commercial fishing for salmon.

§ 661.11 Recreational fishing.

(a) *Open seasons and areas.* The Pacific Council's Fishery Management Area is closed to recreational salmon fishing except as opened by this Part 661 or by superseding regulations. All seasons shall begin at 0001 hours and terminate at 2400 hours local time on the dates specified herein.

(1) In Sub-Areas A, B and C the season for all salmon species shall begin on May 10, and terminate on September 14.

(2) In Sub-Areas B and C a season *for Chinook salmon only* shall begin on September 15, and terminate on October 31.

(3) In Sub-Areas D and E the season for all salmon species shall begin on February 17, and terminate on October 13.

(b) *Gear restrictions.* (1) No person shall engage in recreational salmon fishing in the Pacific Council's Fishery Management Area using other than recreational fishing gear as defined in § 661.5(n), to which may be attached not more than one artificial lure or natural bait, with no more than four single or multiple hooks.

(2) No person shall use more than one rod and line for recreational salmon fishing in Sub-Areas A, B and C; there shall be no limit to the number of rods and/or lines used for recreational salmon fishing in Sub-Areas D and E.

(3) No person engaged in recreational fishing for salmon in Sub-Areas D and E may use weights of more than four (4) pounds attached directly to the line.

(c) *Length restrictions.* Minimum total lengths of salmon are as follows:

		Minimum Total Length (in inches)
SUB-AREAS A	Chinook	24
	Coho	16
SUB-AREAS B and C	Chinook	22
	Coho	16
SUB-AREAS D and E	Chinook and Coho	22 1/
ALL SUB-AREAS	Species other than Chinook and Coho	None

1/ except that one chinook or coho salmon per day may be less than 22 inches but not less than 20 inches.

(d) *Catch limits.* (i) No person shall fish for, or take and retain, or possess more than three salmon per day while recreationally fishing in Sub-Areas A, B, or C.

(ii) No person recreationally fishing in Sub-Areas A, B, or C following any reduction in the daily bag limit from three salmon to two salmon, as provided for in § 661.12, shall fish for, or take and retain, or possess more than two salmon per day.

(iii) No person shall fish for, or take and retain, or possess more than two salmon per day while recreationally fishing in Sub-Areas D and E.

§ 661.12 In-season adjustments.

(a) The Regional Director may modify the open seasons and catch limits in § 661.10 and § 661.11 of this Part in any portion of Sub-Areas A, B, or C (with exceptions as noted in § 661.12), by issuing a Field Order in accordance with the provisions of this section, if the Regional Director determines that:

(1) Actual conditions of abundance and distribution of salmon, and fishing efforts and catches, differ from conditions anticipated prior to May 1; and

(2) In-season modifications are reasonably necessary to provide adequate escapement for spawning, to meet Treaty-Indian allocation requirements, or to maintain, insofar as possible, the historical harvest ratio between commercial and recreational salmon fisheries, as set forth in paragraph (b)(3) of this section.

(b) Field Orders—Procedures

(1) Preliminary Determinations: On August 7, or the working day closest thereto, the Regional Director following consultation with the Chairman of the Council, the Director of the WDF, and the Director of the ODF&W, shall estimate coho salmon stock abundance in Sub-Areas A, B, and C, and make a preliminary projection of total ocean harvests that will occur by the end of the fishing season in those Sub-Areas by the commercial and recreational fisheries. The Regional Director shall consider the following factors in making the preliminary projections:

(i) The number of participants, levels and distribution of fishing efforts, and catches of the commercial and recreational fisheries as of August 7 compared to similar data and time periods in prior years; and

(ii) The current and historical harvest ratios between the commercial fishery and the recreational fishery, as set forth in paragraph (b)(3) of this section; and

(iii) Abundance estimates and catches of coho stocks in Sub-Area A as of August 7 compared to the Washington Production Projection (WPP) of coho abundance and catch data for the 1974–1976 period; and

(iv) Abundance estimates and catches of coho stocks in the Oregon Production Index (OPI) area as of August 7, including private hatchery fish, compared to their original OPI predictions; and

(v) Data from marked-fish recoveries, including analysis of recoveries of coho salmon with implanted coded-wire tags; and

(vi) Any other scientific information relevant to the abundance and distribution of coho stocks, total fishing efforts and catches that is available as of August 7.

The preliminary projections and determinations shall be published in the **Federal Register** and distributed through public news media on August 7 or as soon as practicable thereafter.

(2) Final Determinations and Field Orders: On August 22 or the working day closest thereto, the Regional Director, following consultation with the Chairman of the Council, the Director of the WDF, and the Director of the ODF&W, and taking into consideration all information received under paragraph (b)(5) of this section, all factors considered in making the preliminary projections under paragraph (b)(1) of this section and any additional relevant scientific information received, shall estimate coho stock abundances in Sub-Areas A, B, and C and make a final projection of fishing effort and total ocean harvests that will occur by the end of the fishing season in Sub-Areas A, B, and C by the commerical and recreational fisheries. The following factors shall be considered in projecting ocean fishing effort:

(i) For the Washington Production Projection (WPP) Regulatory Area as defined in § 661.5(v) actual effort as of August 22 compared to average effort for the 1974–76 period and for 1979; and

(ii) For the OPI Regulatory Area (as defined in § 661.5(l)), the actual effort trend as of August 22 compared to 1979 boat-days and to average effort derived by aerial surveillance for the 1976–79 period; and

(iii) Any relevant scientific information submitted by the WDF, the ODF&W or any other source.

The final determinations by the Regional Director and any field order issued under paragraph (a) of this section shall be published in the **Federal Register** and other public news media on August 22 or as soon as practicable thereafter, together with the reasons therefore.

(3) Commercial and Recreational Ocean Fisheries: Any modification made

by the Regional Director under paragraph (a) of this section, shall, insofar as possible, maintain the historical harvest ratios between the commercial and recreational fisheries as follows:

(i) For the WPP Regulatory Area (as defined in § 611.5(v)) a 60:40 coho havest ratio between the commerical and recreational fisheries;

(ii) For the OPI Regulatory Area (as defined in § 661.5(l)) a 71:29 coho harvest ratio between the commercial and recreational fisheries.

(4) Availability of Data: The Regional Director shall compile in aggregate form all data relevant to the preliminary projections and final determinations under paragraphs (b) (1) and (2) of this section, and shall make them available for public review during normal office hours at the Northwest Regional Office of the National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109.

(5) Public Comment: Comments from the public that are relevant to the projections and determinations in paragraphs (b) (1) and (2) of this section may be submitted to the Regional Director until August 22.

(6) Field Orders—Effective Date: Any field order issued under paragraph (a) of this section shall be effective upon filing with the Office of the Federal Register, and shall remain in effect until the expiration date stated in the order, or until rescinded or superceded and shall be announced through public news media.

(7) Nothing contained in this Section shall limit the authority of the Secretary to issue emergency regulations under Section 305(e) of the Act as specified in § 661.14 of this Part.

§ 661.13 Treaty Indian fishing.

(a) Persons entitled to exercise rights under the Treaty with the Makah may fish for all salmon species in that portion of Sub-Area A north of 48°07'36" North latitude (Sandy Point) from 0001 hours on May 1, to 2400 hours on October 31. Except as specified by this subsection (a), such persons are subject to the provisions of this Part 661, the Act, and any other regulation issued under the Act.

(b) Members of the Quileute and Hoh Tribes entitled to exercise rights under the Treaty of Olympia, may fish for all salmon species in that portion of Sub-Area A south of 48°07'36" North latitude (Sandy Point) and north of 47°31'42" North latitude (mouth of Queets River) from 0001 hours on May 1, to 2400 hours on October 31. Except as specified by this subsection (b), such persons are subject to the provisions of this Part 661, the Act, and any other regulations issued under the Act.

(c) Members of the Quinault Tribe entitled to exercise rights under the Treaty of Olympia, may fish for all salmon species in that portion of Sub-Area A south of 47°40'6" North latitude (Destruction Island) and north of 46°53'3" North latitude (Point Chehalis) from 0001 hours on May 1, to 2400 hours on October 31. Except as specified by this subsection (c), such persons are subject to the provisions of this Part 661, the act, and any other regulations issued under the Act.

(d) The Secretary will give due consideration in promulgating emergency regulations under § 661.14 to the treaty fishing rights of Indian tribes with usual and accustomed fishing grounds in the area affected by such regulations.

§ 661.14 Emergency regulations.

(a) The Secretary may issue emergency regulations under Section 305(e) of the Act, if an emergency involving the salmon resource is determined to exist. Emergency regulations will be announced by publication of a notice in the **Federal Register**. Information on emergency regulations will be disseminated to affected persons through public news media.

(b) The Council may, at any time, make recommendations to the Secretary for emergency regulations under this section.

§ 661.15 Catch reports.

This Part 661 recognizes that catch and effort data necessary for implementation of this Fishery Management Plan shall be collected by the States of Washington, Oregon and California under existing State data-collection provisions. No additional catch reports will be required of fishermen or processors as long as the data-collection and reporting systems operated by state agencies continue to provide the Secretary with statistical information adequate for management. Reporting requirements may be promulgated by emergency regulations if this reporting system becomes inadequate for management purposes.

§ 661.16 Test fisheries.

The Secretary may, upon recommendation from the Pacific Council, allow for scientific purposes limited test fisheries for salmon in the Fishery Management Area as may be proposed by the Pacific Council, the Federal Government, State Governments, and Treaty Indian Tribes having fishing rights in usual and accustomed fishing grounds in the Pacific Council's Fishery Management Area.

[FR Doc. 80-13630 Filed 4-30-80; 10:55 am]
BILLING CODE 3510-22-M

Reader Aids

Federal Register

Vol. 45, No. 86

Thursday, May 1, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders and problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Index and Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, MAY

29001-29262.....1

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1980

This table is for use in computing dates certain in connection with documents which are published in the Federal Register subject to advance notice requirements or which impose time limits on public response.

Federal Agencies using this table in calculating time requirements for submissions must allow sufficient extra time for Federal Register scheduling procedures.

In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
May 1	May 16	June 2	June 16	June 30	July 30
May 2	May 19	June 2	June 16	July 1	July 31
May 5	May 20	June 4	June 19	July 7	August 4
May 6	May 21	June 5	June 20	July 7	August 4
May 7	May 22	June 6	June 23	July 7	August 5
May 8	May 23	June 9	June 23	July 7	August 6
May 9	May 27	June 11	June 23	July 8	August 7
May 12	May 27	June 12	June 26	July 11	August 11
May 13	May 28	June 13	June 27	July 14	August 11
May 14	May 29	June 16	June 30	July 14	August 12
May 15	May 30	June 16	June 30	July 14	August 13
May 16	June 2	June 16	June 30	July 15	August 14
May 19	June 3	June 18	July 3	July 18	August 18
May 20	June 4	June 19	July 7	July 21	August 18
May 21	June 5	June 20	July 7	July 21	August 19
May 22	June 6	June 23	July 7	July 21	August 20
May 23	June 9	June 23	July 7	July 22	August 21
May 27	June 11	June 26	July 11	July 28	August 25
May 28	June 12	June 27	July 14	July 28	August 26
May 29	June 13	June 30	July 14	July 28	August 27
May 30	June 16	June 30	July 14	July 29	August 28

CFR CHECKLIST; 1979/1980 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1979/1980. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $450 domestic, $115 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1980):

Title	Price
1	$4.50
4	6.50
6	3.75
7 Parts:	
0-52	8.50
700-899	7.00
900-944	7.00
945-980	5.50
981-999	5.50
1060-1119	7.00
1120-1199	6.00
8	5.50
9 Parts:	
1-199	7.00
200-end	6.50
10 Parts:	
0-199	7.50
200-499	8.50
12 Parts:	
1-199	6.00
13	7.00
14 Parts:	
60-199	8.50
1200-end	6.00
16 Parts:	
0-149	7.00
150-999	6.00
CFR Index	8.50

CFR Unit (Rev. as of Apr. 1, 1979):

17	12.00
18 Parts:	
0-149	6.50
150-end	7.00
19	7.50
20 Parts:	
1-399	5.50
400-499	7.00
500-end	6.50
21 Parts:	
1-99	5.50
100-199	7.50
200-299	4.00
300-499	7.00
500-599	7.00
600-1299	6.00
1300-end	4.25
1300-end—1308 Table	4.25
22	7.00
23	6.50
24 Parts:	
0-499	8.00
500-1699	7.50
1700-end	6.00
25	7.00
26 Parts:	
1 (§§ 1.0-1.169)	8.00
1 (§§ 1.170-1.300)	6.50
1 (§§ 1.301-1.400)	5.50
1 (§§ 1.401-1.500)	6.00
1 (§§ 1.501-1.640)	6.00
1 (§§ 1.641-1.850)	6.50
1 (§§ 1.851-1.1200)	7.50
1 (§§ 1.1201-end)	8.50
2-29	6.00
30-39	6.00
40-299	7.00
300-499	6.00
600-end	4.25
27	11.00

CFR Unit (Rev. as of July 1, 1979):

28	6.50
29 Parts:	
0-499	8.00
500-1899	9.00
1900-1919	11.00
1920-end	7.50
30	13.00
31	8.50
32 Parts:	
1-39 (Vol. I)	8.50
1-39 (Vol. II)	11.00
1-39 (Vol. III)	8.50
40-399	8.50
400-699	8.50
700-799	7.50
800-999	7.50
1000-end	6.00
32A	5.50
33 Parts:	
1-199	8.50
200-end	7.00
34 (Rev. 12/31/79)	6.00
35 (Rev. 12/31/79)	6.00
36	7.00
37	5.50
38	9.00
39	6.00
40 Parts:	
0-49	6.50
50-59	12.00
60-80	6.50
81-99	7.00
100-399	8.00
400-end	12.00
41 Chapters:	
1-2	9.00
3-6	7.50
7	4.00
8	4.00
9	7.00
10-17	6.50
18 (Pts. 1-52 SUPP.)	3.00
19-100	6.00
101-end	12.00
CFR Index	8.50

CFR Unit (Rev. as of Oct. 1, 1979):

42 Parts:	
1-399	8.00
400-end	8.00
43 Parts:	
1-999	5.50
1000-end	9.00
44	5.50
45 Parts:	
1-99	6.50
100-149	7.00
150-199	7.00
200-499	5.00
500-1199	7.00
1200-end	6.50
46 Parts:	
1-29	4.25
30-40	4.50
41-69	6.50
70-89	4.75
90-109	4.75
110-139	4.25
140-155	5.50
156-165	5.50
166-199	5.25
200-end	8.50
47 Parts:	
0-19	6.50
20-69	8.00
70-79	7.00
80-end	8.00
48 [Reserved]	
49 Parts:	
1-99	4.75
100-177	7.00
178-199	7.00
200-399	7.00
400-999	7.00
1000-1199	7.00
1200-1299	9.00
1300-end	6.00
50	8.00

AGENCY ABBREVIATIONS
Used in Highlights and Reminders

(This List Will Be Published Monthly in First Issue of Month.)

USDA Agriculture Department

AMS Agricultural Marketing Service
APHIS Animal and Plant Health Inspection Service
ASCS Agricultural Stabilization and Conservation Service
CCC Commodity Credit Corporation
CEA Commodity Exchange Authority
EMS Export Marketing Service
EOA Energy Office, Agriculture Department
EQOA Environmental Quality Office, Agriculture Department
ESCS Economics, Statistics, and Cooperatives Service
FmHA Farmers Home Administration
FAS Foreign Agricultural Service
FCIC Federal Crop Insurance Corporation
FGIS Federal Grain Inspection Service
FNS Food and Nutrition Service
FS Forest Service
FSQS Food Safety and Quality Service
RDS Rural Development Service
REA Rural Electrification Administration
RTB Rural Telephone Bank
SCS Soil Conservation Service
SEA Science and Education Administration
TOA Transportation Office, Agriculture Department

COMMERCE Commerce Department

BEA Bureau of Economic Analysis
Census Census Bureau
EDA Economic Development Administration
FSPSO Federal Statistical Policy and Standards Office
FTZB Foreign-Trade Zones Board
ITA International Trade Administration
MA Maritime Administration
MBDA Minority Business Development Agency
NBS National Bureau of Standards
NOAA National Oceanic and Atmospheric Administration
NSA National Shipping Authority
NTIA National Telecommunications and Information Administration
NTIS National Technical Information Service
PTO Patent and Trademark Office
USTS United States Travel Service

DOD Defense Department

AF Air Force Department
Army Army Department
DCAA Defense Contract Audit Agency
DCPA Defense Civil Preparedness Agency
DIA Defense Intelligence Agency
DIS Defense Investigative Service
DLA Defense Logistics Agency
DMA Defense Mapping Agency
DNA Defense Nuclear Agency
EC Engineers Corps
Navy Navy Department

DOE Energy Department

APA Alaska Power Administration
BPA Bonneville Power Administration
EIA Energy Information Administration
ERA Economic Regulatory Administration
ERO Energy Research Office
ETO Energy Technology Office
FERC Federal Energy Regulatory Commission
OHADOE Hearings and Appeals Office, Energy Department
SEPA Southeastern Power Administration
SOLAR Conservation and Solar Energy Office
SWPA Southwestern Power Administration
WAPA Western Area Power Administration

HEW Health, Education, and Welfare Department

ADAMHA Alcohol, Drug Abuse, and Mental Health Administration
CDC Center for Disease Control
ESNC Educational Statistics National Center
FDA Food and Drug Administration
HCFA Health Care Financing Administration
HDSO Human Development Services Office
HRA Health Resources Administration
HSA Health Services Administration
MSI Museum Services Institute
NIH National Institutes of Health
NIOSH National Institute of Occupational Safety and Health
OE Office of Education
PHS Public Health Service
RSA Rehabilitation Services Administration
SSA Social Security Administration

HUD Housing and Urban Development Department

CARF Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD Community Planning and Development, Office of Assistant Secretary
EQO/HUD Environmental Quality Office, Housing and Urban Development Department
FHC Federal Housing Commissioner, Office of Assistant Secretary for Housing
FHEO Fair Housing and Equal Opportunity, Office of Assistant Secretary
GNMA Government National Mortgage Association
ILSRO Interstate Land Sales Registration Office
NCA New Communities Administration
NCDC New Community Development Corporation
NVACP Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR Interior Department

BIA Bureau of Indian Affairs
BLM Bureau of Land Management
FWS Fish and Wildlife Service
GS Geological Survey
HCRS Heritage Conservation and Recreation Service
Mines Mines Bureau
NPS National Park Service
OHA Office of Hearings and Appeals, Interior Department
SMO Surface Mining Office
WPRS Water and Power Resource Service

JUSTICE Justice Department

DEA Drug Enforcement Administration
BJS Bureau of Justice Statistics
INS Immigration and Naturalization Service
LEAA Law Enforcement Assistance Administration
NIC National Institute of Corrections
NIJ National Institute of Justice
OJARS Justice Assistance, Research and Statistics Office
PARCOM Parole Commission

LABOR Labor Department

BLS Bureau of Labor Statistics
BRB Benefits Review Board
ESA Employment Standards Administration
ETA Employment and Training Administration
FCCPO Federal Contract Compliance Programs Office
LMSEO Labor Management Standards Enforcement Office
MSHA Mine Safety and Health Administration

OSHA Occupational Safety and Health Administration
P&WBP Pension and Welfare Benefit Programs
W&H Wage and Hour Division

STATE State Department

FSGB Foreign Service Grievance Board

DOT Transportation Department

CG Coast Guard
FAA Federal Aviation Administration
FHWA Federal Highway Administration
FRA Federal Railroad Administration
MTB Materials Transportation Bureau
NHTSA National Highway Traffic Safety Administration
OHMR Office of Hazardous Materials Regulations
OPSR Office of Pipeline Safety Regulations
RSPA Research and Special Programs Administration
SLSDC Saint Lawrence Seaway Development Corporation
UMTA Urban Mass Transportation Administration

TREASURY Treasury Department

ATF Alcohol, Tobacco and Firearms Bureau
Customs Customs Service
Comptroller Comptroller of the Currency
ESO Economic Stabilization Office (temporary)
FS Fiscal Service
IRS Internal Revenue Service
Mint Mint Bureau
PDB Public Debt Bureau
RSO Revenue Sharing Office
SS Secret Service

Independent Agencies

AC Aging, Federal Council
ANGTS Alaska Natural Gas Transportation System, Office of Federal Inspector
ATBCB Architectural and Transportation Barriers Compliance Board
CAB Civil Aeronautics Board
CASB Cost Accounting Standards Board
CEQ Council on Environmental Quality
CFTC Commodity Futures Trading Commission
CITA Textile Agreements Implementation Committee
CPSC Consumer Product Safety Commission
CRC Civil Rights Commission
CSA Community Services Administration
CWPS Wage and Price Stability Council
EEOC Equal Employment Opportunity Commission
EPA Environmental Protection Agency
ESC Endangered Species Committee
ESSA Endangered Species Scientific Authority
EXIMBANK Export-Import Bank of the U.S.
FCA Farm Credit Administration
FCC Federal Communications Commission
FCSC Foreign Claims Settlement Commission
FDIC Federal Deposit Insurance Corporation
FEC Federal Election Commission
FEMA Federal Emergency Management Agency
FEMA/USFA United States Fire Administration
FFIEC Federal Financial Institutions Examination Council
FHLBB Federal Home Loan Bank Board
FHLMC Federal Home Loan Mortgage Corporation
FLRA Federal Labor Relations Authority
FMC Federal Maritime Commission
FRS Federal Reserve System
FTC Federal Trade Commission
GAO General Accounting Office
GPO Government Printing Office
GSA General Services Administration
GSA/ADTS Automated Data and Telecommunications Service
GSA/FPA Federal Preparedness Agency
GSA/FPRS Federal Property Resources Service
GSA/FSS Federal Supply Service
GSA/NARS National Archives and Records Services
GSA/OFR Office of the Federal Register
GSA/PBS Public Buildings Service
ICA International Communication Agency
ICC Interstate Commerce Commission
ICP Interim Compliance Panel (Coal Mine Health and Safety)
IDCA International Development Cooperation Agency
ITC International Trade Commission
IRLG Interagency Regulatory Liaison Group
LSC Legal Services Corporation
MB Metric Board
MBDA Minority Business Development Agency
MSPB Merit System Protection Board
MWSC Minimum Wage Study Commission
NACEO National Advisory Council on Economic Opportunity
NASA National Aeronautics and Space Administration
NCCB National Consumer Cooperative Bank
NCUA National Credit Union Administration
NFAH National Foundation for the Arts and the Humanities
NLRB National Labor Relations Board
NRC Nuclear Regulatory Commission
NSF National Science Foundation
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OMB/FPPO Federal Procurement Policy Office
OPIC Overseas Private Investment Corporation
OPM Office of Personnel Management
OPM/FPRAC Federal Prevailing Rate Advisory Committee
OSTP Office of Science and Technology Policy
PADC Pennsylvania Avenue Development Corporation
PBGC Pension Benefit Guaranty Corporation
PRC Postal Rate Commission
PS Postal Service
ROAP Reorganization Office of Assistant to President
RRB Railroad Retirement Board
SBA Small Business Administration
SEC Securities and Exchange Commission
Trade Trade Representative, Office of United States
TVA Tennessee Valley Authority
USIA United States Information Agency
VA Veterans Administration
WRC Water Resources Council

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

23405 4–7–80 / Milk in the Upper Midwest Marketing Area; order suspending certain provisions

Food and Nutrition Service—

4960 1–22–80 / Child Care Food Program

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

14581 3–6–80 / Foreign fishing for billfish, oceanic sharks, wahoo, and makimaki in Pacific Ocean

ENERGY DEPARTMENT

Economic Regulatory Administration—

21196 3–31–80 / Crude oil buy/sell program dealing with emergency allocation for small refiners for month of June 1980 and thereafter

ENVIRONMENTAL PROTECTION AGENCY

21246 4–1–80 / North Carolina; water quality standards for Welch Creek

GENERAL SERVICES ADMINISTRATION

Automated Data and Telecommunications Service—

62515 10–31–79 / Federal conversion support center, temporary regulation

TRANSPORTATION DEPARTMENT

Coast Guard—

34129 6–14–79 / Pilot rules for inland waters and Western rivers; flashing yellow lights at head of tows being pushed ahead

Federal Railroad Administration—

21092 3–31–80 / Railroad locomotive safety standards and locomotive inspection

National Highway Traffic Safety Administration—

15179 3–10–80 / Motorcycle helmets; amendment to Safety Standard No. 218

VETERANS ADMINISTRATION

21242 4–1–80 / VA home loans; delegation of authority

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing April 29, 1980